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Recent Biblical and Oriental Archaeology.

By A. H. SAYCE, D.D., PROFESSOR OF ASSYRIOLOGY, OXFORD.

The Laws of Khammurabi.

ONE of the best publications called forth by the discovery of the code of ancient Babylonian law is *Moses und Hammurabi*, by Dr. Johannes Jeremias (Leipzig: Hinrichs, 1903), and its extensive sale is a proof that it has been appreciated. A new and enlarged edition of it has just appeared, with many additions and improvements. In this new edition Dr. Jeremias dwells upon the contrasts as well as upon the resemblances that exist between the codes of Babylonia and Israel, and admits that there could have been no direct influence of the one upon the other. On the other hand, the list of parallel enactments, which he has drawn up between the code of Khammurabi and the Book of the Covenant is now presented in a form which makes it very striking.

When all is said, however, there remains the great fact that, in spite of numerous resemblances in detail, the two codes stand in strong contrast one to the other. The code of Khammurabi presupposes a highly civilized monarchy, with a wealthy commercial and agricultural population; the code of Moses is addressed to a compact and half-nomad community, whose wants are few and whose life is simple. From this point of view it is instructive to compare the two codes where they more or less cover the same ground. In that of Babylonia the primitive doctrine of blood-revenge is thrown into the background; in the code of Israel it runs through the whole legislation. Even cities of refuge are provided by the lawgiver, in which the manslayer may receive sanctuary and protection from private revenge. Babylonian law, on the other hand, allowed the individual to take

the law into his own hands in only two instances; in all other cases the individual is superseded by the state, which alone has the right to punish. Private revenge is as stringently forbidden as it is in the England of to-day. Theft, on the contrary, is treated in the Babylonian code with Draconian severity, in striking contrast to the way in which it is regarded in the Mosaic law. In a great commercial community respect for property was naturally highly developed; and to rob a man's house was as serious a crime as to kill the man himself. In a camp of confederated tribes the individual's private property was of comparatively little account. The laws of inheritance, again, in the two codes, present marked features of difference. The will, which played so large a part in Babylonian law, was unknown in Israel; and the Babylonian system of adoption was similarly foreign to it. Even in minor details the contrast between the stages of culture presupposed by the two codes is equally apparent. The code of Khammurabi lays down laws for the surgeon and the veterinary: of either surgeon or veterinary the Pentateuch knows nothing. The community for which the Mosaic law-book was compiled was not only still in a tribal and semi-nomad condition, it was centuries behind the Babylonia of Khammurabi in culture and civilization.

The fact is all the more remarkable when we remember that Canaan had been for centuries a province of the Babylonian empire, in which the language, script, and laws of Babylonia were as well known as they were in Babylonia itself. It must be taken with the further fact that the patriarchal history contained in the Book of Genesis shows an acquaintance with laws of Khammurabi which we do not find in the code of Moses. The two facts are an important testimony to the substantially historical character of the narratives in Genesis, as well as to the traditional date of the Mosaic legislation. It is true that the Mosaic legislation includes enactments which imply a settled as well as a semi-nomad community, but, as Dr. Jeremias observes, the Israelites had lived in Goshen before they began the wandering life of the wilderness.

There is yet another point in which the codes of Babylonia and Israel are in broad contrast one to another. The moral and divine element which is so conspicuous in the second is absent from the first. The code of Israel rests upon the Ten

Commandments; that of Babylonia on judicial precedents and the authority of the king. Khammurabi does, indeed, commence the preamble of his code with an invocation to the 'supreme god,' and the bas-relief at the head of the monument on which it is engraved represents him as receiving it from the sun-god; but in the body of the law itself we look in vain for any recognition of a divine sanction or a moral origin. Crime, and not sin, is the object which the legislation has in view.

At the same time it must be remembered that the ritual law of Babylonia has not yet been discovered. There are references to it in the first two enactments of the code, and the so-called 'Babylonian confession' shows that something analogous to the Ten Commandments must once have existed. Until it is discovered, Babylonia necessarily offers no parallel to a large part of the Mosaic legislation. But, even where the two legislations occupy the same ground, the spirit which runs through them—the foundation, as it were, on which they are built—is wholly different. Crime was punished in Babylonia because it was injurious to society, not because it was an offence against God. Dr. Jeremias traces to this fact the superior humanity of the Mosaic law. The slave is not a mere chattel in its eyes, as he was in Babylonia, where his master had the power of life and death; and protection was given to the slave of another, on commercial and not on humane grounds. In Israel, on the other hand, it was forbidden to kill or maltreat the slave (Ex 21^{20, 26, 27}), and even the foreign fugitive slave was allowed his freedom. We must not forget, however, that even in Ex 21²¹ the slave is declared to be a chattel, and his more humane treatment by Israelitish law goes along with the general fact that the society for which the Mosaic legislation was made had none of the respect for private property which prevailed in Babylonia, and was not sharply divided into rich and poor.

In the last section of his little book Dr. Jeremias has a few pertinent remarks on the two great legislators of Semitic antiquity whose codes have come down to us—Moses and Khammurabi. The code of Moses no longer stands alone: for the first time we can compare it with another and older code, and submit it, accordingly, to a scientific examination. As the Tel el-Amarna tablets disproved the supposed illiteracy of the Mosaic age, so the discovery of the code of Khammurabi has

now disproved the assumption that no codification of law was possible at such a date. On the contrary, Western Asia was familiar with the conception centuries before Moses was born.

And in the light of this latest discovery of Oriental archæology it is difficult to see when the Israelitish code could have been compiled, except in the age to which tradition refers it. Babylonian law was the law of Canaan down to the time of its conquest by the Israelites; and after the conquest, when Israelite and Canaanite had intermingled, and the culture of the conquered was more and more influencing their ruder conquerors, its principles must have been, to a certain extent, embodied in any code of laws which could have been then put together. In the age of the monarchy, indeed, its background would have been, not the desert, but a settled kingdom like that of Khammurabi. Even the form of the individual laws

composing it bears witness to the truth of the story of its origin. The form is identical with that in which the laws of Khammurabi are cast, beginning with the hypothetical 'If' and, since the form assumed by the Babylonian laws is due to the fact that they are decisions of the royal judges in specific cases, we are justified in concluding that the Mosaic laws also were, in the first instance, judicial decisions. Now this is exactly what they are stated to have been in Ex 18²⁴⁻²⁶.

It is clear that pentateuchal criticism will have to be thoroughly revised. We have at last a scientific basis from which to start in our examination of the Mosaic legislation. Theories must make way for facts, subjective impressions for the scientific method of comparison. Some, at any rate, of the results to which this is likely to lead can be gathered from the pages of Dr. Jeremias' little book.

Recent Foreign Theology.

Original Documents on the Reformation.¹

THIS is the first part of a new collection of original documents bearing on the history of Protestantism. The editors promise such important writings as the Heidelberg Catechism and Luther's Prefaces to the New Testament. In the present booklet we have three sets of *Theses* and a few fragments, possibly, from another set. The first set deals with the question—*De viribus et voluntate hominis sine gratia*; and the fragments which follow concern the same subject. The second set of theses makes a *Disputatio contra scholasticam theologiam*. The third consists of a *Disputatio Heidelbergæ habita*. The first two are the 'promotion,' or as we would say the 'graduation,' theses of students of Luther; and the third contains the heads of a disputation held under his presidency. Dr. Stange holds that we can extract from them what Luther taught his students in his earlier

lectures. His principal reasons for so thinking are that they come from Luther's students, Bartholomæus Bernhardus and Franz Günther; that they are not of the common type of students' graduation theses, and are almost free from the common dialectical extravagances which characterized the theses of the times; and that they contain what has all the appearance of being the fundamental principles of a new system of theology. Hence their value, in the eyes of the editor, for the student of the origins of the doctrines of the Reformation.

It may be doubted whether Dr. Stange is not disposed to place too high a value upon these fragments of Reformation university life and work. The editor is impressed with a theory of his own about the fundamental character of the Reformation theology. He holds that it differed from all other, because its distinctive characteristic was that it always treated the problems of Christian faith in a peculiar way. It looked at them exclusively from a point of view determined by certain clearly defined ethical conceptions. Dr. Stange finds a proof for this idea of his in the contents of these relics of the times of the Reformation. It is scarcely the best preparation for the task of selecting typical

¹ *Die Aeltesten Ethischen Disputationen Luthers*. Herausgegeben von Dr. C. Stange, o.ö. Professor in Königsberg. Leipzig: A. Deichert, 1904. Price 1s. 8d. (*Quellenschriften zur Geschichte des Protestantismus*. Herausgegeben von Joh. Kunze und C. Stange. 1 Heft. Leipzig: A. Deichert).