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A COMPARISON **Short Title** OF HAMMURABI

LAWS OF MOSES AND HAMMURABI COMPARED

A Thesis Presented to the Faculty
of Concordia Seminary, St. Louis,
Department of Historical Theology
in partial fulfillment of the
requirements for the degree of
Bachelor of Divinity

by
Ernest M. Pflug

June 1954

Approved by:

Carl L. ...
Advisor

Aspfeld von Rohr ...
Reader

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AND MOSAIC LAW

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... of the law can take note of the apparent similarities, and ... account for them. In the search for a better understanding of the similarities, we shall not limit ourselves to the texts of the two codes but we shall also consider the historical background, cultures, and personalities responsible for them.

The problem of this thesis has always been a difficult one. Many have tried to solve the problem and have worked for a suitable solution. It has been our special interest to us to explore studies on the civilization of antiquity and to examine in their connection the new evidence brought forward by archaeology. It is a great thrill to read histories of the men of antiquity, for the further we are able to know the closer we come to the hand of God the Creator. Today rank unbeliever and skeptics have given us a realistic critical view of Scripture. Therefore, it is necessary to examine and re-examine the available evidence in this matter in order to determine how far our own rational knowledge of Scripture before progressive revelation gives way

CHAPTER I

INTRODUCTION

As the title of this thesis indicates, the problem we wish to explore is the apparent similarities between the Code of Hammurabi and the Mosaic Law. We want to explore both bodies of law and take note of the apparent similarities, and then try to account for them. In the search for a better understanding of the similarities, we shall not limit ourselves to the texts of the two codes but we shall also consider the historical background, cultures, and personalities responsible for them.

The problem of this thesis has always been a difficult and timely one for anyone who takes seriously Scripture's claim of uniqueness. Many have tried to solve the problem and have worked for a suitable solution. It has long been of personal interest to us to explore studies on the civilizations of antiquity and to examine in their connection the new evidence brought forward by archaeology. It is a great thrill to read histories of the men of antiquity, for the farther back one goes in time the closer he comes to the hand of God the Creator. Today rank unbelief and skepticism have given way to a subtle critical view of Scripture. Therefore, it is necessary to examine and re-examine the available evidence on this problem in order to determine how far one can rationalize teachings of Scripture before progressive revelation gives way

to an evolutionary type of religion. This is a very important problem to us because it concerns the foundations of revealed Truth--Holy Scripture.

This thesis will not include the entire Code of Hammurabi, but will compare Hammurabi's laws to those of Moses in these fields: 1) Agriculture and Horticulture, 2) Property and Inheritance, and 3) Family Life and Personal Injury. In these three areas there are the most frequent points of contact between the two bodies of law.

It will not be within the scope of this paper to prove that Hammurabi and Moses are historical figures since this has been rather conclusively verified and commonly accepted. Other assumptions under which we shall work are first of all that Moses is the author of the Pentateuch and that it is a unified body of books. This is an assumption made on the basis of personal study of the matter. Evidence can be mustered for both sides of the issue, but it is not our purpose to set out to air that problem in this paper. Secondly, we assume that God does manifest and reveal Himself to man. In short, we are not writing a polemic against the JEPD theory, nor are we trying to prove revelation or theophanies. Our purpose is to examine the documents on their own terms, on the basis of their own claims, and in the historical setting in which they themselves portray their coming into being.

Each term will be explained and defined as it is used in the context of this paper. The term "Mosaic Law" will always

refer to the laws of Moses as they are found in the biblical books of Exodus, Leviticus, Numbers, and Deuteronomy, unless designated otherwise.

In Chapter II of this paper a study will be made of the origins of these laws, trying to understand what historical stimulus might have brought them about. We could not help but notice that the rise of Babylon to the status of an empire created a great need at Hammurabi's time--a need which called for a unified code of law for the realm. The claims of Hammurabi to be a man sent by Marduk to rule with law and justice provided another clue to understanding Hammurabi's desire to codify the laws of the land. Moses' laws are remarkable because they were spoken by God to Moses. The historical fact of Israel's leaving for the Promised Land added impetus to the giving of the laws.

Moses and the type of people his laws were intended to govern are discussed in Chapter III. His life as an Egyptian prince and its implications for Mosaic Law is important. His contact with God as it is recorded in Scripture is considered. The children of Israel and their racial ancestry are compared with the culture in which Hammurabi lived.

Chapter IV treats of the character of Hammurabi and the people whom he ruled. It is shown in this chapter how Hammurabi used the common jargon of reverence for the gods, yet at the same time was claiming all authority and honor for himself. The people are shown as springing from a common ancestry

with those of Israel. The three classes of society are described and contrasted with the two-class society under the Mosaic Laws.

Comparison of specific laws is made in Chapters V, VI, and VII. Chapter V compares the laws of agriculture and horticulture existing in the two codes. Parallels of the Code in Exodus and Deuteronomy show a wide difference in the spirit of the Babylonian and Mosaic Laws. They obviously are meant for two entirely different societies, one very commercial and the other non-commercial.

Property and inheritance laws are compared in Chapter VI. Under property are topics such as cattle, money, and slaves, showing that although the Babylonians lived on a high plane of civilization, yet the Hebrews in their laws showed a much more humane approach toward children and slaves. The entire structure of society fared much better under Mosaic Law than under the Code of Hammurabi.

Most interesting, and in places most similar and in others most dissimilar, are the laws concerning family life and personal injury. These are examined in Chapter VII. Both of these codes of law prescribe punishment for those who violate virgins not betrothed. Hammurabi's Code called for a death penalty, while the Laws of Moses demanded a heavy monetary fine. However the Mosaic Law laments that this lost honor is something money cannot buy. The most striking parallel passages of the two codes are treated in this chapter, those dealing with an eye for an eye and a tooth for a tooth. Those two are so

convincingly parallel that a common source for both of them seems necessary.

Chapter VIII ties all the evidence together and in substance offers three possible answers to the problem of similarities in the two codes. 1) Moses was influenced by the Code of Hammurabi in his studies in Egypt. 2) Moses received these laws by oral transmission from Abraham who lived in Ur. 3) Both were dependent upon Semitic influence. We favor a combination of the last two statements and would say that the Semitic influence by which both were affected leads back to the Garden of Eden where perfect law was written in man's heart. This was orally transmitted and restored in full once again by God through Moses.

CHAPTER II

THE ORIGIN OF HAMMURABI'S CODE AND OF THE MOSAIC LAWS

The Code of Hammurabi

In order to make a fair and meaningful comparison between the Code of Hammurabi and Mosaic Law, it is necessary to understand certain things about the Laws, their origins and authors. This chapter will concern itself with a comparison of the origin of these two bodies of law.

The Code of Hammurabi was engraved upon a monument discovered at Susa. The discovery took place in December, 1901 and January, 1902 under the direction of a Frenchman named M. de Morgan.¹ He was sent to Susa by the French government.

The code of laws is one thousand years older than the Mosaic age, making it the oldest set of written laws known to exist. They are engraved on a pillar of black diorite which is nearly eight feet tall. When de Morgan discovered the pillar it was in three pieces, but fortunately they were easily joined again. Originally there were three thousand lines of writing on this diorite slab, writing which was

¹Stephen L. Jaeger, Bible and Spade (London: Oxford University Press, 1936) p. 87.

divided into forty-nine columns.² This archaeological find was inscribed at the command of Hammurabi, king of Babylon about 2100 B. C., surviving almost intact as he left it and containing nearly three hundred carefully tabulated laws. It opens with a prelude to the Sun-god and closes with an epilogue denouncing a curse on anyone who should deface it.

This curse apparently did not impress the Elamite king Sutrak Nakhunt, for about 1100 B. C. he took this pillar to his capital at Susa. Here he defaced the code by erasing five columns on front, apparently intending to inscribe the account of how he captured Babylon.³

The pillar originally stood in the temple of Marduk at Babylon, known as E-sagila⁴ ("the lofty house"). On the Obverse of it is a bas relief exhibiting King Hammurabi receiving the laws from the Sun-god. Under the relief are sixteen columns of text, four and one-half of them being the Prologue. On the Reverse are twenty-eight columns, the last five of which are the Epilogue.⁵

²"Hammurabi," The Americana (New York-Chicago: Americana Corporation, c.1936), XIII, 656.

³Ibid.

⁴Morris Jastrow, Jr., The Civilization of Babylonia and Assyria (Philadelphia and London: J. B. Lippincott Company, 1915), p. 283.

⁵Robert Francis Harper, Code of Hammurabi (Chicago: University of Chicago Press, 1904), p. xi.

Although the copy found at Susa is the most complete we have, there is evidence that this was only one of many such copies of the Code. "They were broadcast throughout the Babylonian Empire, and remained a text-book for students up to the days of Ashurbanipal."⁶ It was fragments of later copies on tablets which enabled scholars to restore the Susa text in some places.

The historical stimulus that brought about the codification of these laws was the rise of Babylon as a great center of power. Babylonia was a land made up of countless provinces ruled by kings and princes. Gradually it divided into a Northern and a Southern Babylonia. Here it is necessary to go into some background history to understand the situation in which Hammurabi found himself. The first dynasty of Babylon was founded in 2160 B. C. by Sumurabi in the city of Babylon. This was a west Semitic dynasty--the one in which Hammurabi was to reign ninety-three years later. Babylonia had already been invaded by these Semitic Canaanites years before, and this resulted in the founding of a dynasty at Isin in 2301 B. C., a city in southern Sumer, which, until the rise of the Canaanite kingdom of Babylon, shared with another province, Ellassar, the control of Sumer and Accad.⁷

⁶Caiger, op. cit., p. 91.

⁷Stephen Herbert Langdon, "Hammurabi", Encyclopedia Britannica (Chicago-London-Toronto: Encyclopedia Britannica Inc., c.1951), XI, 135.

At first the Canaanites at Babylon had control of only a small region north and south of the capital, and during the reign of the first two kings of this dynasty there was a rival kingdom only eight miles away at Kish. During the reigns of Hammurabi's five predecessors the kingdoms of Isin and Ellasar, previously mentioned, were successful in maintaining control of all of southern Babylonia. The last one of these five, Sinmuballit, conquered and put an end to the kingdom of Isin with the aid of Rim-Sin who was the powerful king of Ellasar in 2076. Seven years later he lost it again to Rim-Sin, and it took until Hammurabi's thirtieth year as king to put an end to the kingdom ruled by Rim-Sin.⁸

Such then is a brief summary of what took place in the years right before Hammurabi ascended the throne. Sinmuballit bequeathed to him the united control of Sumer and Accad. Hammurabi's further military and political achievements helped him establish a central government at Babylon which included not only Sumer and Accad, but northward to the central provinces of the Tigris and Euphrates, one of the most remarkable events of ancient history. Hammurabi succeeded in making Babylon the political and intellectual center of West Asia down to the Christian era.⁹ A historical situation like this would make it advisable to set forth a code of laws which

⁸Ibid.

⁹Ibid.

could be used throughout an extended realm of rule.

The reason Hammurabi himself gives in the Prologue to his code of laws is quite different. He speaks of his task of ruling as one given directly to him by the gods. He says:

Anu and Bel called me, Hammurabi, 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, to go forth like the Sun over the Black Head Race, to enlighten the land and to further the welfare of my people.¹⁰

At the end of the Prologue he also says this of his acts: "When Marduk sent me to rule the people and to bring help to the country, I established law and justice in the land and promoted the welfare of the people." In the Epilogue he gives further testimony as to why he set forth these laws.

In my bosom I carried the people of the land of Sumer and Akkad; under my protection I brought their brethren into security; in my wisdom I restrained them; that the strong might not oppose the weak, and that they should give justice to the orphan and the widow, in Babylon, the city whose turrets Anu and Bel raised; in Esagila, the temple whose foundations are firm as heaven and earth, for the pronouncing of judgments in the land, for the rendering of decisions for the land, and for the righting of wrong, my weighty words I have written upon my monument, and in the presence of my image as king of righteousness have I established.¹¹

Throughout the Prologue and the Epilogue, Hammurabi depicts himself as a man of righteousness, justice and great wisdom. These he puts to work under the favor of the gods in order that his people might be protected from oppression:

¹⁰Harper, op. cit., p. 3.

¹¹Ibid. p. 101.

The code itself reverts to an older Sumerian original of which some fragments have been found. It seems that Hammurabi's task was to prepare a Semitic translation as an official code of laws of the country for all times.¹²

The Mosaic Law

Whereas the Code of Hammurabi lay for centuries out of existence in written form, the Laws of Moses have continued to this day. Certainly we have instances where long periods of time elapsed during which the laws were forgotten, such as the era preceding the reign of Josiah,¹³ but on the whole the Laws of Moses have, in written form at least, continued down to the present time.

The Mosaic Law is found in Exodus, Leviticus, Numbers, and Deuteronomy. Along with the actual statutes and laws is the account of Israel's history during this time. As was mentioned in the first chapter, it is not the scope of this thesis to compare all the laws of Moses to the Code of Hammurabi, but chiefly those concerning agriculture, property, inheritance, family life, and personal injury.

The historical cause for the giving of the law, aside from the inspiration of God, was that the children of Israel were now ready to go into their own land. Israel was a people

¹²Jastrow, op. cit., p. 283.

¹³2 Kings 22:13

who had been released from a prolonged existence of bondage in Egypt. The people were accustomed to living in a society of slaves with all the responsibilities of livelihood and justice meted out to them by a foreign nation. In the strict sense of being a nation possessing land, they were not a nation. At best they were a wandering group which had left bondage, six hundred thousand men strong in numbers, relying upon Moses and Aaron for their leadership. At first Moses attempted to judge the people single-handedly on the basis of his knowledge of justice.¹⁴ This however became an impossible task.

On the advice of his father-in-law, Moses chose able men out of the group and made them heads over the people to help him execute justice. Rulers were set up to be judges over groups of thousands, hundreds, fifties, and tens. These men then judged and executed justice and brought the special difficult cases to the attention of Moses.¹⁵

God interveded in the third month after Israel had left Egypt. It was then that what is referred to as Mosaic Law came into existence. The origin of the set of laws came by direct divine intervention. The set of laws in the Exodus account are prefaced with the statement: "And God spake all these words, saying. . . ."¹⁶ Again in Deuteronomy the preface is:

¹⁴Ex. 18:13

¹⁵Ex. 18:25-26

¹⁶Ex. 20:1

Now these are the commandments, the statutes, and the judgments, which the Lord your God commanded to teach you, that ye might do them in the land whither ye go to possess it: that thou mightest fear the Lord thy God to keep all his statutes and his commandments, which I command thee, thou, and thy son, and thy son's son, all the days of thy life: and that thy days may be prolonged.¹⁷

Again and again in all the Mosaic Law the statement is made, "The Lord said," "The Lord said unto Moses," or "God spake all these words. . . ." Dr. Rendle Short has stated that "between the middle of Exodus and the end of Deuteronomy there are some five hundred occasions, or three times in every chapter, where these phrases occur."¹⁸

If we were to consider the growing of the Mosaic Law solely as a historical event, the stimulus for the formulation of Mosaic Laws came about because a people which never had a homeland was now about to possess the promised land. This fact posed a great problem for Moses, just as an expanding kingdom had posed a great problem for Hammurabi centuries before this.

Moses spoke these laws to the people at the command of God rather than for his own gain. It is strange that there is no evidence in the Mosaic Laws that Moses, in any way, sought self-honor and self-glory. For instance, the following statements are recorded not as exhaustive study, but typical examples. On the night before the deliverance from

¹⁷ Deut. 6:1

¹⁸ G. E. Hicks, My Servant Moses (London: Marshall, Morgan and Scott, c.1951), p. 152.

Egypt Moses tells the people, "Remember this day in which ye came out of Egypt, out of the house of bondage; for by strength of hand the Lord brought you out of this place."¹⁹ After the deliverance from Egypt was complete, Moses had this to relate to his father-in-law, Jethro: "And Moses told his father-in-law all that the Lord had done unto Pharaoh and to the Egyptians for Israel's sake, and all the travail that had come upon them by the way, and how the Lord had delivered them."²⁰ In his final discourse to the people he declared, "Be strong and of a good courage, fear not, nor be afraid of them: for the Lord thy God, he it is that doth go with thee; he will not forsake thee."²¹

A few other notes need to be mentioned in looking at the Mosaic Laws. In the first place, though they were given to a people in the wilderness, these laws were adapted and designed for a nation permanently settled. Secondly, the laws themselves attest that they are for a theocratic state, and as such, sin is also a crime. Thirdly, this legislation was grafted on a previously existing state of things, and took its character, in some respects, from customs which existed among the people. Finally, in judging the origin of these laws, one cannot disregard the purpose for which the nation was called

¹⁹Ex. 13:3

²⁰Ex. 18:8

²¹Deut. 31:6

into existence. These laws were for all the world and yet they were exclusive to Israel.²²

In summarizing a comparison of the origins of the Code of Hammurabi and of Mosaic Laws the following evidence is apparent:

1. The statutes of the Code of Hammurabi have long since ceased in written form, while with a few exceptions the Mosaic Laws have continued to the present.
2. The Code of Hammurabi pre-dates the era of Moses by nearly a thousand years:
3. The historical stimulus which prompted the codification of laws in the days of Hammurabi was a great centralization of power at Babylon, while the historical stimulation for Mosaic Law was a slave people embarking upon the status of a nation.
4. The declared purpose of Hammurabi was to present himself as the bearer of justice, righteousness, and equity in order that the poor might not be oppressed while Moses speaks as God's prophet making God's will known to His people.
5. Both sets of laws take into account the existing situations and customs of the people.
6. The Code of Hammurabi was given for the furtherance of a monarchical state while the Laws of Moses were given for a clarification and furtherance of a theocratic state.

²²William M. Taylor, Moses The Law Giver (New York and London: Harper and Brothers Publishers, c.1907), p. 262.

CHAPTER III

MOSES AND THE PEOPLE GOVERNED BY HIS LAWS

It is important to understand both Moses and his people and Hammurabi and his people in order to make a full and fair comparison of the laws as they arose in the two countries. First under consideration are Moses and the children of Israel.

Moses lived to be one hundred and twenty years old, and it is interesting to note that his life can be broken up into three equal time segments of forty years each. The first forty years were spent as a prince in Egypt, the second forty years as a shepherd in the wilderness, and the final forty years as the leader of the children of Israel. The account of his life is given in the books of Exodus, Leviticus, Numbers and Deuteronomy. Fifteen verses are allotted to an account of the first forty years, and eight verses for the second forty. The remaining forty years take up the entire books of Exodus, Leviticus, Numbers, and Deuteronomy.¹ This gives a picture of Scripture's emphasis on the importance of his life as leader of the children of Israel.

Moses' Forty Years as Egyptian Prince

Moses was born in the midst of an Egyptian purge of all

¹G. E. Hicks, My Servant Moses (London: Marshall, Morgan and Scott, c.1951), p. 38.

Israelite baby boys instituted by a Pharaoh who feared the rising population of this slave people. He was born into a Levite family and was the son of Amram and Jochebed.² In the book of Hebrews, in the New Testament, the actions of his parents in hiding him from Pharaoh were explained as follows: "By faith Moses, when he was born, was hid three months of his parents, because they saw he was a proper child: and they were not afraid of the king's commandment."³

But the hiding could not continue indefinitely. This brings us to the next phase of Moses' early life. After he had been carefully placed in the Nile river inside a basket made of bulrushes, the Pharaoh's daughter found him and took him as her own child. Here the name "Moses" was given to be a constant reminder to her that she "drew him out of the water."⁴ There is some evidence that this Pharaoh's daughter is the same person as Queen Hatsheput of Egypt. "The tradition in Josephus that the name of this princess was Thermuthis seems to connect her with the house of Thothmes, and the impression of her character gained from the Bible is not unlike that of Hatsheput."⁵

As a member of the royal family, Moses received a very

²Ex. 2:1

³Heb. 11:23

⁴Ex. 2:10

⁵Stephen L. Caiger, Bible and Spade (London: Oxford University Press, 1936), p. 67.

special type of education. Evidently, books telling of Moses' life at the Egyptian court were in circulation in the Apostolic era since Stephen could tell his hearers: "And Moses was learned in all the wisdom of the Egyptians, and was mighty in words and deeds."⁶ These works are no longer extant and the only evidence available are sketches of early Egyptian education and tradition of what Moses learned and what he accomplished as Prince of Egypt.

The Temple of the Sun in Heliopolis was a great center of learning in Moses' day. Here reading and writing, arithmetic, astronomy, and architecture were expounded, and certainly the son of a king's daughter would be given an education at a school like this. Philo said, "He [Moses] speedily learned arithmetic and geometry, and the whole science of rhythm and harmony and meter, and the whole of music by means of the musical instruments, and by lectures on the different arts."⁷ As a prince of the land he received an "education which comprised all fields of learning."⁸ It can safely be assumed that this would also cover the field of law. Such is the evidence available on the education Moses received.

Egyptians were also given a very thorough physical

⁶Acts 7:22

⁷William M. Taylor, Moses The Law Giver (New York and London: Harper and Brothers Publishers, c.1907), p. 28.

⁸Henry S. Noerdlinger, Moses and Egypt (Los Angeles: University of Southern California Press, c.1956), p. 19.

education. Part of the physical training of Egyptian youth included wrestling, fighting with sticks, throwing knives or daggers, as well as lifting heavy bags of sand over the head.⁹ This sort of training has caused people to picture Moses as a robust and husky individual, especially from the illustration of his might in the encounter with the attacking shepherds at Reuel's well.¹⁰ He was a man of commanding height, a man physically far stronger than the average, and a superb athlete who was handsome, impetuous, impulsive and daring.¹¹ Philo pictures him as having an appearance that was "beautiful and noble, full of modesty yet full of dignity."¹² Josephus claims that God gave him tallness when he was but three years old, a tallness that was wonderful, and that his beauty was such that nobody would be so impolite as not to turn again and look at him after passing him on the way.¹³

Once he became a matured prince, Josephus says that Moses was appointed general of the Egyptian army in the war with the Ethiopians. In this role he gained repeated victories over the enemies of his foster mother's nation.¹⁴ Moreover,

⁹Hicks, op. cit., p. 32.

¹⁰Ex. 2:17

¹¹Hicks, loc. cit.

¹²Ibid.

¹³Ibid.

¹⁴Taylor, op. cit., p. 29.

Moses' activity as chief architect of the treasure city of Raamses is spoken of in the Midrash Rabbah.¹⁵

Moses' Forty Years as Shepherd in the Wilderness

Loss of self-control caused him to kill an Egyptian taskmaster who was oppressing one of the Israelites. This deed was intended as a favor to his fellow countrymen enslaved to the Egyptians, but as it turned out, it led to the beginning of a new life for him in the wilderness as a shepherd. Stephen, in the New Testament, looks back at this incident and surmises: "he supposed that his brethren would have understood how that God by his hand would deliver them."¹⁶

Moses, after this act, fled to Midian. Here he rescued Reuel's daughters from aggressive sheep herders and, as a reward, gained Zipporah, one of Reuel's daughters for a wife.¹⁷ Here in the wilderness he attended a different university than that of the sun-worshippers at Heliopolis. His books were the stars and the silent hills, the shrubs about him and the flocks beside him that grazed on the fields.

In this setting God appeared to Moses in a burning bush. This certainly shocked Moses, but God identified Himself as

¹⁵Midrash Rabbah, edited by H. Freedman and Maurice Simon (London, 1951), III, 35.

¹⁶Taylor, op. cit., p. 31.

¹⁷Ibid., p. 45.

the God of Abraham, Isaac, and Jacob¹⁸ in order that Moses' fears might be allayed. God told Moses that He had chosen him to be the one to deliver His people from bondage. Moses first gave forth a string of excuses based on (1) Personal unworthiness because he could not speak eloquently; (2) Inability to answer if asked to tell who had sent him; (3) The fact that people would not believe him; and (4) A reiteration of his inability to speak. Finally after many assurances from God, Moses took up the great task of leading the children of Israel out of Egypt. The writer to the Hebrews looks back on this incident and interprets it as follows:

By faith Moses, when he was come to years, refused to be called the son of Pharaoh's daughter, choosing rather to suffer affliction with the people of God, than to enjoy the pleasures of sin for a season; esteeming the reproach of Christ greater riches than the treasures of Egypt; for he had respect unto the recompense of the reward.¹⁹

Moses' Forty Years as Leader

When Moses was eighty years old, he confronted the Pharaoh of Egypt with the demand: "Thus saith the Lord God of Israel, Let my people go, that they may hold a feast unto me in the wilderness."²⁰ Moses had returned to the center of

¹⁸Ibid., p. 46.

¹⁹Heb. 11:24-26

²⁰Ex. 5:1

Egyptian power and law. The memory of Moses and his deeds must have still been alive in order for Moses, as a lowly shepherd, to receive a hearing before the Pharaoh.

Moses' words as a leader standing before Pharaoh were accompanied by mighty manifestations of power and disaster. At his command, the waters of Egypt were turned to blood, frogs swarmed over the entire land, lice afflicted the people and animals of the land, flies swarmed over the length and breadth of Egypt, the cattle of Egypt mysteriously fell dead, boils pained the bodies of the Egyptians, a mighty hailstorm wrought destruction on the crops of the land, darkness enveloped the land, and finally a most dreadful plague killed the first-born in every home whose door-post was not painted with the blood of a lamb.²¹ All of these mighty signs accompanied the words of Moses, the leader. What is the explanation for these mighty deeds of Moses in the land of Egypt? "Can there be any other worthy or adequate explanation than that in some way 'God made his ways known unto Moses' Ps. 103:7 and that in and through him revelation found its first majestic prophet?"²²

Out of Egypt then he led the people six hundred thousand men²³ strong, not counting the women and children. If

²¹Ex. 7-12

²²Hicks, op. cit., p. 18.

²³Ex. 12:37

ever there was a time when leadership was called for, this was the time. Moses' varied background fitted him for this leadership. He had learned diligence as a student while still in the court of the Pharaohs. He had learned to be observant during his forty years as a shepherd. And now the big task of leading this people was upon him, a task which led him into the Sinai peninsula he knew so well. Here he was to give the people a law by which God would have them live. Here in the wilderness a people had to be built up into a nation.

Moses was the man to do the job since he was chosen by God. He has had no compeer in time, and he is a man who testifies to men today--a fact acknowledged by Winston Churchill. Churchill spoke of the Ten Commandments in particular as, "those fundamental laws which were henceforward to be followed, with occasional lapses by the highest forms of human society."²⁴

The People Moses Led Out of Egypt

The Laws of Moses were given to a people who had spent four hundred years in bondage. To understand these people one must go back to their very beginnings.

The great ancestor of the Israelite race was Abraham. Abraham was a Semite, born in Ur of the Chaldees.²⁵ This is important for a clear understanding in comparing Mosaic Law with that of Hammurabi, for Abraham was raised in the same

²⁴Noerdlinger, op. cit., p. 43.

²⁵Gen. 12

general area that Hammurabi ruled. Furthermore, Abraham and Hammurabi were contemporaries, the Biblical king Amraphel²⁶ being identified with Hammurabi of Babylonia.²⁷ The account of the clash between Amraphel of Shinar and Abraham is recorded as follows:

And it came to pass in the days of Amraphel king of Shinar, Arloch king of Ellasar, Chedorlaomer king of Elam, and Tidal king of nations; that these made war with Bera king of Sodom, and with Birsha king of Gomorrah, Shinab king of Admah, and Shemeber king of Zebolim, and the king of Bela which is Zoar. . . . And they took all the goods of Sodom and Gomorrah, fled, and fell there; and they that remained fled to the mountain. And they took all the goods of Sodom and Gomorrah, and all their victuals, and went their way. And they took Lot, Abram's brother's son, who dwelt in Sodom, and his goods, and departed. And there came one that had escaped, and told Abram the Hebrew: for he dwelt in the plain of Mamre the Amorite, brother of Eschol, and brother of Aner: and these were confederate with Abram. And when Abram heard that his brother was taken captive, he armed his trained servants, born in his own house, three hundred and eighteen, and pursued them unto Dan. And he divided himself against them, he and his servants, by night, and smote them, and pursued them unto Hobah, which is on the left hand of Damascus. And he brought back all the goods, and also brought again his brother Lot, and his goods, and the women also, and the people.²⁸

Oral transmission was one of the most practiced modes to pass on information in Abraham's era. Abraham and his sons probably transmitted their knowledge of Semitic law down from generation to generation.

Israelites then had their ancestry in the Semitic race

²⁶Gen. 14:1

²⁷C. H. W. Johns, Ancient Babylonia (Cambridge: University Press, c.1913), p. 76.

²⁸Gen. 14:1,2,10-16

and lived for a time anyway in the Babylonian orbit. Abraham's great-grandson, Joseph, was the link in the chain which eventually brought about the crisis which Moses faced with the Pharaohs of Egypt. Joseph rose to the position of second in command to Pharaoh over all Egypt.²⁹ He was a great, wise ruler who saved the land of Egypt during seven drought years, and because of this greatness, the Pharaoh of Egypt invited Joseph's entire family to dwell permanently in the land of Egypt.³⁰ This began the long stay of the Israelites in the land of Egypt.

Peace and prosperity halted for the Israelites when a ruler came to the throne who "knew not Joseph."³¹ This signalled the beginning of the oppression of the Israelites, and from then on they were a slave nation.

After the deliverance from this bondage, Moses made laws for a people who, as a nation, had been made culturally bankrupt by long years of slavery and who looked forward to entering the Promised Land.

The study of Moses and the people that his Laws governed shows the following:

1) Moses was a leader who received a royal education, and as such, undoubtedly studied law in his early days at Heliopolis.

²⁹Gen. 41:43

³⁰Gen. 47:11

³¹Ex. 1:8

2) Moses' position as a prince in Egypt gained for him great respect.

3) Moses was a man to whom God spoke directly.

4) God accompanied Moses' words with mighty physical phenomena.

5) The Israelites were of Semitic ancestry, and their father Abraham, at one time, dwelt in Babylonian culture which was strongly Semitic.

6) The Israelites' ancestral father Abraham was contemporary with Hammurabi.

7) At the time that God gave the law through Moses, Israel was a nation recently emancipated from foreign bondage.

¹ "Hammurabi," *The Americanist* (New York-Chicago: Americanist Association, 1934), XIII, 636.

² Henry Francis Harper, *Code of Hammurabi* (Chicago: University of Chicago Press, 1904), p. xi.

³ John Wilson, *Light From the Ancient East* (Princeton: Princeton University Press, 1933), p. 28.

⁴ Herbert Leavelle, "Hammurabi," *Encyclopaedia Britannica* (Chicago-London-Toronto: Encyclopaedia Britannica, 1911), XI, 125.

CHAPTER IV

HAMMURABI AND THE PEOPLE GOVERNED BY HIS LAWS

Hammurabi the King

Hammurabi, the great king of Babylon and codifier of laws, was born in the twenty-third century before Christ. There is a degree of variance among scholars as to the exact date. Some have set it at 2200 B. C.¹, others at 2250 B. C.², and still others have pinpointed the date at 2267 B. C.³ The dates are sufficiently within range of each other and do not pose a major problem. It is commonly conceded that Hammurabi is to be identified with Amraphel, king of Shinar, mentioned in Genesis 14:1 account. Historically, he seems to have had "peaceful relations at this time with Rim-Sin of Ellasar, his father Kudurmabug, ad-da of Emutbal and of Amurru,"⁴ and so the biblical records square with these facts.

Hammurabi was sixth in a succession of princes which,

¹"Hammurabi," The Americana (New York-Chicago: Americana Corporation, c.1936), XIII, 666.

²Robert Francis Harper, Code of Hammurabi (Chicago: University of Chicago Press, 1904), p. xi.

³Jack Finegan, Light From the Ancient Past (Princeton: Princeton University Press, c.1946), p. 59.

⁴Stephen Herbert Langdon, "Hammurabi," Encyclopedia Britannica (Chicago-London-Toronto: Encyclopedia Britannica Inc., c.1951), XI, 135.

following the Babylonian king-lists, we designate "The First Babylonian Dynasty."⁵ The five kings before Hammurabi experienced many difficulties in welding together a kingdom. Each city in reality was a separate kingdom. The kings of the south claimed to be the rulers, and the men in the north were looked upon as vassals. "Documents of this time never refer to those of the north as king."⁶ Larsa, a city in the south, looked upon Babylon as a vassal. However Hammurabi's father, Sirmubbalit, overthrew Rim-Sin, the last of the Elamite kings, and this signaled the end for the south.⁷

As far as Babylon was concerned at this time, "the first 'golden age' commenced with the succession of Hammurabi to the throne."⁸ This meant a great change for Babylonia, for now "North Babylonia with its central point at Babylon became the province, with Babilu, the holy city of the god Marduk (Merodach), the seat of authority in the Babylonian world of culture."⁹ No wonder this became the first "golden age," and what a place for an enterprising man

⁵Hugo Winckler, The History of Babylonia and Assyria (New York: Charles Scribner's Sons, 1907), p. 56.

⁶Ibid., p. 57.

⁷Ibid., p. 58.

⁸P. J. Wiseman, Babylon In The Days of Hammurabi and Nebuchadrezzar, in Journal of Transactions of the Victoria Institute (London: Harrison and Sons, Ltd., c.1927) LIX, 122.

⁹Winckler, op. cit., p. 61

such as Hammurabi to take the lead.

His reign began very peacefully, and he did much building. In the second year of his reign he said that he established the heart of his land in righteousness, and many have taken this phrase to mean that this was the year that the code of laws was published: however this did not come until a later year of his reign. It should be taken to mean that "by his legal reforms he settled the country in law and order."¹⁰ He was a very conscientious king in administering to the needs of the realm. "Many letters written by Hammurabi have been found, revealing his close attention to all the details of his realm and illustrating the true clarity with which he issued his instructions."¹¹

A brief listing of some of his building feats are as follows: In his ninth year he dug a canal after his own name, the Hammurabi-khegel.¹² In his twelfth year he made a throne for Zerpenit, the consort of Marduk, and in his fourteenth year a throne for Ishtar of Babylon.¹³ The twenty-second year of his reign is the one in which he put out the Code. This he did in conjunction with the setting up of a statue of himself

¹⁰C. H. W. Johns, Ancient Babylonia (Cambridge: University Press, c.1913), p. 77.

¹¹Finegan, op. cit., p. 48.

¹²Johns, loc. cit.

¹³

ibid.

in the temple of Marduk at Babylon, calling himself the "king of righteousness."¹⁴ From the thirty-fourth year of his reign on to the end he devoted his life to great works of peace. A full listing of this can be found in Johns' Ancient Babylonia.¹⁵

All was not peaceful in the forty-three year reign of Hammurabi. From his thirty-first to his thirty-fourth years were years of great conquest. In the thirty-first year of his reign he met with his most glorious hour "for with help from Anu and Bel, who went before his army, his hand smote down the land of Amutbalum and its king Rim-Sin."¹⁶ In his thirty-second year he ravaged the borders of Elam, and by his thirty-third year his rule was acknowledged at Nippur.¹⁷ Even with all of his struggles the empire he built did not remain on its high plane of security. After he had successfully put Elam out of the way, it looked as if the road would be clear for a lasting peace in Babylon, but "his successors on the throne experienced trouble from other quarters."¹⁸

A further insight into the character of Hammurabi can be gained by examining his prologue and epilogue to the Code of

¹⁴Ibid.

¹⁵Johns, op. cit., cf. pp. 78-80.

¹⁶Ibid. p. 78.

¹⁷Ibid.

¹⁸L. W. King, Chronicles Concerning Early Babylonian Kings, in Studies In Eastern History (London: Luzac and Co., c.1907), p. 143.

Law. He constantly refers to the gods, especially Anu and Bel. He speaks of himself as the worshiper of the gods.¹⁹

Direct references connecting himself to the gods are as follows: "Anu and Bel called me,"²⁰ "rejoiced the heart of Marduk, his lord . . . obedient to the mighty Shamash . . . whom the wine god Ma-ma has clothed with complete power."²¹ Again he speaks of himself as "the warrior of Dagan, his creator."²²

He not only refers to his relations with the gods, but also speaks in high phrases of his own worth and power. Thus he calls himself, "the wine king,"²³ "the pious and suppliant one . . . the diplomatic king . . . the warrior, the protector of Larsa . . . the mighty bull, who gores the enemy . . . the exalted one . . . the divine city king . . . the wise and perfect one."²⁴ The crowning one of his self inflicted virtues came when he called himself the one "who made the rising sun to shine brilliantly."²⁵

What of all these attributes that Hammurabi takes for himself? Do they mean he is primarily concerned for the welfare

¹⁹Harper, op. cit., p. 3.

²⁰Ibid.

²¹Ibid., p. 5.

²²Ibid., p. 7.

²³Ibid., p. 3.

²⁴Ibid., p. 5.

²⁵Ibid., p. 7.

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²⁰Ibid.

²¹Ibid., p. 5.

²²Ibid., p. 7.

²³Ibid., p. 3.

²⁴Ibid., p. 5.

²⁵Ibid., p. 7.

of the gods of the cities, and is he convinced that he is carrying out the will of the gods? Could we look upon his association with the gods in the same way Moses is associated with Jahwe? Hugo Winckler comments tersely that "Hammurabi professes to have received his laws from the hand of the god Shamash, but it is no longer 'divine law' that the code presents. It is clearly the 'law of the king.' . . ."26

The People of Babylon

What were the people like who were governed by the Code of Hammurabi? So far as we can determine, these first inhabitants of Babylon were the Sumerians.²⁷ We do not know a great deal about these people. About a thousand years before the age of Hammurabi, the Babylonian Semites entered the land and took over the culture of the Sumerians.²⁸ This civilization continued until about 2400-2100 B. C., when Western Asia and Babylonia came into possession of a people best described as Canaanite.²⁹ This brings us to the age of Hammurabi, by which time Babylon had experienced civilizations composed of Sumerians, Babylonian-Semites, and then Canaanite-Semitic. This sets the general tone of the culture at the time of Hammurabi as one which fits in with the Abraham account in Scripture. Therefore Abraham's common background with Hammurabi

²⁶Winckler, op. cit., p. 64.

²⁷Ibid., p. 13.

²⁸Ibid., p. 21.

²⁹Ibid.

leaves the possibility of an oral transmission of law down to the time of Moses.

Society in this type of civilization of Hammurabi's day consisted legally of three classes. 1) The Awilum. This group consisted of the house-holders, property owners, the wealthy and upper classes.³⁰ This term could be translated as "gentlemen." Some prefer to call this class the "patricians."³¹ 2) The Muskenum. This was a class of people who could hold property and slaves; however they were poor. They were free and held a position somewhere between the upper class and the slave.³² They could be called "serfs," "freemen," or as Barton prefers, "working men."³³ 3) The Wardum-Antum. This was the lowest class, made up of male and female slaves.³⁴ These were the three classes of people who were ruled by the Laws of Hammurabi. The breakdown is more complex in comparison with the Hebrew society. Hebrew society had two main groups of people, the freemen and the slaves.

Aside from these groups in Babylonian society, there was a class of government officials known as the "officers,"

³⁰Harper, op. cit., p. xii.

³¹George A. Barton, Archaeology And The Bible (Philadelphia: American Sunday School Union, c.1925), p. 361.

³²Harper, loc. cit.

³³Barton, loc. cit.

³⁴Harper, loc. cit.

"constables," and "taxgatherers."³⁵

The evidence cited concerning Hammurabi and his people shows that:

1. Hammurabi was contemporary with Abraham.
2. Hammurabi's career as king was marked by a golden era of peace during which beneficial construction was carried out, and also marred by a few major wars in which Hammurabi emerged victorious.
3. In his own writings, Hammurabi associated himself with the gods.
4. Hammurabi was an extremely boastful man.
5. The people of Babylon were descendants of Sumerians, Babylonian-Semites and Canaanites.
6. Babylon's society was based on a three class system.

³⁵Ibid.

CHAPTER V

A COMPARISON OF THE LAWS OF AGRICULTURE AND HORTICULTURE

Laws of Agriculture

Agriculture played an important role in the economies of both Babylon and Israel. It is of little wonder that civil law contained statutes aimed at justice in agricultural transactions. The people of Babylon were in an ideal situation for making a livelihood from agriculture. The presence of the two rivers, Tigris and Euphrates, brought about an "unusual fertility"¹ in Babylonia. This gave the many people who settled there conditions "which with a minimum of effort yielded a maximum of sustenance."²

Enlil became the deity of agriculture, a god who manifested himself in the storm and spoke in the thunder.

Now, agricultural deities are either conceived as personifications of the power residing in the sun as the chief factor involved in vegetation, or as the personification of the earth pictured as the female element in whose womb the seed ripens and in time brings forth fruit. Enlik, therefore, while not losing the fierce traits belonging to him as a mountain god whose element is the storm, absorbs the attributes of a solar deity, while his consort, Ninlil, becomes a mother goddess who nurtures the seed, and spreads blessings among mankind.³

¹Morris Jastrow, Jr., The Civilization of Babylonia and Assyria (Philadelphia and London: J. B. Lippincott Company, 1915), p. 8.

²Ibid.

³Ibid., p. 188.

The Israelites also took up agriculture in their land. Many of them planted vineyards and fig trees. The God who granted growth to the crops was always Jahwe. This is another basic difference between the people of Babylonia and Israel. The Babylonians put their trust in many different gods, one for each of their basic needs, while the trust of the Israelites was in Jahwe alone.

Following is a listing of the agricultural laws from the Code of Hammurabi and from the Mosaic Law.

The Code of Hammurabi on Agriculture

42

If a man rent a field for cultivation and do not produce any grain in the field, they shall call him to account, because he has not performed the work required on the field, and he shall give to the owner of the field grain on the basis of the adjacent (fields).⁴

43

If he do not cultivate the field and neglect it, he shall give to the owner of the field grain on the basis of the adjacent (fields): and the field which he has neglected, he shall break up with hoes, he shall harrow and he shall return to the owner of the field.

44

If a man rent an unreclaimed field for three years to develop it, and neglect it and do not develop the field, in the fourth year he shall break up the field with hoes, he shall hoe and harrow it and he shall return it to the owner of the field and shall measure out ten GUR⁵ of grain per ten GAN.⁶

⁴All parenthesis in texts quoted from the Code of Hammurabi are those of translator Robert Francis Harper.

⁵Jastrow, op. cit., p. 297.

⁶Ibid.

37

45

If a man rent his field to a tenant for crop-rent and receive the crop-rent of his field and later Adad (i.e., the Storm God) inundate the field and carry away the produce, the loss (falls on) the tenant.

46

If he have not received the rent of his field and he have rented the field for either one-half or one-third (of the crop), the tenant and the owner of the field shall divide the grain which is in the field according to agreement.

47

If the tenant give the cultivation of the field into the charge of another--because in a former year he has not gained a maintenance--the owner of the field shall not interfere. He would cultivate it, and his field has been cultivated and at the time of harvest he shall take grain according to his contracts.

48

If a man owe a debt and Adad inundate his field and carry away the produce, or, through lack of water, grain have not grown in the field, in that year he shall not make any return of grain to the creditor, he shall alter his contract-tablet and he shall not pay the interest for that year.

49

If a man obtain money from a merchant and give (as security) to the merchant a field to be planted with grain and sesame (and) say to him: "Cultivate the field, and harvest and take to thyself the grain and sesame which is produced;" if the tenant raise grain and sesame in the field, at the time of harvest, the owner of the field shall receive the grain and sesame which is in the field and he shall give to the merchant grain for the loan which he had obtained from him and for the interest and for the maintenance of the tenant.

50

If he give (as security) a field planted with (grain) or a field planted with sesame, the owner of the field shall receive the grain or the sesame which is in the field and he shall return the loan and its interest to the merchant.

51

If he have not the money to return, he shall give to the merchant (grain or) sesame, at their market value according to the seals fixed by the king, for the loan and its

interest which he has obtained from the merchant.

52

If the tenant do not secure a crop of grain or sesame in his field, he shall not cancel his contract.

53

If a man neglect to strengthen his dyke and do not strengthen it, and a break be made in his dyke and the water carry away the farm-land, the man in whose dyke the break has been made shall restore the grain which he has damaged.

54

If he be not able to restore the grain, they shall sell him and his goods, and the farmers whose grain the water has carried away shall share (the results of the sale).

55

If a man open his canal for irrigation and neglect it and the water carry away an adjacent field, he shall measure out ten GUR of grain per GAN.

56

If a man open up the water and the water carry away the improvements of an adjacent field, he shall measure out ten GUR of grain per GAN.

57

If a shepherd have not come to an agreement with the owner of a field to pasture his sheep on the grass; and if he pasture his sheep on the field without the consent of the owner, the owner of the field shall harvest his field, and the shepherd who has pastured his sheep on the field without the consent of the owner of the field shall give over and above twenty GUR of grain per ten GAN to the owner of the field.

58

If, after the sheep have gone up from the meadow and have crowded their way out (?) of the gate into the public common, the shepherd turn the sheep into the field, and pasture the sheep on the field, the shepherd shall oversee the field on which he pastures and at the time of harvest he shall measure out sixty GUR of grain per ten GAN to the owner of the field.⁷

⁷Robert Francis Harper, Code of Hammurabi (Chicago: University of Chicago Press, 1904), pp. 25-31.

Mosaic Law on Agriculture

If a man shall cause a field or vineyard to be eaten, and shall put in his beast, and shall feed in another man's field: of the best of his own field, and of the best of his own vineyard, shall he make restitution. If fire break out, and catch in thorns, so that the stacks of corn, or the standing corn, or the field, be consumed therewith; he that kindled the fire shall surely make restitution.⁸

And six years shalt thou sow thy land, and shalt gather in the fruits thereof: But the seventh year thou shalt let it rest and lie still; that the poor of thy people may eat: and what they leave the beasts of the field shall eat. In like manner thou shalt deal with thy vineyard, and with thy oliveyard.⁹

When thou cuttest down thine harvest in thy field, and hast forgot a sheaf in the field, thou shalt not go again to fetch it: it shall be for the stranger, for the fatherless, and for the widow: that the Lord thy God may bless thee in all the work of thine hands.

When thou beatest thine olive tree, thou shalt not go over the boughs again: it shall be for the stranger, for the fatherless, and for the widow.

When thou gatherest the grapes of thy vineyard, thou shalt not glean it afterwards: it shall be for the stranger, for the fatherless, and for the widow.

And thou shalt remember that thou wast a bondman in the land of Egypt: therefore I command thee to do this thing.¹⁰

When thou comest into thy neighbour's vineyard, then thou mayest eat grapes thy fill at thine own pleasure; but thou shalt not put any in thy vessel.

When thou comest into the standing corn of thy neighbour, then thou mayest pluck the ears with thine hand: but thou shalt not move a sickle unto thy neighbour's standing corn.¹¹

⁸ Ex. 22:5,6

⁹ Ex. 23:10,11

¹⁰ Deut. 24:19-22

¹¹ Deut. 23:24,25

One of the obvious differences in the two systems of law concerns cultivation of the land. In the Babylonian civilization the land was leased out for others to work. The Hebrew law pictures each man working his own land. Connected with this state of affairs is the matter of interest. When the Babylonians rented out a field, "the stipulation was in general (a) a return through a percentage of the yield, according to the size of the property, calculated on an average crop and applying to both fields and date-tree orchards, or (b) with further special provisions in the case of virgin fields."¹² If we were to take the directives of law Number 44 as an example, the rate of interest charged in Babylonia was about twenty percent.¹³ According to the Mosaic Law, the charging of interest was illegal. The directive of Exodus 22:25 is: "If thou lend money to any of my people that is poor by thee, thou shalt not be to him as an usurer, neither shalt thou lay upon him usury." This law against taking interest "lasted until Hillel a contemporary of Herod the Great who invented an interpretation known as Prosbul, which practically did away with this law and permitted Jews to take interest."¹⁴ The two codes differ radically therefore on principles of charging interest, and of cultivation.

¹²Jastrow, loc. cit.

¹³Ibid.

¹⁴George A. Barton, Archaeology And The Bible (Philadelphia: American Sunday School Union, c.1925), p. 345.

The two codes reflect an entirely different approach to sociological problems. In comparing the agricultural laws one would have to conclude either that (1) Babylonians had no concern for the poor, while the Hebrews made a conscious effort for their well-being, or that (2) Babylonia had no poor people. The Code of Hammurabi has no provision made for poor people, while the laws of the Hebrews required land owners to (1) leave any sheaves forgotten in the fields for the poor, (2) leave some of the olives on the trees for the poor, (3) allow the poor to glean in the vineyards, (4) allow neighbors to come into vineyards and cornfields in order to eat their fill, and (5) allow the land to lie fallow every seventh year "that the poor of thy people may eat."¹⁵

Two items are common to both sets of law regulating agriculture. In the first place, they both were aware of possible destruction of the crops by means of natural calamities. In Babylonia the great fear of destruction from water was evident. This would be natural in a land irrigated by canals and rivers. The great concern of the Hebrews was fire. In a land that was extremely dry at times, fire would be a great menace. In the second place, both codes have laws of restitution in common. The Babylonian code is very specific as to what the restitution should be. For example, laws 55-58 specify the amount of grain that should be paid for the

¹⁵Ex. 23:11

destruction of a neighbor's property through careless channeling of water or willful pasturing of sheep on his property without permission. Mosaic law does not spell out specific penalties in these violations, but simply states that restitution shall surely be made.

The Code of Hammurabi on Horticulture

59

If a man cut down a tree in a man's orchard, without the consent of the owner of the orchard, he shall pay one-half mana of silver.

60

If a man give a field to a gardener to plant as an orchard and the gardener plant the orchard and care for the orchard four years, in the fifth year the owner of the orchard and the gardener shall share equally, the owner of the orchard shall mark off his portion and take it.

61

If the gardener do not plant the whole field, but leave a space waste, they shall assign the waste space to his portion.

62

If he do not plant as an orchard the field which was given to him, if corn be the produce of the field, for the years during which it has been neglected, the gardener shall measure out to the owner of the field (such produce) on the basis of the adjacent fields, and he shall perform the required work on the field and he shall restore it to the owner of the field.

63

If the field be unreclaimed, he shall perform the required work on the field and he shall restore it to the owner of the field and he shall measure out ten GUR of grain per ten GAN for each year.

64

If a man give his orchard to a gardener to manage, the gardener shall give to the owner of the orchard two-thirds of the produce of the orchard, as long as he is in possession of the orchard; he himself shall take

one-third.

65

If the gardener do not properly manage the orchard and he diminish the produce, the gardener shall measure out the produce of the orchard on the basis of the adjacent orchards.¹⁶

Mosaic Law on Horticulture

If a man shall cause a field or vineyard to be eaten and shall put in his beast, and shall feed in another man's field: of the best of his own field, and of the best of his own vineyard shall he make restitution.¹⁷

But the seventh year thou shalt let it rest and lie still: the land that the poor of thy people may eat: and what they leave the beasts of the field shall eat. In like manner thou shalt deal with thy vineyard, and with thy oliveyard.¹⁸

It is impossible to get a full picture of the horticultural laws of Babylonia since immediately following this section are the five columns of law erased by the Elamite king. It has been estimated that thirty-five sections of law have been lost through this erasure. Judging from the laws we do have, horticultural laws seem to be based on the same principles as those laws dealing with agriculture. In the case of Mosaic laws, horticultural matters are put on exactly the same basis as agricultural matters. Again it is very evident that the Babylonian law sought to list very specific measures to be taken in isolated cases, while the

¹⁶ Harper, op. cit., pp. 31-33.

¹⁷ Ex. 22:5

¹⁸ Ex. 23:11

Hebrew law spoke only of general principles to be followed.

After comparing Babylonian and Mosaic Law in the area of agriculture and horticulture, the following can be said:

1. Babylonian law was made on the basis of leased lands and orchards, while Mosaic Law was made on the basis of privately maintained lands and vineyards.
2. Babylonian law made no provision for the poor, while Mosaic law provided in many ways for the poor.
3. Babylonian law dealt in detail with the matter of interest, while Mosaic law forbade the charging of interest.
4. Both codes of law took cognizance of destruction by natural calamities.
5. Both laws demanded retribution to be paid for destruction of crops, orchards, and groves; Babylonian law listed the penalty to be paid, while Hebrew law prescribed no specific penalty.

CHAPTER VI

A COMPARISON OF LAWS OF PROPERTY AND INHERITANCE

Protection of property is a great concern of many laws today, and it was of no less concern in the days of Hammurabi and Moses. Transfer of property through the medium of inheritance is also a concern which looms large in the field of law. In this chapter, laws dealing with property and inheritance, as they are recorded in the Code of Hammurabi and Mosaic Law, will be placed side by side in order that a comparison can be made. Laws on property will cover the areas of slaves, cattle, and theft of property. Laws on inheritance will be given separate treatment.

The Laws Concerning Property

Slaves were live property of men and were often used to pay debts. The following are the laws pertaining to the status and duties of slaves as recorded in the Code of Hammurabi.

117

If a man be in debt and sell his wife, son or daughter, or bind them over to service, for three years they shall work in the house of their purchaser or master; in the fourth year they shall be given their freedom.

118

If he bind over to service a male or female slave, and if the merchant transfer or sell such slave, there is no cause for complaint.

119

If a man be in debt and he sell his maid servant who has

borne him children the owner of the maid servant (i.e., the man in debt)¹ shall repay the money which the merchant paid (him), and he shall ransom his maid servant.²

The Mosaic Law lists the following ordinances on slaves.

And if a man sell his daughter to be a maidservant, she shall not go out as the menservants do.

If she please not her master, who hath betrothed her to himself, then shall he let her be redeemed: to sell her unto a strange nation he shall have no power, seeing he hath dealt deceitfully with her.

And if he have betrothed her unto his son, he shall deal with her after the manner of daughters. If he take him another wife; her food, her raiment, and her duty of marriage, shall he not diminish.

And if he do not these three unto her, then shall she go out free without money.³

If thou buy an Hebrew servant, six years he shall serve; and in the seventh he shall go free for nothing.

If he came in by himself, he shall go out by himself: if he were married, then his wife shall go out with him.

If his master have given him a wife, and she have born him sons or daughters; the wife and her children shall be her master's and he shall go out by himself. And if the servant shall plainly say, I love my master, my wife, and my children; I will not go out free;

Then his master shall bring him unto the judges; he shall also bring him to the door, or unto the door post; and his master shall bore his ear through with an aul; and he shall serve him forever.⁴

The substance of these two quotations is quite similar, yet the spirit of them is different. Hebrew law said that a man could enter slavery on his own volition, while Babylonian law permitted the wife, son or daughter to enter slavery in

¹All parenthesis in texts quoted from the Code of Hammurabi are those of translator Robert Francis Harper.

²Robert Francis Harper, Code of Hammurabi (Chicago: University of Chicago Press, 1904), p. 41.

³Ex. 21:7-11

⁴Ex. 21:2-6

the man's stead. If the Hebrew man did sell his daughter into the role of maidservant, she had to be treated in a different way than the menservants. A manservant's type of work could not be expected of her. Furthermore, if the master did not deal with the girl in a specified way, the girl could go free at any time even if it were not yet the seventh year. There is a paucity of Hebrew law concerning slaves. The Code of Hammurabi devotes many laws to dealing with slaves and slave problems. In addition to the three ordinances listed in this paper there are twenty-two other laws about slaves dispersed throughout the Code. This is understandable when it is pointed out that Babylonian society was definitely broken into the classes of gentlemen, working men, and slaves. It is true that Hebrew society had freemen and slaves, but the Mosaic Law shows its humane attitude toward slaves when it repeatedly injects the following statement when listing duties and rights of slaves: "And thou shalt remember that thou wast a bondman in the land of Egypt, and the Lord thy God redeemed thee; therefore I command thee this thing today."⁵

Besides slaves, another important piece of property to Babylonians and Hebrews was cattle. Regulations on cattle in the Code of Hammurabi are the following:

241

If a man seize an ox for debt, he shall pay one-third mana⁶ of silver.

⁵Deut. 15:15

⁶A mina (or mana) is 60 shekels. The actual silver value of a shekel is less than 50 cents in modern coinage, but it is a standard coin in antiquity. Its purchasing

242, 243

If a man hire (an ox) for a year, he shall give to its owner four GUR of grain as the hire of a draught ox, (and) three GUR of grain as the hire of an ox. (?)

244

If a man hire an ox or an ass and a lion kill it in the field, it is the owner's affair.

245

If a man hire an ox and cause its death through neglect or abuse, he shall restore an ox of equal value to the owner of the ox.

246

If a man hire an ox and he break its foot or cut its hamstring (?), he shall restore an ox of equal value to the owner of the ox.

247

If a man hire an ox and destroy its eye, he shall pay silver to the owner of the ox to the extent of one-half its value.

248

If a man hire an ox and break its horn or cut off its tail or injure the flesh (through which) the ring (passes), he shall pay silver to the extent of one-fourth of its value.

249

If a man hire an ox and a god strike it and it die, the man who hired the ox shall take an oath before god and go free.

250

If a bull, when passing through the street, gore a man and bring about his death, this case has no penalty.

251

If a man's bull have been wont to gore and they have made known to him his habit of goring, and he have not protect-

Value fluctuating according to commercial activity, was much higher--perhaps at times as much as five dollars in our days." (Morris Jastrow, Jr., The Civilization of Babylonia and Assyria [Philadelphia and London: J. B. Lippincott Company, 1915], p. 292.)

ed his horns or have not tied him up, and that bull gore the son of a man and bring about his death, he shall pay one-half mana of silver.

252

If it be the servant of a man, he shall pay one-third mana of silver.

253

If a man hire a man to oversee his farm and furnish him the seed-grain and intrust him with oxen and contract with him to cultivate the field, and that man steal either the seed or the crop and it be found in his possession, they shall cut off his fingers.

254

If he take the seed-grain and over work the oxen, he shall restore the quantity of grain which he has hoed.

255

If he let the oxen of the man on hire, or steal the seed-grain and there be no crop in the field, they shall call that man to account and he shall measure out 60 GUR of grain per 10 GAN.

256

If he be not able to meet his obligation, they shall leave him in that field with the cattle.⁷

The following passages can be cited from the Mosaic Laws dealing with the subject of cattle:

And if a man borrow ought of his neighbour, and it be hurt, or die, the owner thereof being not with it, he shall surely make good.

But if the owner thereof be with it, he shall not make it good: if it be an hired thing, it came for his hire.⁸

If an ox gore a man or a woman, that they die: then the ox shall be surely stoned, and his flesh shall not be eaten; but the owner of the ox shall be quit.

But if the ox were wont to push with his horn in time past, and it hath been testified to his owner, and he hath not kept him in, but that he hath killed a man or a woman; the ox shall be stoned, and his owner shall also be put to death.

⁷Harper, op. cit., pp. 85-89.

⁸Ex. 22:14,15

If there be laid on him a sum of money, then he shall give for the ransom of his life whatsoever is laid upon him. Whether he have gored a son, or have gored a daughter, according to this judgment shall it be done unto him. If the ox shall push a manservant or a maidservant; he shall give unto their master thirty shekels of silver, and the ox shall be stoned. And if a man shall open a pit, or if a man shall dig a pit, and not cover it, and an ox or an ass fall therein; the owner of the pit shall make it good, and give money unto the owner of them; and the dead beast shall be his. And if one man's ox hurt another's, that he die; then they shall sell the live ox, and divide the money of it; and the dead ox also they shall divide. Or if it be known that the ox hath used to push in time past, and his owner hath not kept him in; he shall surely pay ox for ox; and the dead shall be his own.⁹

One very obvious difference in the two codes is that Hammurabi's Code set the price of the fine to be levied on the basis of the class of person injured. Thus in statute 251 of Hammurabi's Code the fine that is listed for an ox goring the son of a gentleman is one-half mana of silver. If the ox gored the servant of a man, the fine was only one-third mana of silver. In contrast to this, the Mosaic law provided that an ox who gored a man or woman, son or daughter, manservant or maidservant must be put to death. In the case of the goring of the manservant or maidservant, the owner of the ox was fined an additional thirty shekels of silver. The principle of making a distinction of classes in the fixing of fines and punishments is not limited to this one place in Hammurabi's Code but is characteristic throughout.¹⁰

⁹ Ex. 21:28-36

¹⁰ Morris Jastrow, Jr., The Civilization of Babylonia and Assyria (Philadelphia and London: J. B. Lippincott Company, 1915), p. 293.

The Mosaic Law took the death of any person at the horns of an ox very seriously. In all cases, the penalty for an animal taking the life of a human being, was death for the animal. The Code of Hammurabi on the other hand levied a fine to be paid.

It should also be noted that the Code of Hammurabi is much more detailed and complete than Mosaic law on the matters of hiring out the oxen and asses. This would be due primarily to the very commercial outlook of the Code of Hammurabi. However, even where the codes do parallel each other in subject matter, the particulars differ greatly. Mosaic law made a distinction between a borrowed animal and a hired animal. A borrowed animal is always the responsibility of the man who borrowed it, while the fate of a hired animal was the responsibility of the man who hired out the animal. Babylonian law held the man who hired the ox responsible for any injury which befell the ox.

One other subject on which we should like to compare the two codes is that of theft of property. This can be approached under the two topics of (1) theft of general property, and (2) theft of children and slaves. On the topic of theft of general property the Code of Hammurabi says the following:

6

If a man steal the property of a god (temple) or palace, that man shall be put to death; and he who receives from his hand the stolen (property) shall also be put to death.

7

If a man purchase silver or gold, manservant or maid-servant, ox, sheep or ass, or anything else from a man's

son, or from a man's servant without witnesses or contracts, or if he receive (the same) in trust, that man shall be put to death as a thief.

8

If a man steal ox or sheep, ass or pig, or boat--if it be from a god (temple) or a palace, he shall restore thirtyfold; if it be from a freeman, he shall render tenfold. If the thief have nothing wherewith to pay he shall be put to death.

9

If a man, who has lost anything, find that which was lost in the possession of (another) man; and the man in whose possession the lost property is found say: "It was sold to me, I purchased it in the presence of witnesses;" and the owner of the lost property say: "I will bring witnesses to identify my lost property;" if the purchaser produce the seller who has sold it to him and the witnesses in whose presence he purchased it, and the owner of the lost property produce witnesses to identify his lost property, the judges shall consider their evidence. The witnesses in whose presence the purchase was made and the witnesses to identify the lost property shall give their testimony in the presence of god. The seller shall be put to death as a thief; the owner of the lost property shall recover his loss; the purchaser shall recover from the estate of the seller the money which he paid out.

10

If the purchaser do not produce the seller who sold it to him, and the witnesses in whose presence he purchased it (and) if the owner of the lost property produce witnesses to identify his lost property, the purchaser shall be put to death as a thief; the owner of the lost property shall recover his loss.

11

If the owner (claimant) of the lost property do not produce witnesses to identify his lost property, he has attempted fraud (has lied), he has stirred up strife (calumny), he shall be put to death.

12

If the seller have gone to (his) fate (i.e., have died), the purchaser shall recover damages in said case fivefold from the estate of the seller.

13

If the witnesses of that man be not at hand, the judges shall declare a postponement for six months; and if he

do not bring in his witnesses within the six months, that man has attempted fraud, he shall himself beat the penalty imposed in that case.¹¹

The Mosaic Law lists the following ordinances to be observed in the case of theft of property:

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.

If a thief be found breaking up, and be smitten that he die, there shall no blood be shed for him.

If the sun be risen upon him, there shall be blood shed for him: for he should make full restitution; if he have nothing, then he shall be sold for his theft.

If the theft be certainly found in his hand alive, whether it be ox, or ass, or sheep; he shall restore double.

For all manner of trespass, whether it be for ox, for ass, for sheep, for raiment, or for any manner of lost thing, which another challengeth to be his, the cause of both parties shall come before the judges; and whom the judges shall condemn, he shall pay double unto his neighbour.¹²

Or have found that which was lost, and lieth concerning it, and sweareth falsely: in any of all these that a man doeth, sinning therein:

Then it shall be, because he hath sinned, and is guilty, that he shall restore that which he took violently away, or the thing which he hath deceitfully gotten, or that which was delivered him to keep, or the lost thing which he found.

Or all that about which he hath sworn falsely; he shall even restore it in the principal, and shall add the fifth part more thereto, and give it unto him to whom it appertaineth, in the day of his trespass offering.¹³

The Code of Hammurabi has one element in it that is completely foreign to Mosaic law. A distinction was always made as to whether the article stolen was sacred or profane. Included under sacred property were those items belonging to a

¹¹Harper, op. cit., no. 13-15.

¹²Ex. 22:1-4,9

¹³Lev. 6:3-5

temple or to a palace. The palace was sacrosanct as the dwelling of the king since he was a representative of the deity. And so the palace was always adjacent to the temple and the two buildings were viewed under the same aspect, for the temple was the dwelling place of the deity, and the palace was the temple of the deity's representative on earth.¹⁴ Statutes Numbers 6 and 7, therefore, put the heavy punishment of death on anything stolen from the temple or palace. Statute Number 8 modified this a little bit and declared that the theft of minor items such as sheep, asses, pigs, or boats, even if they were taken from the temple or palace, were punishable with a fine rather than death. The Mosaic Law made no parallel laws.

The two codes sound very similar on the matter of setting up judges to hear the evidence and then render a verdict. However, a theft was treated with much more stringent measures under Babylonian law than under Mosaic law. Babylonian law often prescribed death as a penalty, while Hebrew law speaks in terms of double, four-fold, and five-fold restitution.

Both codes of law have directives dealing with the theft of children and slaves. Hammurabi's Code lists the following:

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

¹⁴Jastrow, op. cit., pp. 289-290.

male or female slave of a freeman to escape from the city gate, he shall be put to death.

16

If a man harbor in his house a male or female slave who has fled from the palace or from a freeman, and do not bring him (the slave) forth at the call of the commandment, the owner of that house shall be put to death.

17

If a man seize a male or female slave, a fugitive, in the field and bring that (slave) back to his owner, the owner of the slave shall pay him two shekels of silver.

18

If that slave will not name his owner, he shall bring him to the palace and they shall inquire into his antecedents and they shall return him to his owner.

19

If he detain that slave in his house and later the slave be found in his possession, that man shall be put to death.

20

If the slave escape from the land of his captor, that man shall so declare, in the name of god, to the owner of the slave and shall go free.¹⁵

On the subject of stolen children and slaves the Mosaic Law has the following ordinances:

And he that stealeth a man and selleth him, or if he be found in his hand, he shall surely be put to death.¹⁶

Thou shalt not deliver unto his master the servant which is escaped from his master unto thee; he shall dwell with thee, even among you in that place which he shall choose in one of thy gates where it liketh him best; thou shalt not oppress him.¹⁷

The two codes parallel each other in the penalty exacted

¹⁵Harper, op. cit., p. 17.

¹⁶Ex. 21:16

¹⁷Deut. 23:14,15

for kidnapping. In both cases the person who steals another person was guilty of death. Mosaic law did not treat of those who simply went about stealing slaves, while the Code of Hammurabi made this type of person also guilty of death.

The most interesting point in this comparison is that the laws on fugitive slaves differ so greatly. The Code of Hammurabi prescribes that the man who seized a fugitive slave should return the slave to the owner, while Mosaic law said that the slave should not be returned, but rather live with the man to whom he escaped.

The Laws Concerning Inheritance

The laws of inheritance in the Code of Hammurabi are as follows:

162

If a man take a wife and she bear him children and that woman die, her father may not lay claim to her dowry. Her dowry belongs to her children.

163

If a man take a wife and she do not present him with children and that woman die; if his father-in-law return to him the marriage settlement which that man brought to the house of his father-in-law, her husband may not lay claim to the dowry of that woman. Her dowry belongs to the house of her father.

164

If his father-in-law do not return to him the marriage settlement, he may deduct from her dowry the amount of the marriage settlement and return (the rest) of her dowry to the house of her father.

165

If a man present field, garden or house to his favorite son and write for him a sealed deed; after the father dies, when the brothers divide, he shall take the present which the father gave him, and over and above they shall divide the goods of the father's house equally.

166

If a man take wives for his sons and do not take a wife for his youngest son, after the father dies, when the brothers divide, they shall give from the goods of the father's house to their youngest brother, who has not taken a wife, money for a marriage settlement in addition to his portion and they shall enable him to take a wife.

167

If a man take a wife and she bear him children and that woman die, and after her (death) he take another wife and she bear him children and later the father die, the children of the mothers shall not divide (the estate). They shall receive the dowries of their respective mothers and they shall divide equally the goods of the house of the father.

168

If a man set his face to disinherit his son and say to the judges: "I will disinherit my son," the judges shall inquire into his antecedents, and if the son have not committed a crime sufficiently grave to cut him off from sonship, the father may not cut off his son from sonship.

169

If he have committed a crime against his father sufficiently grave to cut him off from sonship, they shall condone his first (offense). If he commit a grave crime a second time, the father may cut off his son from sonship.

170

If a man's wife bear him children and his maid servant bear him children, and the father during his lifetime say to the children which the maid servant bore him: "My children," and reckon them with the children of his wife, after the father dies the children of the wife and the children of the maid servant shall divide the goods of the father's house equally. The child of the wife shall have the right of choice at the division.

171

But if the father during his lifetime have not said to the children which the maid servant bore him: "My children;" after the father dies, the children of the maid servant shall not share in the goods of the father's house with the children of the wife. The maid servant and her children shall be given their freedom. The children of the wife may not lay claim to the children of the maid servant for service. The wife shall receive her dowry and the gift which her husband gave and deeded to her on a tablet and she may dwell in the house of her husband

and enjoy (the property) as long as she lives. She cannot sell it, however, for after her (death) it belongs to her children.

172

If her husband have not given her a gift, they shall make good her dowry and she shall receive from the goods of her husband's house a portion corresponding to that of a son. If her children scheme to drive her out of the house, the judges shall inquire into her antecedents and if the children be in the wrong, she shall not go out from her husband's house. If the woman set her face to go out, she shall leave to her children the gift which her husband gave her; she shall receive the dowry of her father's house, and the husband of her choice may take her.

173

If that woman bear children to her later husband whose house she has entered and later on that woman die, the former and the later children shall divide her dowry.

174

If she do not bear children to her later husband, the children of her first husband shall receive her dowry.

175

If either a slave of the palace or a slave of a freeman take the daughter of a man (gentleman) and she bear children, the owner of the slave may not lay claim to the children of the daughter of the man for service.

176

And if a slave of the palace or a slave of a freeman take the daughter of a man (gentleman); and if, when he takes her, she enter into the house of the slave of the palace or the slave of the freeman with the dowry of her father's house; if from the time that they join hands, they build a house and acquire property; and if later on the slave of the palace or the slave of the freeman die, the daughter of the man shall receive her dowry, and they shall divide into two parts whatever her husband and she had acquired from the time they had joined hands; the owner of the slave shall receive one-half and the daughter of the man shall receive one-half for her children.

176A

If the daughter of the man had no dowry they shall divide into two parts whatever her husband and she had acquired from the time they joined hands. The owner of the slave shall receive one-half and the daughter of the man shall receive one-half for her children.

177

If a widow, whose children are minors, set her face to enter another house, she cannot do so without the consent of the judges. When she enters another house, the judges shall inquire into the estate of her former husband and they shall intrust the estate of her former husband to the later husband and that woman, and they shall deliver to them a tablet (to sign). They shall administer the estate and rear the minors. They may not sell the household goods. He who purchases household goods belonging to the sons of a widow shall forfeit his money. The goods shall revert to their owner.

178

If (there be) a priestess or a devotee to whom her father has given a dowry and written a deed of gift; if in the deed which he has written for her, he have not written "after her (death) she may give to whomsoever she may please," and if he have not granted her full discretion; after her father dies her brothers shall take her field and garden and they shall give her grain, oil and wool according to the value of her share and they shall make her content. If her brothers do not give her grain, oil, and wool according to the value of her share and they do not make her content, she may give her field and garden to any tenant she may please and her tenant shall maintain her. She shall enjoy the field, garden or anything else which her father gave her as long as she lives. She may not sell it, nor transfer it. Her heritage belongs to her brothers.

179

If (there be) a priestess or a devotee to whom her father has given a dowry and written a deed of gift; if in the deed which he has written for her, he have written "after her (death) she may give to whomsoever she may please," and he have granted her full discretion; after her father dies she may give it to whomsoever she may please after her (death). Her brothers may not lay claim against her.

180

If a father do not give a dowry to his daughter, a bride or devotee, after her father dies she shall receive as her share in the goods of her father's house the portion of a son, and she shall enjoy it as long as she lives. After her (death) it belongs to her brothers.

181

If a father devote a votary or NU.PAR to a god and do not give her a dowry, after her father dies she shall receive as her share in the goods of her father's house one-third

of the portion of a son and she shall enjoy it as long as she lives. After her (death), it belongs to her brothers.

182

If a father do not give a dowry to his daughter, a priestess of Marduk of Babylon, and do not write for her a deed of gift; after her father dies she shall receive as her share with her brothers one-third the portion of a son in the goods of her father's house, but she shall not conduct the business thereof. A priestess of Marduk, after her (death), may give to whomsoever she may please.

183

If a father present a dowry to his daughter, who is a concubine, and give her to a husband and write a deed of gift; after the father dies she shall not share in the goods of her father's house.

184

If a man do not present a dowry to his daughter, who is a concubine, and do not give her to a husband; after her father dies her brothers shall present her a dowry proportionate to the fortune of her father's house and they shall give her to a husband.¹⁸

An equivalent statement of inheritance laws in the Mosaic Law is as follows:

If a man have two wives, one beloved, and another hated, and they have born him children, both the beloved and the hated; and if the firstborn son be her's that was hated:

Then it shall be, when he maketh his sons to inherit that which he hath, that he may not make the son of the beloved firstborn before the son of the hated, which is indeed the firstborn;

But he shall acknowledge the son of the hated for the firstborn, by giving him a double portion of all that he hath: for he is the beginning of his strength; the right of the firstborn is his.

If a man have a stubborn and rebellious son, which will not obey the voice of his father, or the voice of his mother, and that, when they have chastened him, will not hearken unto 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

¹⁸Harper, op. cit., pp. 57-69.

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: so shalt thou put evil away from among you; and all Israel shall hear, and fear.¹⁹

The basic concept of these two bodies of law is quite different on inheritance. The Code of Hammurabi was built on equal distribution of goods amongst the children. All those whom he in his lifetime called "children" are legal heirs, even though they were born to a maidservant. It was possible for a Babylonian to write a document specifying that one son, a "favorite son," should receive a bonus gift before the dividing of the estate took place, but the general rule stood that the estate was divided equally amongst the legal sons. The wife was never the heir, and her portion was simply the dowry and marriage gift which was set aside at the time of her wedding. If there was no marriage gift set aside, the wife could claim a share equal to that of one of the sons.²⁰ Hebrew law put great emphasis on the first-born son who automatically received a double portion of the estate. This was true even if the first-born son was the son of a "hated wife."

Disinheritance existed in both codes of law. A son who committed a crime against his father could be cut off from sonship any time after the first offense. Hebrew law was much stricter. The father brought the rebellious son before the

¹⁹Deut. 21:15-21

²⁰Jastrow, op. cit., p. 305.

people of the town accused him, and then the people stoned the son to death.

In summarizing the comparison of the Code of Hammurabi and the Mosaic Law on property and inheritance laws it can be said that:

1. Property in both instances included slaves, children and cattle.
2. The Mosaic Laws made much better provision for slaves-- a provision which was prompted by the Hebrews' remembrance of their days spent in slavery to Egypt.
3. Babylonian law legislated its penalties on the basis of the class of society to which the offender belonged, while Hebrew law judged the crime that had been committed.
4. When Babylonian law judged crimes of theft, it distinguished between sacred articles and profane articles, while Hebrew law judged the theft committed.
5. Babylonian law often prescribed death for a theft, while Hebrew law prescribed restitution.
6. Hammurabi's Code required the return of fugitive slaves while the Mosaic Law forbade the return.
7. Laws of inheritance in Babylonian law provided for equal distribution amongst the sons, while Hebrew law gave great preference to the first-born son.
8. A rebellious son in Babylonian statutes was dismissed from the household, while Hebrew statutes called for him to be stoned.

Source: Jackson, Jr., *The Civilization of Babylonia and Assyria*, Philadelphia and London: J. B. Lippincott Company, 1903, p. 110.

All references in texts quoted from the Code of Hammurabi are those of translator Robert Francis Jarman.

Source: Robert Francis Jarman, *Code of Hammurabi* (Chicago: University of Chicago Press, 1904), p. 48.

CHAPTER VII

A COMPARISON OF LAWS OF FAMILY LIFE AND PERSONAL INJURY

In this final chapter of comparisons, we shall examine some of the laws dealing with family problems and with personal injuries. It would be impossible to treat every one of these laws, since almost one-fourth of the Code is taken up with the regulation of family relationships, including such subjects as adultery, divorce, false accusations, rights of wives, desertion, and the like.¹ The laws will be listed which are very similar, laws which are very dissimilar, and laws which are listed in the Code of Hammurabi but have no counterpart in Mosaic law.

Laws on Family Relationships

In the following ordinance, the Code of Hammurabi shows its stress on the necessity for legal documents in order for a marriage to be binding.

128

If a man take a wife and do not arrange with her the (proper)² contracts, that woman is not a (legal) wife.³

¹Morris Jastrow, Jr., The Civilization of Babylonia and Assyria (Philadelphia and London: J. B. Lippincott Company, 1915), p. 302.

²All parentheses in texts quoted from the Code of Hammurabi are those of translator Robert Francis Harper.

³Robert Francis Harper, Code of Hammurabi (Chicago: University of Chicago Press, 1904), p. 45.

The Mosaic Law has no ordinance on legal contracts for the validity of a marriage.

The Code of Hammurabi has the following laws on the practice of keeping concubines.

137

If a man set his face to put away a concubine who has borne him children or a wife who has presented him with children, he shall return to that woman her dowry and shall give to her the income of field, garden and goods and she shall bring up her children; from the time that her children are grown up, from whatever is given to her children they shall give to her a portion corresponding to that of a son and the man of her choice may marry her.⁴

144

If a man take a wife and that wife give a maid servant to her husband and she bear children; if that man set his face to take a concubine, they shall not countenance him. He may not take a concubine.

145

If a man take a wife and she do not present him with children and he set his face to take a concubine, that man may take a concubine and bring her into his house. That concubine shall not rank with his wife.

146

If a man take a wife and she give a maid servant to her husband, and that maid servant bear children and afterwards would take rank with her mistress; because she has borne children, her mistress may not sell her for money, but she may reduce her to bondage and count her among the maid servants.

147

If she have not borne children, her mistress may sell her for money.⁵

The Mosaic Law as such has no laws on keeping concubines.

Earlier Hebrew history tells of Abraham receiving a concubine

⁴Harper, op. cit., p. 49.

⁵Ibid., pp. 51-53.

from Sarah after she was unable to bear him a child.⁶ Likewise Rachel and Leah gave Bilhah and Zilpah to Jacob.⁷

Two laws on family relationships are strikingly similar in the two codes. One is the ordinances on incest, and the other one is the ordinances dealing with cases where adultery is committed with a daughter-in-law. The Code of Hammurabi stated the following on incest:

157

If a man lie in the bosom of his mother after (the death of) his father, they shall burn both of them.

158

If a man, after (the death of) his father, be taken in the bosom of the chief wife (of his father) who has borne children, that man shall be cut off from his father's house.⁸

On the same subject Mosaic law recorded these ordinances:

The nakedness of thy father, or the nakedness of thy mother, shalt thou not uncover: she is thy mother; thou shalt not uncover her nakedness.

The nakedness of thy father's wife shalt thou not uncover: it is thy father's nakedness.⁹

A man shall not take his father's wife nor discover his father's skirt.¹⁰

And the man that lieth with his father's wife hath uncovered his father's nakedness: both of them shall surely be put to death; their blood shall be upon them.¹¹

⁶Gen. 16

⁷Gen. 30

⁸Harper, op. cit., p. 55.

⁹Lev. 18:7,8

¹⁰Deut. 22:30

¹¹Lev. 20:11

Both laws speak out against incest, the Babylonian Code specifying that both of the parties to the act should be burned or cut off from inheritance, while Mosaic law simply commands that they should both be put to death.

Laws which are very similar are those which dealt with adultery committed with a daughter-in-law. The Code of Hammurabi decreed that:

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 bosom and they take him, they shall bind that man and throw him into the water.¹²

A similar Mosaic law states:

If a man lie with his daughter in law, both of them shall surely be put to death: they have wrought confusion: their blood shall be upon them.¹³

Both codes of law prescribe death for those who participate in this form of sexual aberration.

Some laws on family relationships point up how these two codes differ from each other. They are laws which governed cases where the wife was accused of infidelity, where adultery was committed in and out of marriage, and where people wanted to be divorced.

The case of the accused wife is treated in the following manner in the Code of Hammurabi.

131

If a man accuse his wife and she has not been taken in lying with another man, she shall take an oath in the

¹²Harper, loc. cit.

¹³Lev. 20:2

name of god and she shall return to her house.

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.¹⁴

On this same point the Mosaic Law prescribed this detailed ritual for the wife accused by her husband:

And the Lord spake unto Moses, saying,
 Speak unto the children of Israel, and say unto them, if any man's wife go aside, and commit a trespass against him,
 And a man lie with her carnally, and it be hid from the eyes of her husband, and be kept close, and she be defiled, and there be no witness against her, neither she be taken with the manner;
 And the spirit of jealousy come upon him, and he be jealous of his wife, and she be defiled: or if the spirit of jealousy come upon him, and he be jealous of his wife, and she be not defiled:
 Then shall the man bring his wife unto the priest, and he shall bring her offering for her, the tenth part of an ephah of barley meal: he shall pour no oil upon it, nor put frankincense thereon; for it is an offering of jealousy, an offering of memorial, bringing iniquity to remembrance.
 And the priest shall bring her near, and set her before the Lord:
 And the priest shall take holy water in an earthen vessel; and of the dust that is in the floor of the tabernacle the priest shall take, and put it into the water:
 And the priest shall set the woman before the Lord, and uncover the woman's head, and put the offering of memorial in her hands, which is the jealousy offering: and the priest shall have in his hand the bitter water that causeth the curse:
 And the priest shall charge her by an oath, and say unto the woman, if no man have lain with thee, and if thou hast not gone aside to uncleanness with another instead of thy husband, be thou free from this bitter water that causeth the curse:
 But if thou hast gone aside to another instead of thy husband, and if thou be defiled, and some man have lain with thee beside thine husband:

¹⁴Harper, op. cit., pp. 45-47.

Then the priest shall charge the woman with an oath of cursing, and the priest shall say unto the woman, The Lord make thee a curse and an oath among thy people, when the Lord doth make thy thigh to rot, and thy belly to swell: And this water that causeth the curse shall go into thy bowels, to make thy belly to swell, and thy thigh to rot: And the woman shall say, Amen, amen.

And the priest shall write these curses in a book, and he shall blot them out with the bitter water:

And he shall cause the woman to drink the bitter water that causeth the curse: and the water that causeth the curse shall enter into her, and become bitter.

Then the priest shall take the jealousy offering out of the woman's hand, and shall wave the offering before the Lord, and offer it upon the altar:

And the priest shall take an handful of the offering, even the memorial thereof, and burn it upon the altar, and afterward shall cause the woman to drink the water.

And when he hath made her to drink the water, then it shall come to pass, that, if she be defiled, and have done trespass against her husband, that the curse shall enter into her, and become bitter, and her belly shall swell, and her thigh shall rot: and the woman shall be a curse among her people.

And if the woman be not defiled, but be clean: then she shall be free, and shall conceive seed.¹⁵

Both of these laws treat of the accused wife, yet a different procedure is followed in each to determine her guilt or innocence. In the case of the Babylonian Law, the proving ground was whether or not the wife could survive being cast into the river. This was a method of determining guilt or innocence in cases where evidence was lacking and suspicion persisted. Mosaic law required such a woman to drink a potion made up of water and dust from the temple floor. If the woman swelled up and rotted at the thigh, she was pronounced guilty. If she survived the ordeal, she was pronounced innocent.

¹⁵Num. 5:11-28

Laws on adultery differ in the two codes. The ordinance as it is recorded in Hammurabi's Code is as follows:

129

If the wife of a man be taken in living 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).¹⁶

The Mosaic Law provided the following courses of action:

And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbour's wife, the adulterer and the adulteress shall surely be put to death.¹⁷

If a man be found lying with a woman married to an husband, then they shall both of them die, both the man that lie with the woman, and the woman: so shalt thou put away evil from Israel.¹⁸

The great difference in the two codes on this point is that Babylonian law left open the possibility for clemency, while Mosaic law demanded death for both the adulter and the adulteress.

The laws governing cases of adultery with a betrothed woman are as follows in the Code of Hammurabi:

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 shall take him, that man shall be put to death and that woman shall go free.¹⁹

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

¹⁶Harper, op. cit., p. 45.

¹⁷Lev. 20:10

¹⁸Deut. 22:22

¹⁹Harper, loc. cit.

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.²⁰

On the same subject the Mosaic Law records the following:

And whosoever lieth carnally with a woman, that is a bondmaid, betrothed to a husband, and not at all redeemed, nor freedom given her: she shall be scourged; they shall not be put to death, because she was not free.

And he shall bring his trespass offering unto the Lord, unto the door of the tabernacle of the congregation, even a ram for a trespass offering.

And the priest shall make an atonement for him with the ram of the trespass offering before the Lord for his sin which he hath done; and the sin which he hath done shall be forgiven him.²¹

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 out 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:

But unto the damsel thou shalt do nothing: there is in the damsel no sin worthy of death: for as when a man riseth against his neighbour, and slaveth him, even so is the matter.

For he found her in the field, and the betrothed damsel cried, and there was none to save her.²²

The Code of Hammurabi provided the possibility of a cash settlement in the case of a prospective father-in-law committing adultery with the woman betrothed to his son, while Mosaic law knew nothing of a cash settlement. The only leniency shown in

²⁰Harper, op. cit., p. 55.

²¹Lev. 19:20-22

²²Deut. 22:23-27

Hebrew law came in the case of adultery with a betrothed bondwoman. Even in this instance scourging took place and a sacrificial offering had to be made.

A final study to be made on family relationships brings us into the topic of divorce. On this matter the differences in the two codes are obvious. The Code of Hammurabi reads:

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 from her father's house and then he may put her away.

139

If there were no marriage settlement, he shall give to her one mana of silver for a divorce.

140

If he be a freeman, he shall give her one-third mana of silver.

141

If the wife of a man who is living in his house, set her face to go out and play the part of the fool, neglect her house, belittle her husband, they shall call her to account; if her husband say "I have put her away," he shall let her go. On her departure nothing shall be given to her for her divorce. If her husband say: "I have not put her away," her husband may take another woman. The first woman shall dwell in the house of her husband as a maid servant.²³

Mosaic legislation provided the following on divorce:

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 be another man's wife. And if the latter husband hate her, and write her a

²³Harper, op. cit., p. 49.

bill of divorcement, and giveth it in her hand, and sendeth her out of his house; or if the latter husband die, which took her to be his wife: her former husband, which sent her away, may not take her again to be his wife, after that she is defiled: for that is abomination before the Lord: and thou shalt not cause the land to sin, which the Lord thy God giveth thee for an inheritance.²⁴

Babylonian law allowed divorce to take place on two accounts. The first was improper conduct on the part of the woman, and the second was incompatibility between husband and wife.²⁵ The Mosaic Law permitted a bill of divorcement to be written whenever uncleanness was found in a woman. Babylonian law lists instances where the wife could collect alimony, while Hebrew law did not require payment of alimony. This difference in the two laws is the natural result of the variance which existed on grounds for divorce.

Laws on Personal Injury

In comparing laws dealing with personal injury, we shall treat laws of injury resulting in miscarriage and the lex talionis as they are listed in the two codes of law.

On miscarriages caused by injuries inflicted by another person, the Code of Hammurabi states:

209

If a man strike a man's daughter and bring about a miscarriage, he shall pay ten shekels of silver for her miscarriage.

²⁴Deut. 24:1-4

²⁵Jastrow, op. cit., p. 302.

210

If that woman die, they shall put his daughter to death.

211

If, through a stroke, he bring about the miscarriage to the daughter of a freeman, he shall pay five shekels of silver.

212

If that woman die, he shall pay one-half mana of silver.

213

If he strike the female slave of a man and bring about a miscarriage, he shall pay two shekels of silver.

214

If that female slave die, he shall pay one-third mana of silver.²⁶

The Mosaic Law has this brief statement on the same topic:

If men strive, and hurt a woman with child, so that her fruit depart from her, and yet no mischief follow: he shall be surely punished, according as the woman's husband will lay upon him; and he shall pay as the judges determine.²⁷

In this comparison, one evident contrast is the different set of penalties the Babylonian Code prescribes for each different class of society. Hebrew law on the other hand speaks to the crime rather than the criminal. The crime was certainly punished, but each case was to be settled between the offender, the injured wife's husband, and the judge.

Finally, we shall make a comparison of the two codes in respect to the lex talionis--an eye for an eye and a tooth for

²⁶Harper, op. cit., p. 77.

²⁷Deut. 21:22

a tooth. Here we have one of the most striking similarities found between the two codes. The Babylonian law says:

195

If a son strike his father, they shall cut off his fingers.

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.

198

If one destroy the eye of a freeman or break the bone of a freeman, he shall pay one mana of silver.

199

If one destroy the eye of a man's slave or break a bone of a man's slave he shall pay one-half his price.

200

If a man knock out a tooth of a freeman, he shall pay one-third mana of silver.

201

If a man knock out a tooth of a man of his own rank, they shall knock out his tooth.

202

If a man strike the person of a man (i.e., commit an assault) who is his superior, he shall receive sixty strokes with an ox-tail whip in public.

203

If a man strike another man of his own rank, he shall pay one mana of silver.

204

If a freeman strike a freeman, he shall pay ten shekels of silver.

205

If a man's slave strike a man's son, they shall cut off his ear.

206

If a man strike another man in a quarrel and wound him, he shall swear: "I struck him without intent,"

and he shall be responsible for the physician.

207

If (he) die as the result of the stroke, he shall swear (as above), and if he be a man, he shall pay one-half mana of silver.

208

If (he) be a freeman, he shall pay one-third mana of silver.²⁸

Similar to these laws are those found in Exodus, Leviticus, and Deuteronomy of the Mosaic Law:

Eye for eye, tooth for tooth, hand for hand, foot for foot,
Burning for burning, wound for wound, stripe for stripe.²⁹

Breach for breach, eye for eye, tooth for tooth; as he hath caused a blemish in a man, so shall it be done to him again.³⁰

And thine eye shall not pity; but life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot.³¹

These striking similarities would seem to heighten the argument for a common Semitic background for both of the codes. With the exception of the class distinction evident once again in the Babylonian Code, the common underlying principle of both codes is very evident here. This does not necessarily mean that the Mosaic Law was borrowed from the Code of Hammurabi. There are enough striking differences to show that there was

²⁸Harper, op. cit., pp. 73-75.

²⁹Ex. 21:24,25

³⁰Lev. 24:20

³¹Deut. 19:21

no direct borrowing. This eye for an eye and a tooth for a tooth principle which appears in so many of the other sections of the Babylonian laws only shows that Babylonia had a large Semitic element in its population.³¹

In summarizing this chapter on laws of family relationships and personal injury, the following can be said:

1. There are Babylonian laws on family relationships which have no Mosaic counterparts.
2. Laws of incest and certain types of adultery show similarities.
3. Other laws on adultery point up harsher penalties in the Hebrew Code than in the Babylonian Code.
4. Laws on divorce differ greatly in the two codes.
5. Babylonian laws on personal injury were legislated on the basis of rank and position in society, while Hebrew law was legislated on the basis of the crime committed.
6. Similarity in the lex talionis principle can be accounted for by a common Semitic background for both codes of law.

³¹George A. Barton, Archaeology and the Bible (Philadelphia: American Sunday School Union, 1925), p. 367.

CHAPTER VIII

CONCLUSION

The research in this thesis has pointed up the fact that there are many marked dissimilarities between the Code of Hammurabi and the Mosaic Law, and it has also shown that there are some very striking similarities. Although all of the laws were not studied and compared, the substantial number which were studied and compared substantiated the reality of the similarity problem.

Basic to any fair comparison of the two codes of law had to be the following underlying concerns which can be listed in the form of the following questions. How do the cultures of the nations governed by the respective bodies of law compare? Who was responsible for the legislation of the laws? What do the laws themselves say about their purpose, and what is the spirit found existing in the two codes? Finally the most important concern: What then is our attitude toward the similarities which exist--in the light of the evidence, and in the light of our stand in regard to Scripture?

The cultures of the two nations which were governed by the bodies of law in question sprang from a common Semitic background. The meeting of Mosaic Hebrew culture with the culture of Hammurabi's day occurred when Abraham, the father of the Hebrews, and Hammurabi, king of Babylon, lived as

contemporaries of each other. This fact coupled with the theory of oral transmission opens up the possibility of a handing down of basic legal principles from the time of Hammurabi to the days of Moses.

Closely connected with the cultures governed by the codes are the men responsible for introducing the codes. Both Moses and Hammurabi were intelligent men, highly educated, and each a leader in his own right. Moses' education as an Egyptian prince opens the possibility that he became acquainted with the principles of the Code of Hammurabi in his studies at Heliopolis. Both legislators professed an allegiance to a deity or deities. Hammurabi was shown to have honored many gods, and to have pictured himself as their veritable equal. He himself took credit for the laws he codified. Moses was shown to have been a devout worshiper of Jahwe, and to have displayed his loyalty to Jahwe by a complete trust and reliance upon Him. Moses' highest pride was that he could confess that he was merely God's instrument in giving the Law.

This trust and reliance in Jahwe was shown to have existed in the witness of the Mosaic Law. Moses' law claims to be God's Word to men. By its very nature it is a code of ritual regulations and laws based on the religious principle of love toward God and man. The Code of Hammurabi is strictly a set of civil ordinances which prescribe civil justice. Its entire spirit is civil and mundane. This is evident by the fact that it has no concept of sin or offense against God. It

contains at best an altruism which ultimately directs itself toward selfishness. The spirit of the Babylonian Code is one which thrives on rendering legal decisions on the basis of classes in society, while the Hebrew Code is concerned about the crime committed rather than the rank of the person who committed it.

On the basis of the evidence, three surface solutions present themselves to the problem of similarities between the Code of Hammurabi and the Mosaic Law. Either the similarities encountered are due to Moses' dependence on the Code of Hammurabi, or Moses received the principles of the Code of Hammurabi from Abraham through the medium of oral transmission, or both codes of law are dependent upon a common Semitic background.

All of these solutions leave God out of the picture. On the premises that history is not God, and that Scripture is serious when it speaks of revelation, we would propose a solution to the problem as follows. Both the Code of Hammurabi and the Mosaic Law are dependent upon a common Semitic background. This background reaches back to the very Garden of Eden where God placed law in man's heart. As this law was passed on through the years from generation to generation, it became corrupted, and remained in this corrupt state until God called it back to purity at Sinai through Moses. This solution considers the cultural factors involved, allows for the possibility of an oral transmission

of law from Abraham down to Moses, and most important of all, it takes seriously the words, "And God spake unto Moses saying. . . ."

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