THE CODE OF ḪAMMURABI, FRESH MATERIAL FOR COMPARISON WITH THE MOSAIC CODE[1].

THE French Government have long been subsidising explorations at Susa, the ancient Persepolis, and capital of an old Elamite Kingdom. These explorations have been conducted by M. De Morgan, and have resulted in some extraordinarily valuable discoveries. Not only have a multitude of inscriptions been found belonging to the native rulers, but also many very perfectly preserved monuments of Babylonia. These seem to have been carried away as spoil to Susa, in some of the Elamite invasions of Babylonia. With a promptitude that is of priceless worth to the student, the French Minister of Public Instruction publishes, at frequent intervals, the *Mémoires de la Délégation en Perse*, in a style worthy of the most enlightened people of Europe. The fourth volume has just appeared and contains an almost complete text of the celebrated Code of Laws, already ascribed to Ḫammurabi, but hitherto known only from small disjointed fragments.

The monument itself, from which this text is taken, is a block of black diorite, about eight feet high, once containing twenty-one columns on its obverse, of which sixteen remain, with 1,114 lines of writing; and twenty-eight columns on the reverse, almost perfectly preserved, with 2,540 lines. At the top of the obverse is a very fine representation of Ḫammurabi, king of Babylon, circa B.C. 2285, receiving his laws from the seated sun-god Šamaš. Copies of this monument were set up in Babylonia, as the king himself says, 'that any one oppressed or injured, who had a tale of woe to tell, might come and stand before his image, that of

[1] Paper read before the Cambridge Theological Society, October, 1902. (Abridged by W. E. B.)

a king of righteousness, and there read the priceless orders of the king and from the written monument solve his problem.' The king devotes some 700 lines of his inscription to the commemoration of his own glory, and that of the gods whom he worshipped; to blessing those who should reverence and protect his monument, and to cursing those who should deface or remove it. This portion is intensely interesting for its historical and theological bearings, revealing to us the varied cults of the different cities subject to Ḫammurabi's control. We read of Assyria, and perhaps also of Nineveh, though the city meant may be the old Babylonian Nina. Very interesting too, is the position of supremacy ascribed to the god Ilu, doubtless the Hebrew El.

The Elamite monarch who carried off this monument clearly intended, in defiance of the curses recorded upon it, to place his name and titles there. At any rate, five columns were erased and the stone repolished for the purpose; but, as he had gone so far, it is a matter of regret that he did not leave any clue to his identity. Nothing has been inscribed on this space. Hence it is impossible to date its removal to Susa. Nor do we know from what part of Babylonia it was removed. Indeed, as Ḫammurabi conquered Elam, he may himself have set up the monument in Susa. He doubtless set up a duplicate in each town of his empire. A fragment, found in Susa, is part of one such duplicate.

The scribes of Ašurbânipal, king of Assyria, B.C. 668–625, had somewhere found a copy, for there are preserved in the British Museum many fragments which give portions of the text of this Code, and even furnish part of the lost five columns. Copies made in the later times of the New Babylonian Empire also exist in the British Museum and the Berlin Museum. One such fragment at Berlin shews that the scribes had divided the text for the purposes of study into a series of about twelve tablets. The title which they gave to the series was *Nînu Ilu ṣirum*, actually the first words on the Susa monument. A tablet in the British Museum suggests that in Assyria the series had fifteen tablets and had a different title, perhaps 'the judgements of Ḫammurabi.' These many fragments had long been recognised as forming something very like a code of laws; were correctly assigned—from their peculiar forms of expression, and, above all, from the scales of land and corn measures used in them—to the time of the First Dynasty of

Babylon; and even termed provisionally the Code Ḫammurabi.

Beside these fragments thousands of deeds of sale, contracts, memoranda, letters and other documents have reached our museums from Babylonia, which belong to the period of the First Dynasty of Babylon about B.C. 2400–2150. These have been partly published and studied by scholars, among whom we may mention Strassmaier, Révillout, Meissner, Peiser, Pinches and King; and we already knew a great deal about the civil law of Babylonia. But we were hitherto almost entirely uninformed about the criminal law. Further, this Code now systematises the scattered hints, often obscure, which had to be acquired by research and deductive reasonings.

We are still without a code of ritual and ceremonial law for this period. But amid the treasures of our museums lie unpublished materials for these also, and much can be made out from the copies of the later scribes. We have now a wonderful opportunity of estimating the care and accuracy with which the scribes of Assyria and Babylonia reproduced from the monuments themselves, or from earlier copies, documents written fifteen centuries before. They preserved, with the utmost fidelity, even archaic orthography which had no meaning for them, and measures which they did not understand. Their copies, it is true, do not exactly reproduce our monumental text, but the variants are few, and probably due to the fact that their copies were made from a duplicate of our text. Such variants are extremely valuable as they help to restore or understand damaged or obscure places. The monument itself was probably engraved by a stone-cutter from a clay tablet containing a draft of the inscription, and if it was engraved by the order of Ḫammurabi, by an Elamite in Susa, this may account for a few slips which are evident in the text.

The text of the monument is superbly reproduced by photogravure from the monument itself, or from 'squeezes.' It is accompanied by an admirable transcription into Roman letters, and a translation by Father V. Scheil, O.P., *Professeur à l'École pratique des Hautes Études*. He has divided the Code into sections, according to subject-matter, there being no indication of such sectional division on the monument. In many cases,

exception may be taken to the division, and it certainly does not agree with that of the scribes of Assyria and Babylonia, but until prolonged study has settled all points, it seems futile to attempt a revision, and the editor's division will be adopted here.

The first two sections are devoted to penalties against witchcraft or rather the abuse of it. In the very home of magic and sorcery this is at least remarkable. The first section enacts the death penalty against any one who shall put a death spell upon another, without justification. This justification is a special feature of the Code. Complete liberty of trial, the whole economy of a law court appears in full force. Judges, witnesses, the reception of evidence upon oath, reasonable delay for the production of evidence, enactments against tampering with witnesses, against false judgements, all the modern securities for justice, except perhaps the presence of professional lawyers as advocates, are referred to, assumed to be well known. In many cases the procedure is further systematised and controlled.

The death penalty is liberally awarded, as in other early codes. We are nowhere told how, or by whom, it was executed. But it is clear that the time when the injured party exacted vengeance had long passed away. Usually the penalty of death is stated in the formula *iddak*, 'he shall be killed,' or impersonally, 'one shall put him to death.' In the cases where the impersonal use appears, we may have either a singular or plural form, leaving us in complete ignorance as to whether there were a judge, an executioner, or the people of the city as a subject. The few cases where we might imagine the injured party to be the subject are just as well taken to be impersonal uses also.

In considering the relation of the Code to others, it is natural to pass in review first the cases where the death penalty is enacted. Usually this is set down without any specification of its nature. Besides the case of witchcraft above, it is awarded for threatening a witness in a capital case, § 3; for sacrilegious entry of, and theft from, temple or palace, § 6; for kidnapping a free-born child, § 14; for housebreaking, § 21; for brigandage, § 22; for rape of a betrothed maiden living at home, § 130; for building a house so badly as to bring about the death of its owner, § 229; for striking a pregnant woman, if of gentle birth, and causing her death, § 209.

Special forms of the death penalty are attached to crimes of an exceptionally exasperating nature, or with a view to make the penalty more impressive, or as perpetuating ancient custom. These are in a few cases specified by accompanying circumstances as especially appropriate to the crime. Thus a housebreaker, who tunnelled through the walls of a house (a peculiar peril where the walls, as in Babylonia, were built of adobes or unburnt bricks), was not only to be killed, but 'enholed.' One can hardly regard the penalty as referring to mere burial in the earth, opposite the tunnel's mouth, for the verb is also used of a flock passing within a gate. But the man might be buried at the mouth of the tunnel he had made, probably leading from the interior of an adjoining house. This would have the effect of desecrating that house, which may be imagined to be the housebreaker's, and rendering it uninhabitable, a standing monument of his crime. However, the question is not easily decided, till we know whether burial in the earth was a disgrace.

Actual mention of the manner of death is rare. Drowning is referred to, probably, by the expression 'he shall be thrown into the waters.' The fatal result is implied. The literal meaning of the verb is 'to lay down,' and perhaps the method adopted implied a previous binding, or weighting, so as to ensure drowning. This penalty was inflicted upon a wine-seller who sold wine too cheap, or cheated her customers, § 108; on a wife, who in her husband's enforced absence, as a captive, although provided with maintenance, should desert his home for another, § 133; for a ruinous bad wife, § 143. These are all penalties for women. Drowning, perhaps as less painful, seems to have been the woman's death penalty. But if a woman was caught in adultery, she and her paramour were tied together and so drowned, § 129. Perhaps the disgrace of a woman's death, or more likely the appropriateness of both sharing the same penalty, decided this use. A man who had intercourse with his son's wife was drowned, § 155. This seems aberrant, but may be due to old custom. Burning was the penalty of the votary who opened a wine shop, or entered one, § 110. As a Šamaš devotee she was probably a vestal, and penalty by fire may have been peculiarly appropriate. A mother and son who committed incest were to be burned, § 157. Crucifixion, or rather impalement, was

the penalty for a wife, who, for love of another man, procured the death of her husband, § 153.

As likely to result in death, the ordeal by water must be considered next. This was to be submitted to by a man who was charged with laying a disabling spell upon another, § 2. He was to jump into the holy river, probably the Euphrates, and if he sank the charge was considered to be proved, and his accuser was to take his house. But if the holy river preserved him, he was taken to be absolved by the river god, and his accuser was put to death, while he took his accuser's house. So, too, if a woman was suspected of infidelity by her husband, but not caught in the act, she must submit to this ordeal for the satisfaction of her husband, § 132.

Mutilation as a penalty comes into the Code in two ways. First, as a mere retaliation for a mutilation. Eye for eye, § 196; tooth for tooth, § 198; limb for limb, § 197, are examples of this principle. The second seems to have its root idea in the punishment of the offending member. When a surgeon through want of skill or care causes the death of a patient under an operation, his offending hands are to be cut off, § 218. If a son struck his father the same penalty was inflicted, § 195. More remote is the case of the wet nurse, who substitutes another child for the child confided to her care, which has died through her neglect; her breasts, as the symbols of her office, are to be cut off, § 194.

If a slave repudiated his master's authority his ear, as the organ of hearing and understanding, and therefore of obedience, was cut off, § 282. If a slave broke the crown (?) of a gentleman he suffered the same penalty, § 205. The actual motive of the form which the punishment took, in the case of an illegitimate child of a votary, or palace guard, who, being adopted into an honourable family, dared to repudiate his adoptive parents, is obscure. His tongue, perhaps as the offending member, was cut out, § 192. If he found out his real parents and went back to them his eyes were torn out, § 193. A man taken to look after a field, provided with all needful means to carry on his work, was condemned to have his hands cut off if he stole the crops, § 253.

Scourging is only once named, § 202. It was to be done with a cowhide whip, and if a gentleman broke the crown (?) of another

above him in rank, the penalty was sixty lashes, laid on before the assembly, or in public.

Branding on the forehead was the punishment for slander of a votary or a married woman, § 127.

Banishment from the city was the penalty of incest with a daughter, § 154.

Having passed in review the severer penalties, it remains to notice other forms of penalty, many of which are alternative to the above when the crime admits of more or less palliation.

Confiscation to the state can hardly be said to exist, except in § 41, where the fencing put in by a man who has taken possession of an official's endowment holding is taken by the official on his return to his property.

The cases where, as in the case of witchcraft, § 2, the victorious party enters into possession of the defeated, and now deceased, party's house, seem more like it, but are rather compensation for vexatious disturbance.

Restitution plays a considerable rôle in the machinery of justice. It may be simple or manifold. Simple restitution appears in the case of a purchaser, who buys lost or stolen property from the thief or finder, but, being made to restore the property to its rightful owner, receives back his purchase money from the estate of the thief, § 9.

Far more common is multiple restitution. For a false judgement, involving the exaction of a penalty, the false judge had to restore the exacted sum twelvefold, though the penalty was not paid to him, § 5. For theft from the estate of a temple, or palace, a gentleman had to restore thirtyfold, a plebeian tenfold, either in default being put to death, § 8. In the case above named of sale of lost or stolen property, reclaimed from the purchaser, if the thief was dead, and so could not suffer penalty, the defrauded purchaser was repaid fivefold his purchase money from the thief's estate, § 12. For loss or misappropriation of goods entrusted for carriage fivefold, § 112. For repudiation of money entrusted to sell on commission threefold, § 106; for extortion of more than is due from an agent sixfold, § 107.

Lesser penalties, chiefly entailing fines or the payment of damages, are very common. They are restitutions, simple or multiple, but do not imply a wrongful profit or gain taken by the offender.

If a man lets out the canal waters and floods a field, he shall pay 10 *GUR* of corn per *GAN* of land, § 56. It is probable that this was the *ṣimdat šani*, or royal standard rate, so often referred to in the contracts. Here there seems to be a suggestion of malice or at least mischief.

If a shepherd puts his sheep to feed on the green corn, without agreement with the owner of the field, and has eaten up the field, the owner shall harvest his crop, but the shepherd shall pay over and above 20 *GUR* of corn per *GAN*, § 57.

The Babylonian was a business man and keenly attached to his money. Doubtless it was no light penalty which made him lose his money in some cases. It was forbidden to certain officers, whose offices were endowed, to part with any of the endowment, house, field, land, garden, sheep, or cattle, which the king had given them. A buyer, who, in face of this enactment, was foolish enough to buy what the officer was forbidden to sell, must return his purchase, and as a penalty lose his money, §§ 35, 37.

The Code, however, was by no means occupied solely with criminal law; it laid down many duties and defined responsibilities. Even these were largely prohibitory in character. Only once is a reward mentioned, two shekels being offered for bringing back a runaway slave, and that seems to be inserted to settle disputes as to how much the service rendered was worth. The Code fixes the reward at one-tenth of the average value.

The Code regulated the conditions of deposit for safe keeping, which must be done before witnesses and a sealed receipt taken for the goods deposited, otherwise no claim could be set up. But if the deposit was made in proper form, return of the goods on demand was enforced, and no plea of loss or diminution allowed.

A woman was not married unless there was a marriage contract *riksâti*, properly 'bonds.' On this point the Code is explicit. If a man take to wife a woman and has not laid down her bonds, that woman is not a wife, § 128. The ceremony denoted by *aššatum aḫâzu* was not legally sufficient. Something of the nature of this ceremony we may gather from the *Tablet of the Wedding Ceremony*, published by Dr. T. G. Pinches, where it seems that the officiating minister placed his hands and feet in contact with the hands and feet of the bridegroom. Then the bride laid her neck on the bridegroom, who repeated a formula,

'Silver and gold shall fill thy lap, thou art my wife, I am thy husband. Like the fruit of a garden will I give thee offspring.' Then followed a ceremony which seems to have consisted in binding sandals on the feet of the newly wedded pair, and delivering to them a shoelatchet (?), and a purse of silver and gold. The celebration of the ceremony seems not to have been a priestly rite, but could be performed by any freeman.

But the marriage contract was a duly certified document. It might contain provisos to the effect that the wife should not be liable for debts contracted by the husband before marriage. This was held to be mutually exclusive of the debts contracted by the wife before marriage. The husband would not be liable for them. But both were liable for all debts contracted after marriage. The contract might contain further stipulations that if the husband took another wife, or a concubine, he was to allow his wife to go away, and must resign her marriage portion to her, or if she had none pay her a mîna of silver.

Unjust suspicions on the part of the husband were met by an oath on the part of the wife that she was faithful; she might then return to her house, § 131.

The Code recognises three distinct classes of the whole population, apart from such professional elements as were separated by their function. These differed in status in the eye of the law. They had different privileges and penalties.

The first class was the *amêlu*, or aristocrat. The word is used again and again as a distinct title, like the word *bêlu*. It may be connected with a word *nêmalu* meaning 'property.' At any rate, it denotes a man who was free, and possessed of lands, houses, slaves, and other property. He was always fined or punished more severely than either of the other classes. Whether really more numerous than the rest of the population, or not, the term *amêlu* is used continually to denote 'a man,' in general, a person, and may then be rendered 'one.' From the usage of the Code we might conclude that, in general, only the *amêlu* was legislated for, and that a side glance at the others was enough. In later times the sign *LU*, read *amêlu*, is the common determinative of officials, if not of personality, being used before every title of office, trade, or occupation, even before the word *ardu*, 'slave,' or *mâru*, 'son.' But some recollection of *amêlu* as aristocrat lingered

in the use of *LU-GAL*, properly *amêlu rabû*, as ideogram for *šarru*, 'king,' who was thus the First Gentleman of Babylonia. In many tablets of the First Dynasty *amêlu* denotes the king himself. In the Code, the *amêlu*, when contrasted with the other classes, is assigned 'a palace.' In every town there was one or more of these 'great houses.' From the ranks of these persons of distinction were drawn all the officials, and probably the officers of the army. But many seem to have held no office at all. It seems that they paid taxes consisting of imposts on land. Some held land subject to the obligation of furnishing a quota to the army, which they discharged by means of slaves. They also were under obligations to furnish certain contributions to temples. Whether they paid tithe is not yet made out clearly.

The second class was the 'poor' man, the *muškînu*. It is difficult to devise a name for him which does not carry with it some implications, either foreign to the Babylonian so designated, or, at least not clearly made out for him. The 'abject' is too pronounced, 'commoner' might do very well if we could forget that there were slaves also. This person was quite free, but supposed not to be able to meet such heavy obligations as the *amêlu*. He seems to have had an obligation to serve both on public works and in the ranks of the army. His fines and penalties were assessed as low as one-third of those due from an *amêlu* for the same offences. His offerings were also expected to be much less. But he was not absolutely destitute. He could hold slaves of his own, and might have lands, houses, and property as an *amêlu* had. He had no civil disabilities, as far as can be seen. The name by which he is designated, *muškînu*, passed into Hebrew as *miskēn*, thence through Arabic into French, Italian, Spanish, and Portuguese with small change. He never appears in office, nor does he earn his living by a trade; but he sometimes worked for hire.

The poverty of his condition may be the explanation of the fact that, while injuries done to an *amêlu* were punished by exact retaliation, the same injuries done to a *muškînu* were paid for. But when an injury was done him, for which an *amêlu* could have claimed a fixed compensation, the *muškînu* had to be content with less. He, however, paid lower fees to the doctor for his cure.

The slave was not a person, but a thing; as was also a son

while still in his father's house. The slave was completely lost in his master's personality. He was property. As such he might not be ruthlessly destroyed or injured. With a considerate master his lot was not one of great hardship. He might marry a free woman, even it seems the daughter of an *amêlu*. At any rate, his wife might bring him a marriage portion from the house of her father. His children then were not slaves. The property acquired by the slave and his wife, if a free woman, was divided equally between his wife and children, on one side, and his master, on the other. His master was his heir. But his master could not touch the wife's portion, which was left out of the division.

A slave girl was often given by her mistress to her master to bear him sons. This was a special case provided for in the code. The maid might presume on her having borne her master children, while her mistress had not, and rival her mistress. But her mistress had not lost her powers, she could set a mark on the maid and put her among the slaves. But the mistress could not sell her, if she had borne her master children; otherwise she might do so.

Slaves might attempt to repudiate their masters. This may be only one way of refusing to obey orders. The penalty might be to lose an ear. If a slave were injured his master had to pay the doctor, or even if he contracted an illness. But to cause the death of a slave was not deemed worthy of death, only the master's loss was considered.

Such is a brief preliminary sketch of what Father Scheil well says may be regarded as one of the most important monuments, not only of the history of the Oriental world, but of universal history. If the tradition be true that Abraham came out of Ur and was a contemporary of this same Ḫammurabi, he must have known this Code. If the Jews in exile had any acquaintance with the legal studies of their Babylonian masters, they must have known this Code. When we seek for parallels and illustrations from other sources for the principles and regulations of the Mosaic Code, we must surely turn to this as a first authority. When we compare its detailed enactments, so comprehensive and minute, so reasonable and just, we must feel sure that it impressed its spirit, if not its letter, upon the peoples who came beneath the

rule of Babylonia, and must have moulded the development in Canaan before the Tell-el-Amarna period. Whatever view we take of the history of Israel, and however strongly we hold to an independent source for its institutions, we cannot deny that there was direct influence from Babylonia. Recalling all that Europe owes to the Hebrew race and the Phoenician trader, we cannot but feel an awe and reverence for the great world power that lay behind both, one of whose most striking monuments must ever be the Code of Ḫammurabi.

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