

Review: The Code of Hammurabi

Reviewed Work(s): The Code of Hammurabi, King of Babylon about 2250 B. C. by Robert Francis Harper, Hammurabi and King of Babylon; The Letters and Inscriptions of Hammurabi by Hammurabi, King of Babylon and L. W. King; Die Gesetze Hammurabis by Hammurabi, King of Babylon and D. H. Müller; Die Gesetze Hammurabis by Hammurabi, King of Babylon and Hugo Winckler

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and belief of many intelligent people both within and without the church, and is a sign of the times; but on another side, that of its critical acquaintance with the earliest Christian tradition, it will scarcely satisfy the historical student.

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THE CODE OF HAMMURABI.

THE discovery of the Code of Hammurabi is the most important event which has taken place in the development of Assyriological science since the days of Rawlinson and Layard. In his Introduction, pp. xi, xii, Professor Harper¹ gives an admirably clear and brief exposition of the discovery and nature of the code, which I cannot do better than quote *verbatim*:

The monument on which the Code of Hammurabi is engraved was found in December, 1901, and January, 1902, on the acropolis of Susa by an expedition sent out by the French government under the director general, M. de Morgan. It is a block of black diorite, nearly eight feet high, broken into three pieces which were easily rejoined. Another fragment was found which does not belong to this monument, but which contains a text corresponding to Column 41, 72-80, and this leads to the conclusion that another copy of this famous code existed in Susa. On the obverse we have a bas-relief exhibiting King Hammurabi receiving the laws from the sun-god, to which the story of Moses receiving the ten words from Yahweh corresponds. Under this relief are engraved sixteen columns of text, four and one-half of which form the prologue. There were originally five more columns on the obverse, but these have been cut off by the Elamitic conqueror. On the reverse there are twenty-eight columns, the last five of which form the epilogue. There are many reasons for believing that this code of laws was published in many places. We may accept the opinion of Scheil and Winckler that the copy found at Susa may have been taken as plunder by Šutruk-Nahunte (about 1100 B. C.) and brought to his Elamitic capital.

Hammurabi, identified by most Assyriologists with the Amraphel of Genesis 14:1, was the sixth king of the first dynasty of Babylon and reigned for fifty-five years, about 2250 B. C. We have a good account of his life and deeds in the letters which he wrote to Sin-idinam and in *The Chronicle of the Kings of Babylon*, both of which have been edited with great care by Mr. L. W. King.²

¹ *The Code of Hammurabi, King of Babylon about 2250 B. C.* Autographed Text, Transliteration, Translation, Glossary, Index of Subjects, Lists of Proper Names, Signs, Numerals, Corrections, and Erasures, with Map, Frontispiece, and Photograph of Text. By Robert Francis Harper, Ph.D. Chicago: The University of Chicago Press; London: Luzac & Co., 1904. Frontispiece; i-xv; 2-192 pages; photograph of text facing Plate I; Plates I-CIII.

² *The Letters and Inscriptions of Hammurabi*, in 3 vols., 1898-1900. Also D. H. MÜLLER, *Die Gesetze Hammurabis* (Wien, 1903); HUGO WINCKLER, *Die Gesetze Hammurabis* (Leipzig, 1903).

From the prologue and epilogue we learn that he was a great soldier and a pious, god-fearing king who destroyed all his enemies to the north and south and made his people to dwell in peace and security. He codified the existing laws that the strong might not oppress the weak, that they should give justice to the orphan and widow, and for the righting of wrong. He rebuilt cities and canals; he restored temples and endowed them with means for sacrifices; he re-established cults; he reunited his people.

Thus far Professor Harper. Very little is known of the kings of this first Babylonian dynasty save the names. Hammurabi is called the first king of the first dynasty, which simply means that he is the first king known to us, as there must have been many rulers of Babylon before the historical period. It is probable that Babylon was not independent—*i. e.*, that that city did not secure the hegemony of Babylonia—until the days of Hammurabi, in whom we find the first really great king in Semitic history. He was the first monarch to make a united Babylonia. Previous to his time the country had been under the sway, first of one and then of another southern Babylonian city. This union effected by Hammurabi lasted until the days of Cyrus the Persian, 537 B. C. Hammurabi had to meet very great difficulties in establishing his supremacy. For example, he found the Elamites firmly fixed in the country, and he had not only to subdue them, but also to conquer the various petty states of Babylonia which up to his time had shared in turn the rulership of the country. The fact is that the time was probably fully ripe for the destruction of the non-Semitic states, and in Hammurabi was found “the man on horseback” in whose government we see the triumph of the Semitic power.³

There can be no doubt that this king was the same person as the biblical Amraphel⁴ of Gen. 14:1. Amraphel is mentioned in Gen., chap. 14, as being associated with a number of allies in western campaigns. This account of victories in Palestine and Syria agrees well with what is known of the general situation at the time of Hammurabi, but it forms merely an unimportant episode in the Babylonian history.

The close similarity between the Hammurabi laws and the Mosaic

³ Cf. ROGERS, *History of Babylonia and Assyria*, Vol. I, p. 388.

⁴ The name of Hammurabi seems to be a combination of *hammu*, “ruler,” and *rabû*, “great,” *i. e.*, “great ruler.” The word *hammu* occurs in the proper name *Nabû-hammu-îlâni*, II R., 64, 48a. The stem *hamâmu* means “rule, lead;” cf. *Hwb.*, 282a; MUSS-ARNOLT, *Assyrian Dictionary*, p. 320a. For the name Amraphel, evidently a late Hebrew corruption of Hammurabi, cf. EBERHARD SCHRADER, *Cuneiform Inscriptions and the Old Testament*, and FRANZ DELITZSCH, *Genesis* (1887), Excursus.

code of the Hebrew Old Testament has attracted widespread attention. This resemblance shows itself even in the prologue to Hammurabi's code, where we read:

When the lofty Anu, king of the Anunnâki, and Bêl, lord of heaven and earth committed the rule of all mankind to Marduk, the chief son of Ea when they pronounced the lofty name of Babylon, when they made it famous among the quarters of the world and in its midst established an everlasting kingdom whose foundations were firm as heaven and earth—at that time Anu and Bêl called me, Hammurabi, the exalted prince, the worshiper of the gods, to cause justice to prevail in the land, to destroy the wicked and evil, to prevent the strong from oppressing the weak, to go forth like the sun over the Black Head Race, to enlighten the land and to further the welfare of the people. With this should be compared the proclamation of Yahweh in Exod. 34:6 ff.:

And Yahweh passed by before him [Moses] and proclaimed Yahweh, Yahweh Elohim, merciful and gracious, longsuffering and abundant in goodness and truth. Keeping mercy for thousands, forgiving iniquity and transgression and sin, and that will by no means clear (the guilty), visiting the iniquity of the fathers upon the children and upon the children's children unto the third and fourth generation.

In both these introductions to a legal code we have the statement of divine supremacy, on the one hand, and the will of the God clearly expressed, on the other hand, that justice and right should prevail among the chosen people (the Black Head Race in Hammurabi's code and the Hebrews in the Mosaic code), while evil of all sorts should be overthrown. Furthermore, as has already been indicated above in the quotation from Professor Harper, Hammurabi, like Moses, received his laws from the divine hand itself (see frontispiece, representing Hammurabi receiving his code from the sun-god).

The following comparisons between the Hammurabi and Hebrew codes cannot fail to be of interest to all those who study the Old Testament from a critical point of view:

Adultery.—Harper, p. 45, § 129: "If the wife of a man be taken in lying with another man, they shall bind them and throw them into the water. If the husband of the woman would save his wife, or if the king would save his male servant (he may)." With this *cf.* Deut. 22:22: "If a man be found lying with a woman married to a husband, they shall both of them die." Here the manner of death is not specified, but it was in all probability stoning. It should be noted that immoral lapses on the part of men were only punished, according to both codes, where the crime interfered with the rights of other men. The ancient Semitic laws were much more severe against immoral women. Harper, p. 45,

§ 132: "If the finger have been pointed at the wife of a man because of another man, and she have not been taken in lying with another man, for her husband's sake she shall throw herself into the river."

Both codes were equally severe against the rape of a betrothed girl: Harper, p. 45, § 130: "If a man force the (betrothed) wife of another who has not known a male and is living in her father's house, and he lie in her bosom and they take him, that man shall be put to death and that woman shall go free." Cf. Deut. 22:23-26: "If a damsel that is a virgin be betrothed unto an husband and a man find her in the city and lie with her: then ye shall bring them both unto the gate of that city and ye shall stone them with stones that they die; the damsel because she cried not, being in the city; and the man because he hath humbled his neighbour's wife; so thou shalt put away evil from among you. But if a man find a betrothed damsel in the field and the man force her and lie with her; then the man only that lay with her shall die." The Hebrew law is much more explicit on this point.

The disobedient son.—Harper, p. 71, § 192: "If the son of a NER.SE.GA⁵ or the son of a devotee⁶ say to his father who hath reared him or to his mother who hath reared him: 'My father thou art not;' 'My mother thou art not,' they shall cut out his tongue." Harper, p. 73, § 193: "If the son of a NER.SE.GA or the son of a devotee identify his own father's house, and hate the father who has reared him and the mother who has reared him, and go back to his father's house, they shall pluck out his eye." Harper, p. 73, § 195: "If a son strike his father, they shall cut off his fingers." The biblical law is not so explicit. Thus Deut. 21:18-21: "If a man have a stubborn and rebellious son who will not obey the voice of his father or the voice of his mother, and that when they have rebuked him will not hearken to them, then shall his father and his mother lay hold on him and bring him out unto the elders of his city and unto the gate of his place, and they shall say unto the elders of his city: 'This our son is stubborn and rebellious; he will not obey our voice; he is a glutton and a drunkard.' And all the men of his city shall stone him with stones that he die." On the other hand, the so-called Sumerian Family Laws give a similar case,⁷ but do not prescribe death for the rebellious son.

Divorce.—Harper, p. 49, § 138: "If a man would put away his wife who has not borne him children, he shall give her money to the amount of her marriage settlement, and he shall make good to her the dowry which she brought

⁵ NER.SE.GA=*manzaz pâni*, II R., 39, 46g; literally "a front place," then applied to a high official as here. Cf. *Hwb.*, p. 457a. *Manzaz pâni* also=*amel gal-te*, *Senn.*, i, 30; II R., 51, n. 2, rev. 18. The ideogram NER.SE.GA should be read *gir-se-ga*, i. e., "one who places or gives the foot" (*gir*, "foot"+*sega*=*nadânu*, "give, place," hence "a retainer").

⁶ Literally *zinnišî zikrum*, "woman of a vow." This word *zikru*, "vow," is from *zakâru*, "impress, remember," the same stem as 𒀭𒌶, "male," literally "impresser, impregnator."

⁷ Cf. DELITZSCH, *Al.*, p. 114.

from her father's house, and then he may put her away." With this should be compared Deut. 24:1, 2: "When a man hath taken a wife and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her; then let him write her a bill of divorcement and give it in her hand and send her out of his house. And when she is departed out of his house she may go and belong to another man." The Hebrew code, it will be noticed, makes no mention of a restitution of dowry.

False witness.—Harper, p. 11, §§ 3, 4: "If a man in a case (pending judgment) bear false (threatening) witness or do not establish the testimony that he has given, if that case be a case involving life, that man shall be put to death. If a man (in a case) bear witness for grain or money (as a bribe), he shall himself bear the penalty imposed in that case." The Mosaic law was on similar lines. Thus in Deut. 19:16-19: "If a false witness rise up against any man, to testify against him that which is wrong; then both the men, between whom the controversy is, shall stand before Yahweh, before the priests and the judges which shall be in those days . . . and behold, if the witness be a false witness and hath testified falsely against his brother; then shall ye do unto him as he had thought to have done unto his brother." The Hebrew law here is really a variant of the *lex talionis*, which was also the underlying principle in the Hammurabi code (see below).

Incest.—Harper, p. 55, § 154: "If a man have known his daughter, they shall expel that man from the city." It is curious that there is no express prohibition against intercourse between a father and daughter in the Mosaic code, although it is undoubtedly implied, as the son's wife is forbidden to the father of the son. Harper, p. 55, § 155: "If a man have betrothed a bride to his son and his son have known her, and if he [the father] afterward lie in her bosom⁸ and they take him, they shall bind that man and throw him into the water." § 156: "If a man have betrothed a bride to his son and his son have not known her, but he himself lie in her bosom, he shall pay her one-half-mana of silver, and he shall make good to her whatever she brought from the house of her father, and the man of her choice may take her." In Lev. 18:15 it is expressly stated: "thou shalt not uncover the nakedness of thy daughter-in-law. She is thy son's wife." The penalty is imposed in Lev. 19:12, where in such a case it is ordered that the guilty parties "shall be put to death." Incest with the mother was punished even more severely. Harper, p. 55, § 157: "If a man lie in the bosom of his mother after (the death of) his father, they shall burn both of them." In Lev. 19:11 it is stated "the man who lieth with his father's wife [not necessarily his own mother] . . . they shall both be put to death." It was evidently incon-

⁸ The word *zānu* is euphemistically translated "bosom" by Professor Harper. It was probably a legal term for *puḏendum feminae*. I connect it with the *zini* of *I. R.*, 27, n. 2,33: *muḏi bāb ziniša lā ikāsir*, "the mouth of its sewer he may not close up" (see MUSS-ARNOLT, *op. cit.*, p. 285).

ceivable to the Hammurabi code-makers that incest with the mother could take place during the father's lifetime.⁹

Kidnapping.—Harper, p. 17, § 14: "If a man steal a man's son who is a minor, he shall be put to death." § 15: "If a man aid a male or female slave of the palace or a male or female slave of a freeman to escape from the city gate, he shall be put to death." The Mosaic code imposes a similar penalty: Deut. 24:7: "If a man be found stealing any of his brethren of the children of Israel and maketh merchandise of him or selleth him; then that thief shall die."

Lex talionis.—This is the underlying principle in all the penalties, but it is nowhere so clearly set forth as in Harper, p. 73, § 196: "If a man destroy the eye of another man, they shall destroy his eye." § 197: "If one break a man's bone, they shall break his bone." Compare this with the famous passage, Deut. 19:21: "And thine eye shall not pity; life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot." Lev. 24:19, 20: "And if a man cause a blemish in his neighbour, as he hath done so shall it be done to him. Breach for breach, eye for eye, tooth for tooth" (see below).

Rape was a capital crime only when the woman wronged was the betrothed wife of another man (see above *s. v. Adultery*).

Theft.—There were two degrees of theft according to the Hammurabi code: *i. e.*, first order: entering a palace or temple and stealing from an open place or temple; this was punished by death. The second order consisted in receiving or selling stolen goods, which was also a capital crime (see Harper, p. 13, §§ 6, 7, 9, and p. 23, § 34). Only in the case where the thief had stolen an ox or sheep, ass or pig or boat, might he have the privilege of restitution. *Cf.* Harper, p. 13, § 8: "if it be from a god (temple) or a palace, he shall restore thirtyfold; if it be from a freeman, he shall restore tenfold. If the thief have nothing wherewith to pay, he shall be put to death." The principle of restitution for theft was known also to the Mosaic code. Thus Exod. 22:1: If a man shall steal an ox or a sheep and kill it or sell it, he shall restore five oxen for an ox and four sheep for a sheep.

All law is the concrete expression of the practical necessities of community life. It may be predicated of every law-code in existence that it is a combination on the one hand, of certain ancient, fixed principles descending from the days of the first nationalization of the people who evolved the code, and, on the other hand, of various later modifications which became necessary as the national life ripened under the influence of new conditions, incidental to a growing culture. This is peculiarly true of the Hammurabi laws, in which the ancient principles descending from the earliest Semitic fathers are perfectly apparent. A special study

⁹ A very interesting article on the Jewish laws regarding incest has been published by J. D. EISENSTEIN in the *Jewish Encyclopedia*, Vol. VI, p. 571.

would be needful to set forth the reasons for the systematic order, following which the Hammurabi laws are put together in a code.¹⁰

There can be no doubt that the first and chief principle of the ancient Semitic lawgivers was the *lex talionis*: "life for life, eye for eye," etc. As already mentioned in this review, this idea underlies the entire codes of Hammurabi and of the Old Testament. Such a law was fundamentally necessary in a rude community, and indeed may be said to be inherent in human nature. The essence of self-protection both for the individual and for the community was retribution, not only for deeds actually done, but for deeds *planned*: "And ye shall do to him that which he had *thought* to do unto his neighbour." This is a clear development of the *lex talionis*.

Another principle was "one crime, one punishment." Thus in nearly every case the death penalty excluded any other punishment, therein showing us a more merciful law than that against high treason followed by our English forefathers as late as the very beginning of the nineteenth century. Furthermore, punishment on the body excluded a fine.

Three laws of Hammurabi require our especial attention in this connection, viz.:

Harper, p. 39, §§ 115, 116: "If a man hold a (debt of) grain or money against a man and he seize him for debt, and the one seized die in the house of him who seized him, that case has no penalty. If the one seized die of abuse or neglect in the house of him who seized him, the owner of the one seized shall call the merchant to account; and if it be a man's son (that he seized) they shall put his son to death. . . . Harper, p. 77, §§ 209, 210: "If a man strike a man's daughter and bring about a miscarriage, he shall pay ten shekels of silver for her miscarriage. And if that woman die, they shall put his daughter to death." Harper, D. 81, §§ 220, 220: "If a builder build a house for a man and do not

