HAMMURABI RECEIVING THE CODE FROM THE SUN GOD.

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THE CODE OF HAMMURABI
Edited by ROBERT FRANCIS HARPER

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THE LAWS OF HAMMURABI.

A CENTURY after the promulgation of the Code Napoléon the monolithic law book of Hammurabi is set up in the Louvre. If the analogy is not unduly pressed, there is a significant similarity between the sources of these two codes. In both cases a conqueror sought to consolidate his empire by organizing a mass of undigested local and provincial customs, decisions, and decrees into a uniform and national system. Both Hammurabi and Napoleon set at work influences in jurisprudence which extended far beyond their times and the borders of their empires.

Since M. de Morgan, in December, 1901, and January, 1902, discovered at Susa the three fragments of a beautifully polished and engraved black marble monolith containing an ancient Babylonian code, the Assyriologists have been diligently at work. The first official series of photographic reproductions, together with a transliteration and translation of the text,[1] has been made the basis of several volumes and monographs. The philological elaboration of the code is well under way;[2] its relation to the laws of Moses has been discussed with considerable fulness;[3] several different editions in German, Italian, and English[4] have either been issued or are announced for early publica-

[1] SCHEIL, *Textes élamites-sémitiques*, 2me série (Paris, 1902).

[2] MÜLLER, *Die Gesetze Hammurabis* (Vienna, 1903); pp. 245–67.

[3] KOHLER AND PEISER, *Hammurabi's Gesetz* (Leipzig, 1904); COOK, *The Laws of Moses and the Code of Hammurabi* (London, 1903).

[4] WINCKLER, *Die Gesetze Hammurabis* (Leipzig, 1903); OETTLI, *Das Gesetz Hammurabis und die Thora Israels* (Leipzig, 1903); JOHNS, *The Oldest Code of Laws in the World* (Edinburgh, 1903).

tion. The first American edition, by Professor Robert Francis Harper, of the University of Chicago, is an admirable specimen of careful scholarship.[1] The transliteration is paralleled on opposite pages by a clear and well-considered translation, which is followed by an exhaustive subject index and a complete glossary. Specialists will welcome the autographed text and sign-list which conclude the volume.

Although the annotation and elucidation of this ancient body of law are the special task of the orientalist, the document has rich meaning for all students of institutions. It will engage the attention of historians, jurists, economists, and sociologists. This article will treat briefly the social organization of ancient Babylon as reflected in the code, suggest a few parallels which are to be found in the legislation of other peoples, and finally summarize the principles of social control underlying the rule of Hammurabi.

The early history of Babylon (4500–3800) is a record of struggles between small city-states, each seeking leadership and aggrandizement. A second period (3800–2250) was opened auspiciously by Sargon I., who established a precarious hegemony and laid the foundations for a unification finally achieved by Hammurabi, who reigned for fifty-five years some time in the twenty-third century before Christ.[2] Hammurabi, the Amraphel of the Old Testament,[3] was a forceful king, a man of war and an able administrator. A series of his letters which have come to light afford glimpses of his constant activity, his scrutiny of details, and his imperious manner. A German scholar is reminded of Frederick II. or Frederick William I.[4] The Babylonian gave his commands right royally. A canal is to be finished in three days; an officer whom he summons shall, riding day and night, forthwith appear in Babylon; orders are to be carried out without fail. The king also concerns himself with legal matters, commands the retrial of cases, the return of property, the payment of debts. He summons litigants to the palace

[1] R. F. HARPER, *The Code of Hammurabi, King of Babylon* (Chicago, 1904).

[2] GOODSPEED, *A History of the Babylonians and Assyrians*, pp. 59–65 and 107 ff.

[3] Gen. 14 : 1.

[4] KOHLER AND PEISER, *op. cit.*, p. 2.

for a special hearing. He presides over public works, projecting new canals and sending workmen for these undertakings. He supervises military affairs, naming the troops to be sent out, the boats to be used, and the rations to be bought. He stands forth the patron of art and letters, and commands his scribes to prepare collections of the national literature. Again Hammurabi appears as the servant of the gods, solicitous for their festivals and statues.[1] In the prologue to the code the great king, in true oriental fashion, recites his deeds, and proclaims his relations with the gods. Anu and Bel have called him, "the exalted prince, the worshiper of the gods, to cause justice to prevail in the land, to destroy the wicked and the evil, to prevent the strong from oppressing the weak." There is a long catalogue of honors done in temple-building and service to the gods, of public works completed, of enemies overcome; but the keynote of this civil code is struck in such phrases as, "who establishes in security their property in Babylon," and the concluding sentence of the prologue, "I established law and justice in the land[2] and promoted the welfare of the people."[3]

Both the nature of the circumstances and the structure of the code itself confirm the belief that the aim of Hammurabi was to combine conflicting usages, customs, decisions of judges, into a single body of law, rather than to promulgate new legislation. Whether the work was done by a commission or was intrusted to a single jurist, the glory of the achievement belonged to the king, who combined the authority of his personal sovereignty with a supernatural sanction derived from the gods. In spite of the ingenious theory of Müller, that from the standpoint of ancient Babylonian life the code is to be regarded as a unified and systematic work,[4] the internal evidence seems to confirm the view of Sayce[5] and Cook, who assert that the code is made up of

[1] KING, *The Letters and Inscriptions of Hammurabi, e. g.*, pp. 4, 17, 21, 24, 37.

[2] Another reading of the text, literally "I established law and justice in the mouth —*i. e.*, language — of the people," adds the interesting suggestion that by setting up the code in the national language, as distinguished from local dialects, the king was furthering both linguistic unity and legal uniformity.

[3] HARPER, *op. cit.*, pp. 3–9. [4] MÜLLER, *op. cit.*, pp. 188–205.

[5] SAYCE, "The Legal Code of Babylonia," *American Journal of Theology*, April 1904, p. 257.

several groups or series of laws put together in a somewhat loose way. Thus a certain topic, such as slavery, is treated in several different and widely separated sections. Nevertheless, the work is far from being a mere haphazard collection of decisions and rules.

The first section of the code deals with false accusations, the second with sorcery, while the next three relate to witnesses and judges. Then follows a group which is concerned with theft, including kidnaping, the aiding or harboring of fugitive slaves, burglary, and robbery. In another series (§§ 26–41) the duties and privileges of officers and constables are defined. The next division deals with land laws, and includes the responsibilities of farmers, herdsmen, and gardeners. Here intervenes an erasure, as to the cause and meaning of which there are several conjectures. Sections 66–99 are missing. Evidently the subject of agency began somewhere in this gap, for when the stone again becomes legible at § 100, that topic is being treated. This commercial division ends with several sections on wine-sellers and the price of wine, and a rather full treatment of debt and deposit. Now follows an elaborate code on the family and marriage (§§ 127–93). The chief topics of this division are: slander, marriage contracts, adultery, rape, divorce and separation, status of concubines, types of immorality, the property of women, the betrothal present and the marriage settlement, the laws of inheritance, and the adoption of children. The next group of laws relates to penalties for homicide and assault, and wanders on into the responsibilities and fees of surgeons and veterinaries, the branders of slaves, house-builders, and shipwrights. Another series of laws deals with economic matters, such as the renting of oxen, responsibility for loss, together with tariffs of wages and charges for draft animals and carts. These scales are supplemented by similar regulations concerning boat-hire. The whole concludes with a group of five sections on the sale of slaves, and the mutilation of a slave who denies his master. The epilogue enumerates still other services of Hammurabi, reiterates many of the assertions of the prologue, pronounces a blessing upon him who does not efface or alter the statutes of the code,

and concludes with sixteen complicated curses upon him who dares to ignore, obliterate, or modify the laws of the "king of righteousness whom Shamash has endowed with justice."[1] Aside from the allusions of prologue and epilogue to the gods, and the mention of oaths and the privileges of devotees in the code itself, the subject of religion is not treated. The code is a body of civil law without any ritualistic element.

The translation of an ancient legal code back into the social organization out of which it originally grew is at best a speculative enterprise. Pitfalls abound on every hand. The interpretation of the text is often uncertain; technical terms especially are elusive; many of the regulations may never have been actually enforced; a wide range of customary law may have been assumed, and hence omitted altogether. Fortunately, in this case materials exist from which a fairly satisfactory outline sketch of civilization in ancient Babylon may be drawn. Constantly accumulating finds contribute to the filling in and shading of this picture. The code of Hammurabi gives sharpness of definition to many features which otherwise would be vague. These are, however, the economic, civil, and domestic relations only. Religion, art, literature, and science are not touched by the recently discovered laws.

Babylonia under Hammurabi was a group of city-provinces in process of unification through the influence of a nationalized religion, a powerful, centralized government, a closely interdependent commerce, and a well-recognized legal system which protected property rights and stimulated agriculture and industry. The state was personified in the priest-king, in whom were joined personal prestige and divine authority. Crown lands were held under a feudal tenure by a class of priests, devotees, nobles, military and civil officials, in whose interest the laws were in certain respects carefully framed. To presumably the same social status belonged a class of landowners, bankers, and merchants. Next in the social scale came the tradesmen and artisans, followed by the tenant farmers who held their lands under the metayer system. In the next stratum were the free

[1] HARPER, *op. cit.*, pp. 99–109.

wage-earning laborers; while last of all came a great body of house and other slaves, upon whose labor the entire economic structure was largely based.

Irrigation on a large scale produced abundant wheat and sesame from the rich alluvial soil; vast herds of sheep and cattle were counted among the resources of the land. Cities built of sun-dried and kiln-burnt brick were connected by highways or canals which covered the valley with a web of communication. Boat transportation was developed to a high degree; merchants and business firms, represented by authorized agents, organized their enterprises over a wide area; foreign commerce centered in the markets of Babylonia, whither converging international highways brought teak and cotton from India, stone, spices, copper, and gold from Sinai and Egypt, cedar from Syria, and marbles from the mountains to the east. Manufactures flourished: Babylonia was famous for its rugs of wool; its artisans were skilful in metal-working and stone-cutting, in tanning, dyeing, wood-working, pottery, brick-making, and boat-building.[1]

The complex life of this enterprising people is reflected in their code. The earlier stages of communal property—unless there remained traces in common pasture lands and patriarchal family goods—had disappeared. Individual ownership is assumed and safeguarded throughout. Property in crown and temple lands and herds was vested in the king and in religious corporations. All ownership was precisely defined in legal documents in the form of tablets (§§ 37, 48); every legal transaction was duly set down in deed, bond, contract, certificate of deposit, receipt, or marriage agreement. Many contingencies are anticipated and provided for in the code; all suggest the intricacy of a highly developed economic life, and the need of protection against keen, tricky, dishonest, or inefficient men. This finds illustration in the constant demand in the code for witnesses to testify to the transfer of property, or to the ownership of stolen goods or runaway slaves (§§ 7, 9–13, 123, 124). The laws disclose a persistent effort to guard the owner of property against loss. His sons and slaves may not in any circumstances

[1] GOODSPEED, *op. cit.*, pp. 71–76.

sell his goods, and woe betide the luckless would-be purchaser (§87). A man's slaves are not to be aided or concealed except at fearful penalty (§15); if a burglar enter a house, the punishment is death (§21); if the citizen is robbed upon the highway, the city and governor must make good the loss on the basis of his sworn schedule (§23). The holder of crown land may not be dispossessed except for neglect of duty (§§27–31), nor may the king's land be alienated (§§36, 37). The landowner is carefully protected against dishonest and lazy tenants (§§43, 44). The money-lender is guarded in his rights, although a debtor whose crop is ruined by flood or drought is released from interest for the disastrous year (§48). The owner of a field is protected against the carelessness of a neighbor whose neglected dyke or forgotten runnel causes an inundation (§§53–56), against the shepherd who turns flocks upon the land (§57), or against the trespasser who fells a tree (§59). The merchant is safeguarded in his relations with an agent, who must look to himself and demand receipts and witnesses at every turn (§§100–107). The property-owner who intrusts his goods to a common carrier (§112), or leaves them on deposit (§§122–25), or stores grain in a warehouse is well secured in his rights (§113). The slaveholder may collect damages from those who injure his man or maid, whether it be the unfortunate or bungling surgeon (§219), or the owner of a goring ox (§252). The householder is protected from loss due to the faulty construction of his dwelling, holding the builder responsible both for the damage and the replacing of the house (§§229–31). The boat-owner may recover the value of vessel and cargo from a careless lessee (§236), just as the owner of a hired ox may exact damages for the injury or death of his animal (§§245–48). The possessor of flocks may insist that the shepherd maintain a normal birth-rate among the cattle or sheep, or may recover ten-fold the number that the shepherd may be proved to have stolen (§§263, 264). Of the thirty-seven capital crimes indicated in the code, eighteen relate to property. The mere enumeration of these provisions serves to emphasize the extent to which property rights and vested interests had become sacrosanct at the time when Hammurabi ruled in Babylon four millenniums ago.

In the realm of personal injuries between equals the law of retaliation held almost complete sway, while the principle of compensation took the place of the *lex talionis* when one of higher rank injured a social inferior (§ 195–214). The son whose fingers were cut off for striking his father (§ 195), and the surgeon who suffered the same mutilation (§ 218) for a fatal operation, were both victims of the retaliatory idea. Significantly enough, the code contains no hint of the group-feud or blood-guiltiness. That primitive stage of family or clan revenge had been left behind, and the idea of individual responsibility had clearly emerged. That law which decreed the death of a son or a daughter whose father by carelessness or design had caused the death of another's child (§§ 116, 210, 230) was obviously based upon individualized retaliation, not upon family feud.[1] The *talio* was also extended in an interesting way to other than physical injuries. The false witness in a capital case had to undergo the penalty he had tried to fix upon another (§ 3), or in a case involving property he had to suffer the loss which he sought to bring upon his adversary (§ 4). Again, he who failed to bring witnesses to prove his assertions in a trial bore the penalty imposed in the case (§ 13). The dishonest or discredited judge was compelled to pay twelve-fold the amount involved in the case, besides being deposed from his seat of judgment (§ 5). The principal exception to settlements by retaliation or fine was the appeal to ordeal, which appears only twice in the code. In both cases the trial is by water, once for testing the charge of sorcery or witchcraft (§ 2), and again when the slandered wife must establish her innocence (§ 132).

The Babylonian family was of the patriarchal type, in which the status of woman had been elevated along with the institution of the dowry and the recognition of limited property rights. The authority and rule of the father, while sufficiently absolute, were modified in many respects by the code of the state. In matters of divorce and separation the rights of wife and children were recognized and in a large measure protected. In a marriage

[1] KOHLER, however, regards the three cases in which son or daughter is sacrificed as "bedeutende Reste geschlechterschaftlichen Strafrechts" ("Die Quellen des Strafrechts und Hummurabi," *University Record* (Chicago), March, 1904, p. 373).

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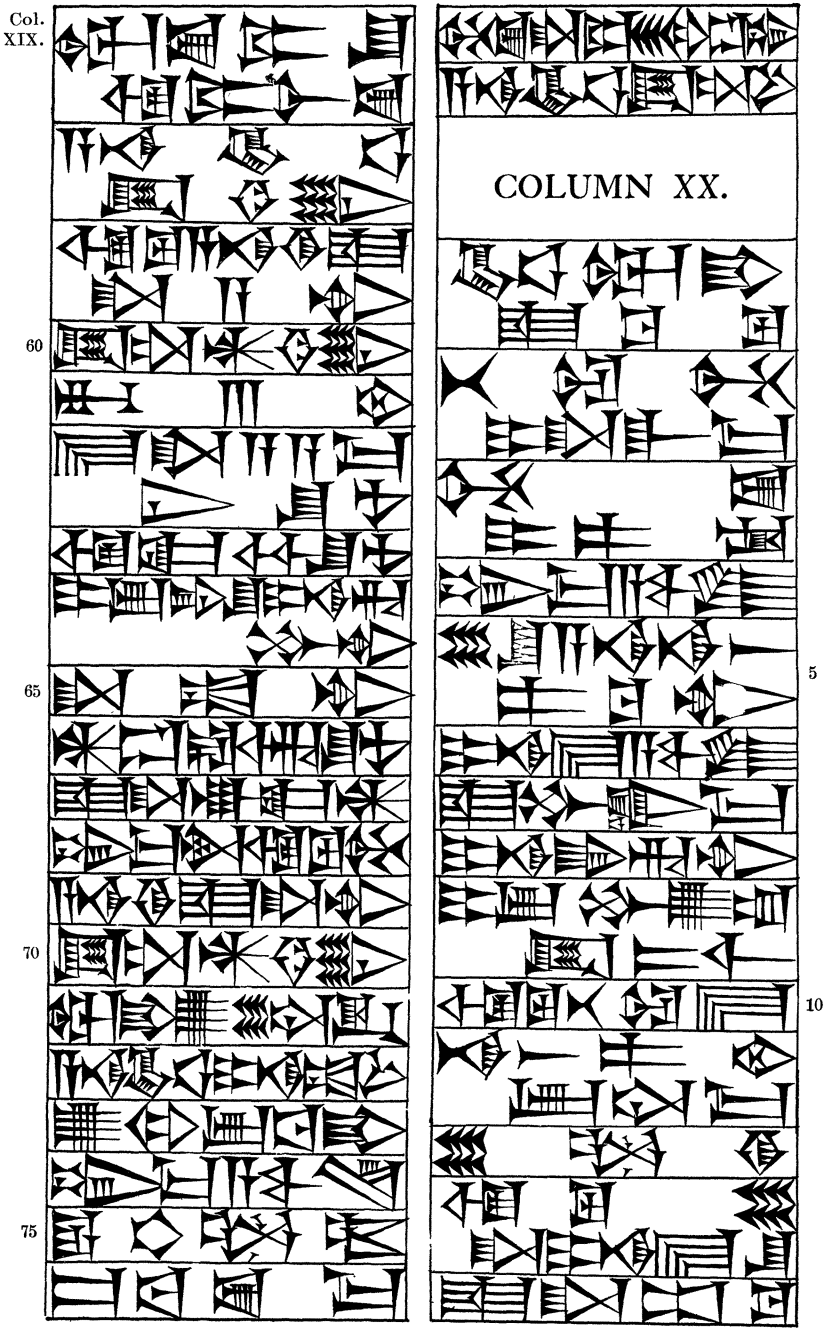

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settlement—and no marriage was legal without a formal contract (§128)—the groom ordinarily gave a betrothal present—a survival of the purchase price—(§159), the father sent with his daughter a dowry (§138), and sometimes the husband added a further gift or jointure (§150). This property played an important part in the family life. Even before marriage, if the groom changed his mind, he forfeited his first gift, or if the father proved fickle, the latter was compelled to return a doubled amount to the disappointed suitor (§§ 159, 160). After marriage, injustice, cruelty, or whim on the part of the husband meant loss of wife and dowry to him; faithlessness, extravagance, or shiftlessness on the wife's side led in extreme cases to death, or to divorce and forfeiture of dowry and betrothal present (§§129, 141–43, 153). The husband had large discretion as to divorcing a wife, but always under the check of these property rights.[1] The husband could pawn his wife, unless she had protected herself by a special contract (§151), but she could not be so held longer than three years (§§117, 152). The deserted wife might marry again without blame (§136); the wife of a man held captive by the enemy might enter another household, if she lacked means of support, but could rejoin her first husband on his return, leaving behind any children of the second union (§§134, 135). The property of the mother descended to her children, and she might even will to a favorite child any jointure that her husband had settled upon her (§150). Minute details as to special contingencies appear in the family division of the code. The causes of divorce are specified, and the procedures are indicated. Various immoralities which are catalogued reflect familiar facts of social vice. The temple devotees are mentioned, and special provisions are made for them. The existence of prostitution, whether wholly religious or otherwise, is assumed, but the code fails to throw much light upon this subject, which has been obscure ever since the allusions of Herodotus called the attention of scholars to the institution. The total impression of the marriage

[1] The significance of the dowry is well brought out by Westermarck who says: "Ultimately the dowry is due to a feeling of respect and sympathy for the weaker sex, which, on the whole, is characteristic of a higher civilization" (*The History of Human Marriage*, p. 415).

laws is one of relatively high legal status for women. How closely this was correlated with their actual social position leaves some room for speculation. In any event, the arbitrary power accorded to the husband points to a subordination of a marked kind for the wife, in spite of the protection afforded by a returnable dowry and other safeguards. Thus the code as a whole gives vivid glimpses of ancient Babylonian society. One sees an energetic and capable people pushing their industry to a complexity which demanded precise regulation, and displaying all those unsocial tendencies which, fostered by private property and competition, require check and guidance from the state. Along with increase in wealth and leisure, and the growth of family life on a basis not wholly physical and economic, the position of women had risen far above the prevailing level of the age. So, too, the redress of personal injury no longer a legal concern of family or clan had been assumed by society which held the individual responsible. Social caste was recorded in the varying scales of privileges, punishments, and damages, and slavery underlay the whole fabric of the nation. Primitive, as time is reckoned, the empire of Hammurabi, judged by its social status, seems in many ways curiously contemporary.

A study of the code naturally suggests similar regulations among other peoples, and raises the two questions: (1) How far has this body of laws directly influenced other legislation? and (2) In what measure does it confirm the thesis that in given conditions the same general principles of social control tend to emerge among groups widely separated in time and space?

The first problem has already been attacked by Semitic scholars who have advanced three tentative theories as to the relation between the laws of Moses and the code of Hammurabi. To Sayce the connection is slight, and the contrasts are more striking than the similarities, which latter he attributes to the common origin of the Semitic peoples and their racial characteristics, rather than to any direct influence.[1] Cook adopts practically the same view as to the so-called Book of the Covenant

[1] *Op. cit.*, pp. 258, 259.

(Exod., chaps. 21–23), and the deuteronomic code (Deut., chaps. 5–26, 28), but detects more direct Babylonian influence upon the post-exilic precepts (Ezek., chaps. 40f.) and the post-canonical, talmudic law.[1] Müller, after tabulating scores of more or less precarious parallels between the Babylonian and Mosaic codes, postulates an ancient written code from which both are derived. The Pentateuch is declared to be nearer the original than are the laws of Hammurabi. The same author also compares the Babylonian code with the laws of the Twelve Tables, and tentatively suggests a direct relation between the two.[2] Johnston surmises that the code of Hammurabi, which must have been the common law of Canaan, was in many ways taken up from the social environment into the Mosaic laws.[3] Sayce explains the otherwise somewhat unintelligible conduct of the patriarchs on this same hypothesis, although, as has been said, he rejects the inference from it.[4] The more definite and conclusive results which are sure to emerge from a comparative study of Semitic institutions under the stimulus of the newly discovered code will be awaited with much interest.

The other field of parallelisms is as wide as the world itself. The scope of this article forbids more than the suggestion of a few typical illustrations. Ethnologists and folk-psychologists have accumulated a mass of materials with which many sections of the Babylonian code may be either duplicated or closely matched. This is true especially of the laws relating to the *talio*, slavery, and the family. In most respects the commercial and industrial sections are to be compared with English law in the time of Edward I., rather than with the legislation of a less advanced people. The decree of the Hammurabi code (§§7, 123) that only sales before witnesses were legal finds its counterpart in the old English law which compelled cattle-dealers especially to traffic openly and before witnesses.[5] This

[1] *Op. cit.*, pp. 42–47. [2] *Op. cit.*, pp. 7, 210.

[3] JOHNSTON: "The Laws of Hammurabi and the Mosaic Code," *Johns Hopkins University Circulars*, June, 1903, p. 60.

[4] The treatment of Hagar by Sarah, while unauthorized by the Mosaic law, is strictly in harmony with Ham., § 146; *cf.* SAYCE, *op. cit.*, p. 261.

[5] POLLOCK AND MAITLAND, *History of English Law*, Vol. II, p. 184.

idea is found among many peoples, as, for example, the ancient Mexicans, who practically confined all sales to public market-places, as it was deemed suspicious to make bargains anywhere else.[1]

The resort to the purgation oath, so frequently employed in the code, was, together with the compurgation, a common practice in early English legal procedure, and in the modified form of affidavit persists as an important principle. If one may safely reason from the code itself, the ordeal played in England a more important part than in Babylon. This appeal in the case of alleged sorcery (Ham., § 2) finds an analogy in an English case in which, in 1209, "one woman appealed another of sorcery in the king's court; the accused purged herself by the ordeal of iron."[2]

The solicitude for the protection of property disclosed in the code might easily be duplicated from modern legislation. One phase of this conservatism finds a significant expression in the severe penalties visited upon those who aid in the escape of slaves (Ham., §§ 15–20). These provisions recall the fugitive-slave laws of the *ante-bellum* days in the United States, as well as similar enactments in the Roman codes. The provision requiring the lessee of a field who neglects to raise a crop (Ham., § 42) to pay the owner grain on the basis of the average yield in the neighborhood, is almost exactly duplicated by a Hindu law which in the same circumstances compels a tenant "to pay the owner of the land the value of the crop that ought to have grown."[3] The law of Hammurabi which held the governor and city responsible for losses through highway robbery within the limits of the district (§ 23) was also the rule in the English Hundred in the time of Edward I.[4] This prin-

[1] SPENCER, *Descriptive Sociology*, Div. II, No. 2.

[2] POLLOCK AND MAITLAND, *op. cit.*, Vol. I, p. 39.

[3] *Sacred Books of the East*, Vol. II, Part I, p. 168.

[4] Of the same sort is the forfeiture inflicted by the statute of Winchester: ". . . . upon the hundred wherein a man is robbed which is meant to oblige the hundredors to make hue and cry after the felon; for if they take him they stand excused. But otherwise the party robbed is entitled to prosecute them by a special action on the case for damages equivalent to his loss."— BLACKSTONE, *Commentaries*, Vol. III, p. 160.

ciple has been recognized in modern times, so far as property losses through riots are concerned.[1] But the demands of property-owners were not all-powerful in ancient Babylon. The poor and weak were afforded a measure of protection. Thus the code forbade, or rather punished by a heavy fine, the creditor who seized the ox—a necessity for agriculture—of his debtor (Ham., § 241). This humane law has a counterpart in the biblical injunction against a creditor's keeping over night the cloak of the man who was in his debt;[2] and something of the same idea of protection against the loss of the barest necessities finds expression in the modern laws which forbid or limit the garnisheeing of wages and guarantee to the bankrupt the retention of his homestead. Another significant section of the code (Ham., § 177) declares null and void all sales of orphans' goods, together with forfeiture of the purchase money —obviously a protective measure based upon the fundamental principles of the modern orphans' court.

The gradation of fines and damages for injuries to members of different social classes (Ham., §§ 198ff.) recall the same phenomena pointed out by Spencer: "with the rise of class distinctions in primitive Europe, the rates of compensation, equal among members of each class, had ceased to be equal among members of different classes."[3] The question might even be raised as to whether, with the existing principle of personal damages graded according to individual earning capacity, every trace of the old idea of a tariff of social distinctions has wholly disappeared.

The *lex talionis* appears among all peoples in more or less disguised forms. Thus a Basuto whose son had been wounded in the head with a staff, in demanding the offender said: "With the same staff and in the same spot where my son was beaten will I give a blow on the head of the man who did it."[4] Among the nations influenced by Christianity the *talio* often appears not

[1] Notably in Pittsburgh and Cincinnati in 1877; *cf.* WRIGHT, *Industrial Evolution of the United States*, p. 306.

[2] Exod. 22 : 26, 27.

[3] *Principles of Sociology*, Vol. II, p. 530.

[4] SPENCER, *op. cit.*, Vol. II, p. 528.

so much as a spontaneous usage as a suggestion from the Old Testament. "When crude retaliation," says Brunner, "appears in a mediæval code, the influence of the Bible may always be suspected."[1] The law of retaliation has curious extensions. The severe penalty inflicted upon an unsuccessful surgeon (Ham., § 218) has been carried by the Chinese to a more cruelly logical conclusion, for the Mongolian doctor loses, not his fingers, but his head.[2] But in most of its provisions the code of Hammurabi is beyond the stage of the *talio*. The responsibility of the ox-owner for the injuries his beast might inflict (Ham., §§ 250, 251) is well in advance of the early biblical principle by which the ox was naïvely stoned to death as a pseudo-criminal.[3] The rule is practically identical with modern law, which holds the owner of an animal responsible for the injury it does only when he can be proved to have known of its dangerous disposition, or to have neglected all reasonable or legally prescribed precautions.

Allusion has already been made to the significance of the dowry as a factor in the Babylonian family life. The provision that in divorcing a barren wife the husband must return to her the dowry and bridal present (Ham., §138) was also enforced in Rome at the close of the republic, as well as in Athens of an earlier day. The Greek wife was usually protected by a mortgage on her husband's property.[4] The Babylonian was not the only husband who could put away a gadding, negligent, and froward wife. By the Laws of Manu a wife "who drinks spirituous liquors, is of bad conduct, rebellious, diseased, mischievous, or wasteful may at any time be superseded by another wife."[5] But, on the other hand, the Babylonian wife was by no means helpless. If her husband was negligent or cruel, she might take her dowry and return to her father (Ham., §142)—a privilege

[1] Quoted by POLLOCK AND MAITLAND, *op. cit.*, Vol. II, p. 489.

[2] BREEDE, "Penal Code of China," *Green Bag*, Vol. XIV, p. 538.

[3] For an interesting extension of this idea to inanimate objects, *e. g.*, a sword, and for reported trials of animals for crimes, *vide* POLLOCK AND MAITLAND, *op. cit.*, Vol. II, pp. 472, 473.

[4] WESTERMARCK, *op. cit.*, p. 412.

[5] *Laws of Manu*, chap. ix, p. 80.

accorded to her sisters in many lands.[1] In much the same way among the Berbers, in case of death or dissolution of marriage, the purchase price and dowry are returned to their respective donors, the husband and the woman's father[2]—a practice also provided for in the code (Ham., §164), which compels a husband on the death of a childless wife to return her property to her father, after deducting the betrothal present. It is interesting to compare the section of the Hammurabi code which in certain circumstances permits the children of a concubine to rank with those of the wife (§171) with the Japanese fiction which in similar circumstances regards the wife as having herself presented the concubine as a gift to the husband, and as being the common mother of all the children.[3]

The fate of the Babylonian wife who, conspiring with a lover, compasses the death of her husband, and is impaled in consequence (§141), is practically duplicated by that of the Chinese woman, who in similar circumstances is killed by slow torture.[4] The sexual sins are regarded by the code of Hammurabi with varying degrees of reprobation, as indicated by the scale of punishments, but in one regard the Babylonian law records a well-nigh universal judgment, namely, as regards one form of incest (§157). "The degrees of kinship," says Westermarck, "within which intercourse is forbidden are by no means everywhere the same. It is most, and almost universally, abominated between parents and children, especially mother and son."[5]

The Babylonian slave who might marry a free woman and acquire property was no more fortunate than the west-African bondsman reported by Ellis as owning slaves, and as having several wives, large wealth, and the command of a party of free soldiers. The mutilation of a slave who denied his master (Ham., §282) is also the practice among the same people.[6]

But there must be an end to the multiplication of parallels. Enough have been cited to suggest a rich field of research and

[1] WESTERMARCK, *op. cit.*, pp. 527–29.

[2] LE TOURNEAU, *La condition de la femme*, p. 233.

[3] *Ibid.*, p. 318. [4] *Ibid.*, p. 250. [5] WESTERMARCK, *op. cit.*, p. 290.

[6] ELLIS, *The Tshi-Speaking Peoples of West Africa*, p. 291.

comparison. It is a significant fact that for illustrations of the *talio* primitive folk afford the best material; for parallels in family life semicivilized people must be drawn upon; while for similarities in industrial activity advanced nations must be studied. The code of Hammurabi carries several legal systems which reflect varying stages of advance in the different elements of a single civilization.[1]

It remains to take a broad survey of the code in order to gather from its details its general drift and purpose. Every society gradually develops a system of control by which almost unconsciously it seeks to mold its members, securing their loyalty, spurring them to useful effort, and checking their antisocial tendencies. In this great task law is only a single factor, and that a subordinate one. Religion, caste, custom, personal prestige, group ideals enforced by public opinion, are the potent forces by which the individual is cozened into conformity. The code contains a few indirect references to such influences. Thus the wife upon whose virtue mere suspicion, unsupported by facts, has been cast (§132) must throw herself into the water, *i. e.*, appeal to the ordeal to escape the pressure of public opinion. It is a clear case of Cæsar's wife. It needs no stretch of the imagination to picture the enforcement in ancient Babylon of a vast tradition of convention and morality not even hinted at in the code. This, nevertheless, discloses certain underlying tendencies and principles of Hammurabi's empire.

The priest-king's supremacy and authority, so essential to the consolidation and perpetuation of the nation, were enforced at all points. If his officers were neglectful or sent substitutes on service, the king's wrath fell heavily upon the faithless. On the other hand, soldiers and magistrates were guaranteed privileges: their lands could not be taken away if they were absent; they enjoyed substantial immunities. The crown lands were inalienable. The king assumed the decision of all suits and the infliction of all penalties,[2] thus removing from the relations of citizens

[1] KOHLER, "Die Quellen des Strafrechts und Hammurabi," *University Record* (Chicago), March, 1904, pp. 372, 373.

[2] In only two cases does the code seem to authorize lynch law, viz., for burglary (§21). and for stealing from a burning house (§25).

the disrupting influence of private revenge and group-feud. The code discloses clearly the dominant power of the state. A strong, centralized, awe-inspiring authority was a vital necessity.

Babylonian society was pyramidal. The king was the apex, and the broad base rested upon a foundation of slaves. Social control was mediated from class to class. Caste and status are embedded in the code. In precise tariffs human values are set forth. This system served the political and economic needs of the time. It did its work of subordinating groups and transmitting a unifying authority.

The economic activity of Babylonia was stimulated by individual ownership and the careful definition and protection of property rights. The code makes one see vividly the dominance of economic interests. One can fancy the pressure by which countless conflicts were consolidated into this body of laws. If the code was well enforced, Babylon must have been popular with men of wealth. Yet there is always danger that protection for property will be pushed to the point where the industrially weak will be impoverished, discouraged, made less productive, or driven into revolt. The code of Hammurabi guards against this tendency by several provisions designed to protect the poor and unfortunate. Justice from the standpoint of social control is the psychological means of reconciling the individual to his status and stirring him to his social tasks. The code of Hammurabi gropes toward a justice which shall stimulate the accumulation of wealth without impairing the stability or diminishing the productive power of the nation.

The laws also reveal the family at a certain stage of development. Primitive polygyny has yielded to a tentative and partial monogamy in which the wife gets a higher status and enjoys meager but actual property rights. The code enforces upon both husband and wife, although in far from equal degrees, duties and responsibilities which make for mutual regard and family unity. Under such conditions a better kind of training is provided for the children — a training demanded by the more disciplined activities of a complex civilization. In short, the relatively high level of Babylonian life records itself in a type of

family which is being molded for better social service. The stress laid by the code upon child-bearing reflects the economic value of children in an agricultural, pastoral, and industrial country. Barrenness as a factor in determining various adjustments of the family relations is frequently mentioned in the marriage laws. The childless wife must have been a pathetic figure in Babylon.

These, then, are the keynotes of the code: supreme, centralized power; a stratified society; a uniform administration of justice by the state; individual responsibility; safeguards for property; protection for the weak; a unified and efficient family institution.

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