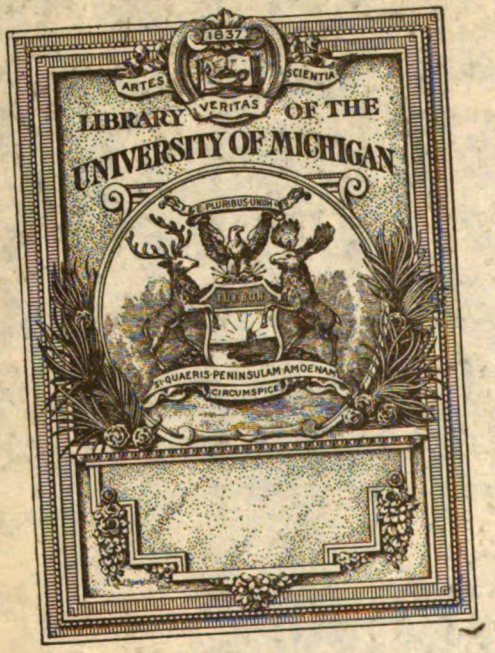

# THE LAWS OF MOSES

AND

# THE CODE OF ḪAMMURABI

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BY

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# PREFACE

THE chief aim of the present study is to provide a full account of the contents of the recently discovered Babylonian Code of laws promulgated in the twenty-third century before Christ by Ḫammurabi, the king whose name has been identified with Amraphel, the contemporary of Abraham (Gen. xiv.). The fact that it is the oldest collection of laws in existence, and the advanced state of culture which Babylonia had reached even at that remote period, make the Code one of the most notable discoveries in the history of cuneiform research, and the great interest which it has succeeded in arousing is evinced by the rapidly growing number of monographs, pamphlets, and articles which have already appeared in print.

To jurists and students of comparative law, the Code, by reason of its antiquity, has an importance surpassing that of similar collections from India, Greece, or Rome. A critical estimate of the extent of Babylonia's influence upon the culture of these lands has yet to be made, but the varied traces that have hitherto been adduced would suggest that in

the department of law, too, these lands may be found to have been not entirely ignorant of Ḫammurabi's Code. Semitic scholars, too, and especially students of biblical and post-biblical literature, will welcome the recovery of a monument which for its bearing upon the laws of the Old Testament exceeds in value even the discoveries of Babylonian creation-legends and deluge-myths.

The Code comes at a time when the biblical world is being flooded with literature, scholarly and otherwise, dealing with the extent of Babylonian civilisation upon Israel. It is, therefore, a particularly opportune discovery, since a careful examination should enable the unprejudiced reader to determine how far—if at all—Israelite legislation was indebted to Babylonia. If the indebtedness is beyond dispute, then the influence of Babylonia must have been of the most deep-seated character; but if, on the other hand, the dependence of Israel upon the Babylonian Code is not proved, only the strongest arguments will allow us to accept those views in accordance with which Palestine had been saturated with Babylonian culture and civilisation centuries before Hebrew history took its rise.

As a preliminary to our account of the Code a few pages have been devoted in Chapter II. to a general consideration of Babylonia and Israel. The problem of the origin of Ḫammurabi's dynasty naturally came up for discussion, since, if it was

Canaanite, there would be the clearest grounds for the view that the Code reflects Canaanite institutions. If, on the other hand, the dynasty was Arabian, the dependence of Israel, and more particularly of Israelite procedure, upon Northern Arabia might suggest that this land was the common home of the Babylonian and Hebrew systems of legislation. Here it was impossible to ignore the question of the antiquity of the old Arabian civilisation, and so—unwillingly enough—one found oneself drawn into the field of controversy. The conclusion that was reached in this chapter was not favourable to the view that Babylonia, or even Arabia, would have been likely to influence Israel to such an extent as to impose upon it a code of laws representing a stage of society which the Israelites had scarcely reached before the Exile, and this provisional conclusion was not refuted by the results which, it is believed, have been legitimately obtained from a discussion of the actual contents of the Code.

The scope of the work is indicated by the title. It is primarily restricted to a discussion of the Pentateuchal legislation and the Code of Ḫammurabi. As regards the "Laws of Moses," the critical standpoint has naturally been adopted,[1] and this procedure appears to be entirely justified by the result. The Code is essentially a collection of civil laws, and on this account the numerous Hebrew

[1] See below, pp. 42-47.

regulations which apply solely to cult and ritual do not fall to be considered. The Code has been supplemented by other laws from Babylonian or Assyrian sources, and illustrated from the numerous contract-tablets. The necessity of keeping the book within limits, however, has prevented the writer from dealing at too great a length with this department, otherwise Chapters VII.-IX. would easily have been double their present length.

The present writer has no claim to any independent knowledge of Assyrian. Three translations of the Code of Ḫammurabi have been published, and the general agreement between them may be unhesitatingly accepted as a sure indication that save only in a very small number of cases is there any doubt about the meaning of the Code. These three translations have been constantly consulted and compared, and he must accordingly express his indebtedness to Father Scheil, whose transliteration and French translation form the basis of all subsequent studies; to Dr. Hugo Winckler, whose German edition with notes is published in convenient form in *Der Alte Orient;* and last, but not least, to the Rev. C. H. W. Johns, whose handy English translation, with its complete digest of the contents of the Code, is indispensable for English readers.

The question of the dependence of Israelite law upon the Code has been steadily kept in view, and

the attempt has been made to work it out on the lines already indicated in an article by the present writer in *The Guardian* of 22nd April. The essential difference between the highly-cultured Babylonians and the more primitive Children of Israel, which is obviously reflected in their laws, has rendered it necessary to widen the inquiry. The post-biblical legislation, therefore, has not been ignored, and the illustrations are significant of the traces of Babylonian law which a complete survey of Talmudical and post-Talmudical literature might have multiplied. Further, the valuable fifth-century law-book edited by Bruns and Sachau has been frequently drawn upon, and its importance for the study of comparative Semitic legislation must be recognised to be of the very first order. In spite of its admitted indebtedness to Roman law, it is difficult to avoid the suspicion that a number of the analogies are to be ascribed to the general similarity of conditions which prevailed in the two lands, rather than to actual dependence upon Rome.

The point of departure for the study of Semitic law must be sought among those communities where society is least complex. The attempt has been made, accordingly, to pay some regard to early pre-Mohammedan usages in so far as they have been collected by others, notably by Robertson Smith and Wellhausen; and if the chapters dealing with "the Family" in all its phases and aspects are

unduly lengthy, the explanation must be sought in the fact that the former scholar in his *Kinship and Marriage in Early Arabia*[1] has emphasised the importance of the subject in its bearing upon the comparative study of Semitic institutions.

Finally, primitive Semites are still to be found at the present day between the Tigris and the Nile. The tenacity with which ancient religious customs have been retained by the Fellaḥīn and Bedouin is familiar. No one can read the observations of such workers as Burckhardt, Doughty, Baldensperger, Curtiss, Jaussen, and others, without the conviction that distinct traces of primitive Semitic religion have been preserved among the modern Arabs and Syrians, and that they may be detected either in their native form, or slightly, but recognisably, tinged with Mohammedanism. If this be true of religion, if the peculiar characteristics of Babylonian worship, for example, have not left their stamp upon the ruder tribes, surely we may expect to find in their laws and customs, also, the primitive principles which the Israelites brought from the desert, and modified under the influence of their settled agricultural life in the land of Canaan, and which the earliest Semitic Babylonians developed, altered, and adapted to suit their growing civilisation. To trace the growth of these principles, as we see them at

[1] A new edition of this work is now being published under the editorship of the present writer.

the present day in the East, down to the finished code of law of a Ḫammurabi, as it existed over four thousand years ago, belongs rather to a handbook of Semitic legislation and lies far outside the scope of the present volume. Nevertheless, in spite of its shortcomings, this collection of material from various parts of the Semitic field will, it is hoped, not be without some interest to those whose inclinations lead them to the study of the unchanging East.

For the convenience of those who have not access to the Babylonian and other texts cited herein, a transliteration of the more important terms or phrases has frequently been added. The indexes have been made fairly complete for the greater facility of reference, and readers who do not happen to possess a translation of the Code will notice that the pages indicated in heavy type in the first index (p. 289 *sqq.*) will usually be found to contain either a translation or a paraphrase of the section in the Code in question.

Attention may also be directed to the Addenda which take account of the most recent literature of the Code and include some corrections of importance. In spite of the care exercised by myself and by the printers—to the accuracy of whose reader I am indebted—errors doubtless remain, for notification of any of these I should be exceedingly obliged.

STANLEY A. COOK.

LONDON, *October* 23, 1903.

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# LIST OF PRINCIPAL AUTHORITIES AND ABBREVIATIONS

V. Scheil, *Délégation en Perse. Mémoires publiés sous la direction de M. J. de Morgan, délégué général.* Tome iv. *Textes Élamites-Sémitiques. Deuxième Série* (Paris, 1902). The Code of Ḫammurabi with the complete text reproduced by photogravure, transliterated and translated.

H. Winckler, *Die Gesetze Hammurabis*, 4th year, part four of *Der Alte Orient*; second edition, Leipzig, 1903; complete translation with introduction and short notes.[1]

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[1] A third edition has recently appeared.

[2] Among the more important articles may be mentioned those by Father Lagrange in the *Revue Biblique*, 1903, January, pp. 27-51, and by Dareste in the *Journal des Savants*, 1902, Oct., pp. 517-528; Nov., pp. 586-596. Some notice of the latest literature will be found in the *Addenda*.

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*Lectures on the Religion of the Semites* (second edition; London, 1894) = *Rel. Sem.*(2)

*Kinship and Marriage in Early Arabia* (second edition; London, 1903) = *Kinship.*(2)

Wellhausen, *Die Ehe bei den Arabern* (*Nachrichten v. d. kgl. Gesellsch. d. Wissenschaft*, Göttingen, 1893; No. xi.).

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*Palestine Exploration Fund, Quarterly Statements* (London, 1869– ) = *PEFQ.*

*Zeitschrift des deutschen Palästina-Vereins* (1878– ) = *ZDPV.*

*Zeitschrift der deutschen morgenländischen Gesellschaft* (1846– ) = *ZDMG.*

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J. Kohler, *Rechtsvergleichende Studien über islamitisches Recht*, etc. (Berlin, 1889).

J. Estlin Carpenter and G. Harford-Battersby, *The Hexateuch . . . arranged in its constituent documents . . . with introduction, notes, marginal references and synoptical tables.* Two vols. (Oxford, 1900).

JE. The oldest Hebrew documents ascribed to the Jahwist and Elohist schools respectively.

P. The writings of the Priestly school.

# CHAPTER I

## THE CODE OF ḪAMMURABI

Sources of the inquiry—The discovery of the monument—Description—The Prologue—Synopsis of the Code—The Epilogue—"Blessings and Curses"—Reign of Ḫammurabi—Associations with Israel—Preliminary questions.

ANCIENT law takes its rise in social custom based upon precedent and practical experience. It is closely interwoven with religion, and lawless deeds are infractions of religious principles. The ordinary affairs of everyday life, however, are regulated by traditional practice preserved without writing, and as traditional usages frequently vary considerably, the same topic may be variously regarded by separate communities. Among the Semites, where there were numerous divisions and subdivisions, nomadic or settled, varying in organisation, culture, and religion, engaged in pastoral, agricultural, or mercantile pursuits, there was scope enough for the development of tribal usage in manifold directions, until, with the gradual unification of diverse elements, the possibility arose of reducing the working results of past experience to some degree of order. Among

the three leading divisions of the Semites we find that at some period the consuetudinary usages have received the stamp of a divine authority, and have henceforth been accepted as authoritative laws, the norm and foundation of subsequent legislation. The three promulgations are those of Ḫammurabi in Babylonia, Moses in Israel, and Mohammed in Arabia, with the first of which the present study is primarily concerned.

The past century has revolutionised our ideas of these lands. The keenness with which Arabic studies have been pursued has immeasurably increased our knowledge of the land in which Islam took its birth, and has permitted us to gain an insight into the conditions that prevailed before the time of Mohammed. The discovery and decipherment of ancient Arabian inscriptions reaching back some centuries before the time of Christ have revealed the presence of an old civilisation with characteristic religious and mythological features, whose influence upon the north-lying land of Canaan future research may enable us to determine with more certainty than is possible at present.[1] In regard to the Hebrews, if the discoveries on Israelite soil have not yet been of such far-reaching importance as those in the adjacent countries, the unremitting study of the Old Testament, and the critical investigation of its literary sources and the development of its ideas, have entirely changed the long-held views of Israel's religion and culture, and the history

[1] See below, chap. 2, pp. 30 *sqq*.

of the Hebrews has been presented in a clearer and more scientific aspect. Finally, in Babylonia and Assyria, the excavation of ruined mounds and the discovery of thousands of tablets have brought to life not one lost nation but many, and we are made familiar with the history of names which in the Old Testament and in classical writers receive only the barest mention. A fund of information has been placed at our disposal whereby the history of the Nearer East is placed in a new perspective and the ancient world is made known with an almost inconceivable fulness. In Babylonia and Assyria the tablets have brought us face to face with a highly developed religion and with a perfectly organised military state; there was a regular postal exchange, intercommunication was unbroken, and mercantile and commercial enterprise was in full swing. In particular, they have enabled scholars to conclude that in such a developed organisation the principles and administration of law and justice must have been firmly established. Not to speak of the legal usages which were to be inferred from the marriage, commercial, and other contracts, a few old Babylonian laws have been known for some years, and on internal grounds were ascribed by Meissner and Delitzsch to the age of Ḥammurabi, the sixth king of the first Babylonian dynasty.[1]

[1] Viz. K 4223 contains portions of laws, §§ 23-25, 31 *sq.*, in the Code of Ḥammurabi; K 8905, § 45 *sq.*; K 10483, § 48 *sq.*; K 11571, § 278 *sq.*; K 10485, § 104 *sq.*; Dt. 81, § 103 *sq.*; Sm. 26, § 267; Sm. 1642, § 249 *sq.*; Rm. 277, §§ 57-59, 120 *sq.* See further Meissner, *Beitr. z. Assyr.* 3 493-523, with the remarks by Fr. Delitzsch,

The accuracy of this opinion was triumphantly proved a little more than a year ago by the actual discovery of a lengthy series of enactments which owed their promulgation to the authority of no other than this king.

This welcome discovery was made by the French excavation under the superintendence of M. de Morgan at the great mound known as the Acropolis of Susa[1] in December 1901-January 1902, a fitting celebration of the centenary of that study which has done so much for the history of ancient civilisation. It consisted of a stone of black diorite nearly eight feet high, and was in three fragments, which readily admitted of being joined together. The upper part bore a representation of the sun-god Šamaš, from whom Ḫammurabi received the laws with which the rest of the stone is covered. The sun-god is seated upon a raised throne. He wears the well-known swathed head-gear, and a flounced robe. Behind his shoulders rays spring out, and in his right hand he clasps a sceptre,[2] the symbol of authority, and a

*ib.* 4 80-87; and cp. Winckler, *Orientalistische Litteratur-zeitung*, 1903, col. 28 *sqq.*

[1] Edited and translated by Father Scheil, *Mémoires de la Délégation en Perse, Textes Élamites-Sémitiques*, vol. 4 (Paris, 1902). Independent translations in German by Hugo Winckler in *Der Alte Orient* (4th year, Heft 4), and in English by C. H. W. Johns (Edinburgh, 1903).

[2] Jeremias and Orelli rather improbably take it to be a stylus, the symbol of wisdom. Ball (*Light from the East*, p. 156), in his remarks on the representation of Šamaš on the inscription of Nabū-apla-iddina, where the same object recurs, suggests that it indicates the straight course of the sun across the heavens.

wheel or ring. The king stands before Šamaš in an attitude of reverent obedience. He is clothed in a long tunic, which is hemmed in at the waist and hangs down in folds, and upon his head he wears a cap with fillet. His right hand is at his mouth, his left hand rests against the waist, precisely as in the familiar portrait sculpture of the king in the British Museum.[1] Like the sun-god, he wears the familiar artificially plaited beard.

The appropriateness of the representation lies in the fact that the sun-god Šamaš was the god of law,[2] whose children are called "Justice" (*kettu*) and "Right" (*mešaru*, cp. Heb. *mēšārīm*), and Ḫammurabi elsewhere calls himself the darling (*mi-gi-ir*) of Šamaš. It is unnecessary, therefore, to suppose that the seated figure is Ḫammurabi himself, before whom stands a man crying for justice,[3] and it is quite improbable that it is the mountain-god Bel who "gave laws to men and wore on his breast the tablets of destiny," who appears here as the law giver.[4]

[1] No. 22454. See the frontispiece to L. W. King, *The Letters and Inscriptions of Hammurabi* (London, 1900), vol. 3. This representation, which differs from the above in certain slight details, contains only the upper half of the king. A fragment of another statue of Ḫammurabi was found at Susa by M. Morgan (*Textes Élamites-Sémitiques*, 184; Paris, 1900).

[2] At Sippar justice was rendered at the "gate (*bāb*) of Šamaš" (Scheil, *Une Saison de fouilles à Sippar*, Cairo, 1902; 11 p. 26). In the inscription of Nabū-apla-iddina (Ball, *loc. cit.*), Šamaš is called "the lofty of eyes."

[3] Lippert, in *Die Nation*, April 4, 1903, no. 27, p. 422.

[4] So, the writer in the *Times*, April 4, in his account of this

Since mutilated portions of Ḫammurabi's code of laws have been found in the library of Ašurbānipal, and a small duplicate fragment of the epilogue was actually discovered at Susa itself, it seems natural to infer that copies of the code were made to be set up in various cities, Susa included.[1] It is possible, also, that the original stone was removed from Sippar by some Elamite conqueror, just as another Elamite, Kutur-Naḫunte, carried off the image of the goddess Nana. At all events, some five columns of the stele have been erased, and the stone has been polished, apparently with the intention of inscribing upon it a fresh inscription, and it is suggested that the Elamite victor in question was probably Šutruk-Naḫunte (towards 1100 B.C.). No name, however, is actually inscribed, and the question must therefore be left unsettled.

There are forty-four columns of inscription, which fall into three divisions: (1) Prologue, (2) Code, and (3) Epilogue. In the Prologue[2] considerable space is devoted to Ḫammurabi's titles and to his glorious and beneficent deeds for his country and people, and this portion of the inscription is extremely im-

code, associates Bel or Ellu with the Hebrew El Shaddai, evidently thinking of the Hebrew law-giving upon Mount Sinai, and the doubtful theory that Shaddai is to be derived from the Ass. *ša(d)du*, "mountain" (*EBi.* "Shaddai," § 2).

[1] Pinches conjectures that it was for some city which Ḫammurabi hoped to conquer in Elam (*Proceedings of the Soc. of Biblical Archæology*, 1902, p. 302).

[2] The following paraphrastic account of the Prologue and Epilogue is based upon the translations by Scheil and Winckler.

portant for its numerous references to the leading historical events of his reign, and for the mythological and other interesting allusions. It commences with the statement that Ilu,[1] the supreme, and Bel, the "lord of the heaven and earth" (*be-el ša-me-e u ir-ṣi-tim*), ruler of the destiny of the world, entrusted to Marduk mankind, and called Ḫammurabi, the god-fearer (*pa-li-iḫ i-li-ya-ti*), to create justice in the land, to destroy the wicked and evil, that the strong oppress not the weak (*dan-nu-um en-ša-am a-na la ḫa-ba-li-im*). "Ilu and Bel called me Ḫammurabi," says the king, "the shepherd (*ri-i-a-um*), the elect of Bel to bring about the happiness of men" (lit. "to please the flesh of men," *a-na ši-ir ni-ši tu-ub-bi-im*).[2] This is followed by the king's personal account of his achievements, in the course of which he states that he has enriched Ur, protected Larsa (Ellasar, Gen. 14 1),[3] and enlarged Cuthah; he refers also to the ceremonial meals of Nin-tu of Keš, and of Nin-a-zu, the oracles (*te-ri-tim*) of Ḫallab, to his great offerings for the "Temple of the Fifty," and to the god Dagon, his creator (*Da-gan ba-ni-šu*).

Ḫammurabi states further that he gave new life

[1] Winckler throughout replaces Ilu by Anu.

[2] So, too, Samsu-iluna, Ḫammurabi's successor, declares that the gods gave him the whole of the world to rule, to settle the land in security and to rule the scattered peoples in prosperity (*šu-ul-mi-im*), L. W. King, *The Letters and Inscriptions of Hammurabi*, vol. 3, p. 205.

[3] Perhaps a reference to the overthrow of the Elamite dynasty. Larsa was the old Babylonian city of the sun-god (*EBi.* col. 1281).

to Uruk by providing its inhabitants with richly-flowing water; he enlarged the agricultural lands (*me-ri-eš-tim*) of Dilbat, granted pasturage and watering-places to Lagaš and Girsu, and fostered the inhabitants of Nin-a-zu in their distress. He, the shepherd of men, who proclaimed right and upheld law, returned its tutelary deity (*lamassu*) to Aššur,[1] and caused the name of Ištar to dwell in Nineveh. He, "the suppliant of the great gods," the descendant of Sumula-ilu, mighty son of Sin-mubalit, concludes his Prologue with the words: "When Marduk sent me to govern men, to sustain and instruct the world, right and justice in the land I established, I brought about the happiness of men."

This is immediately followed by the Code itself, which commences with two laws relating to witch-craft (§ 1 *sq.*), followed by three dealing with witnesses and judges (§§ 3-5). A series of laws on theft (§§ 6-8), and stolen property found in the hands of another (§§ 9-13), leads up to kidnapping (§ 14) and fugitive slaves (§§ 15-20), and ends with burglary and brigandage (§§ 21-25). Another series deals with the duties and privileges of "gangers" and "constables" (§§ 26-41). Next follow the land-laws, and provisions relating to the cultivation of fields (§§ 42-56), the responsibilities of herdsmen (§ 57 *sq.*), and various enactments concerning gardeners (§§ 59-65). This ends on the foot of the sixteenth column. Five columns have been erased,

[1] The earliest mention of the city.

probably by the Elamites, with the purpose already mentioned above (p. 6), and it is estimated that thirty-five sections have been lost. Elsewhere,[1] ancient Babylonian laws have been recovered containing other laws relating to agriculture and to the letting of houses, and it has been plausibly conjectured that they form part of the sections here missing. The laws which commence again on the obverse of the monument deal with merchants and their agents; they are not complete, owing to the erasure. The rights of merchant and agent (§§ 100 [mutilated]-107) are followed by a small series of four relating to wine-merchants and the price of wine (§§ 108-111). Debt and deposit are handled in fifteen sections (§§ 112-126). The laws coming under the head of family relations constitute a small code in themselves (§§ 127-193). Starting with slander (§ 127) and the marriage contract (§ 128), the Code touches on adultery, violation, and suspicion of unchastity (§§ 129-132); separation and divorce in its different aspects (§§ 133-143) are closely linked with the laws regulating the taking of a second wife or concubine (§§ 144-149). Three laws relate to women's property (§§ 150-152). A small series bears upon various forms of unchastity (§§ 153-158), and the regulations respecting the purchase-price for the bride and her marriage-portion (§§ 159-164). The laws of inheritance (§§ 165-184) range over the rights of wife, children, maidservants and slaves and their children, widows, and a particular class

[1] See p. 3, n. 1.

of women. The family code comes to an end with nine laws on adopted children (§§ 185-193). Another series is concerned with responsibility for death, assault, etc. (§§ 194-214), and in addition to fixing penalties, enacts the honorarium to be paid to doctors and veterinary surgeons (§§ 215-225). In the same series is included the branding of slaves (§ 226 *sq.*), and the responsibilities of the builder (§§ 228-233) and boatman (§§ 234-240). Another series is more precisely restricted to agricultural life — laws dealing with oxen, their hire and care, wages of agricultural labourers and artisans, and responsibility for loss (§§ 241-274). Three laws follow on with the prices for hiring boats (§§ 275-277), and the Code concludes with five sections on the buying of slaves and a ferocious penalty for the slave who repudiates his master (§§ 278-282).[1]

The Code is immediately followed by the Epilogue, commencing with the words: "Decrees of justice (*di-na-a-at mi-ša-ri-im*) which Ḫammurabi the Wise King established, for the land a just law and a happy rule." The king then proceeds to state that he has not neglected the people whom Bel had granted to him, whose rule[2] Marduk had

[1] There are a few examples of pentads (§§ 9-13, 21-25, 154-158, 178-182, 278-282); the presence of decads is less easily recognisable (§§ 127-136, 185-194, 195-214 are all doubtful). In addition to the Hebrew Decalogues (Ex. 34, 20), groups of five or ten laws can be detected in the Book of the Covenant (Ex. 21-23), in Deuteronomy, and in the Law of Holiness (Lev. 17-26).

[2] Scheil aptly "pastorate" (*riu*).

entrusted to him. Abodes of peace (*aš-ri šu-ul-mi-im*) he found for them, he opened up the narrow ways and gave them light. Endowed with the mighty help of Zamama and Ištar, with the clear vision of Ea, with the wisdom of Marduk, he exterminated the enemies of North and South Babylonia; he brought about happiness in the land, those that dwelt at home he caused to live in security, free from unrest. "The great gods have chosen me," he continues. "I am the safety-bringing shepherd (*ri'u mu-ša-ḳl-li-mu-um*), whose sceptre is upright (*i-ša-ra-at*), . . . on my breast I cherish the people of Sumer and Accad, in my protection I have let them rest in peace, in my wisdom (or depth) they are concealed, that the strong may not oppress the feeble, to give safety to the orphan and widow; in Babylon the city of El and of Bel in E-sag-gil, the temple whose foundations are as firm as the heaven and earth, for the justice of the land, for the decision of law-suits in the country (*pu-ru-zi-e ma-tim a-na pa-ra-si-im*), for the healing of hurts,[1] my precious words I have written upon my stele, set up before my image (*ṣalmu*) as King of Uprightness (*šarri mi-ša-ri-im*)." The oppressed man who has a suit (*a-wi-lum ḫa-ab-lum ša a-wa-tum i-ra-aš-šu-u*) may come before the image of the King of Justice, may read the inscription, and hear the precious words. The stele will make clear unto him his suit, he will understand his cause (*dinu*), and

[1] Scheil renders, "pour l'edification du faible" (*ḫa-ab-lim šu-te-šu-ri-im*).

his heart will rejoice, saying: "Ḫammurabi is a lord (*be-lum*) who is literally a father (*a-bi-im wa-li-di-im*)[1] to his people, by the word of Marduk his lord he has created fear, the victory of Marduk in north and south has he gained, he has pleased the heart of Marduk his lord, and brought happiness to men for ever, and the land he has set in order." When he reads the document (*da-ni-tum*), and prays with all his heart before "Marduk my lord and Zar-pa-nit my lady," the tutelary deity and the gods of E-sag-gil will bring that man's wishes before Marduk and Zar-pa-nit. Moreover, continues Ḫammurabi, every king that rules in the land shall observe the "sentences of justice" (*a-wa-a-at mi-ša-ri-im*) which are written upon the stele, the laws of the land (*pu-ru-zi-e kalama*) which he has enacted shall he not alter, nor injure the monument. If such a king would rule wisely and govern the land well, let him observe the Code, and act according to it, to exterminate the wicked and evil-doers, and to bring happiness upon the people.

Then the king pronounces a blessing upon those who observe the laws, and utters a series of

[1] The fact that *abū*, "father," is followed by *walidim*, "progenitor," (cp. Heb. *yōlēd* in Gen. 4 18) is particularly interesting, since it shows that the word in Babylonian, as also in the other Semitic languages, originally meant something other than procreator, and that its use as a term of relationship, "husband," "father," is relatively later (see Robertson Smith, *Kinship and Marriage in Early Arabia*,[2] p. 140 *sq.*). To this it may be added that *abū*, "husband," as in Jerem. 3 4, has been shewn to be Babylonian usage also by Barton, *Semitic Origins*, p. 68, n. 5.

dènunciations against the disobedient. "I am Ḫammurabi, King of Justice, to whom Šamaš has entrusted judgment (rectitude, *ki-na-tim*)." If that man observe the sentences engraved upon the stele, and acts in accordance with them, may Šamaš make his sceptre to endure long, to lead his subjects in righteousness (*mi-ša-ri-im*). But if that man pays no heed to them, despises my curse, fears not the curse of God (*ir-ri-it i-li*), annuls my law (*di-in*), alters my sentences, erases my name and engraves his thereon, or through fear of the curses has charged another to do thus, this man, whether king, lord, *patesi*,[1] or man of repute,[2] may the Great God (*ilu ra-bu-um*), the Father of the Gods, remove the splendour of his kingdom, break his sceptre, curse his fate. May Bel, the lord, the decider of destiny (*mu-ši-im ši-ma-tim*), whose command is unalterable, bring sedition, years of sighing, days few in number, years of hunger, darkness without light; may he appoint for him as his fate a death which he shall see with his own eyes; the ruin of his city, the dispersion of his subjects, the removal of his rule, and the disappearance of his name and memory (*šum-šu u zi-kir-šu*), may he decree. May Belti, the great mother, annul his projects before Bel in the Place of Justice and Law, to ruin his country, to destroy his subjects, to pour out his life like water. Similarly, Ea, the messenger of the gods, the all-knowing, is invoked to deprive that king of under-

[1] "Ruler"; see King, *EBi.* "Babylonia," § 43.

[2] Winckler, "or man, whoever he may be."

standing and wisdom, to lead him into oblivion, to close up the source of the rivers, and not to cause the earth to produce corn, "the life of men." Next, Šamaš, "the great judge of heaven and earth," is called upon to destroy his kingdom, to send him in his dreams (*i-na bi-ri-šu*) evil premonitions of the decay of his throne, to hinder his martial successes; "from above, among the living, may he snatch him away, and deprive his departed shades of water." Sin, "the lord of the heavens," the divine creator (*ilu ba-ni-i*), whose sickle shines among the gods, is besought to remove that king's tiara and royal throne, to make him live out the days, months, and years of his rule in sighs and tears, to make burdensome the cares of sovereignty, to inflict upon him a life that is like unto death. May Adad, "the lord of abundance," continues Ḫammurabi, keep back the rain in heaven, the swelling of the waters (*mi-lam i-na na-aḳ-bi-im*), destroy his land with famine and want, thunder upon his city, and make his land a heap of tells. May Zamama, "the great warrior," break his weapons over his battle-field, turn his day into night, and cause his enemy to triumph over him. May Ištar, "the lady of battle and combat," curse his kingdom, and turn his good into evil; on the field of battle may she break his weapons, and destroy his warriors; may she give him captive into the hand of his enemy. Nergal, "the powerful among the gods," is invoked to burn that king's subjects, to cut off his limbs, to break him as an image of clay (*ṣa-lam di-di-im*). Nintu, "the

august mother of the lands," the child-bearing mother (*ummu ba-ni-ti*), is invoked to deprive him of son and progeny (*zir a-wi-lu-tim*) upon earth, to leave him no name (*šu-ma-am*). Nin-Karak is invoked to inflict upon him a severe illness (*mur-ṣa-am kab-tam*), an evil disease (*ašakkam li-im-nam*), a dangerous wound (*zi-im-ma-am mar-ṣa-am*) which cannot be healed, of the character of which the physician (*a-zu*) is ignorant, which cannot be bandaged, until at last she destroys his life. In conclusion, may the great gods of heaven and earth, all the Anunnaki,[1] curse the outskirts of the temple, the walls of this E-barra,[2] his rule, his land, his warriors, his subjects, and his army, and may Bel with an irrevocable curse execrate him, immediately assail him.

With this final denunciation the inscription ends. The code of laws, therefore, is preceded by a honorific introduction, and is followed by a single invocation of blessings upon the man who keeps the laws, and by a series of denunciations upon him who disregards them. Like the Deuteronomic law-book (Deut. 5-26, 28), it concludes with a number of curses, considerably longer than the corresponding blessings.[3]

The sentiments which Ḫammurabi utters, and

[1] The Anunnaki, the evil spirits of the deep, as opposed to the Igigi, or spirits of the heaven.

[2] According to Winckler, the sun-temple of Sippar, where the stele stood.

[3] Ḫammurabi's injunction against altering the laws has Deuteronomic parallels also (Deut. 4 2, 12 32).

the blessings and cursings accompanying the Code, do not stand alone in Babylonian literature. We may compare the warnings contained in a tablet from the library of Ašurbānipal,[1] wherein the king who gives heed to the commands of Ea will be endowed with knowledge and discernment, whereas if he acts contrary to them, Ea "the king of destinies shall change his destiny, and shall visit him with misfortune." If he ignores justice his land shall be overthrown, if he pays no heed to his nobles his days shall not be long, if he ignores his wise men his land shall revolt. "If he treats a man of Sippar with injustice and gives a harsh decision, Šamaš, the judge of heaven and earth, shall give a harsh decision in his land, and shall appoint a just prince and a just judge in place of injustice." If he acts unjustly towards the men of Nippur, Bel shall bring a foreign foe against him and overthrow his army. If he allows himself to be bribed by the men of Babylon, Marduk shall bring a foe and give his goods and possessions to his enemy. "And the men of Nippur, Sippar, or Babylon who do these things shall be cast into prison," concludes the tablet.[2]

It fortunately happens that in addition to this Code we are in possession of a number of contemporary records in the shape of letters, business

[1] For the full text see King, *Babylonian Religion* (London, 1899), p. 217.

[2] In the inscription of Nabū-apla-iddina it is said that the sun-god has been angry with the land because "his laws were forgotten" (Ball, *Light from the East*, p. 156).

documents, and contract-tablets, which throw a welcome light upon the history of Ḫammurabi and his dynasty.[1] He was the sixth king of a dynasty founded by Sumu-abi about the middle of the third millennium B.C., and probably ascended the throne about 2285 B.C.[2] Under his predecessors, Babylonia had been gradually freeing herself from the Elamite yoke, and by the total defeat of Elam—whose king, Eri-aku of Larsa, has been identified with Arioch (Gen. 14 1 9)[3]—he completed the deliverance of his country, and was able to amalgamate Northern and Southern Babylonia into one state, and even extend his sway as far west as Canaan.[4] From the very commencement of his reign Ḫammurabi devoted himself to the internal improvement of his country, and when the Babylonian chronicle says of his second year that it was "the year in which Ḫammurabi (established) the heart of the land in righteousness,"[5] we may see in this the beginning of those reforms which ultimately ended in the promulgation of the Code which has recently been discovered. Examples of his practical efforts on behalf of the welfare of his people will come under consideration

[1] See L. W. King, *Letters of Hammurabi* (vol. 3, English translation, London, 1900); *id. EBi.* art. "Babylonia," § 53.

[2] So, *e.g.*, King, C. H. W. Johns, but Assyriologists are not unanimous, and the date in question ranges from 2394 (Oppert) to 1947 (Hommel).

[3] On this question, see the criticisms by Tiele and Kosters in *EBi.* col. 733 *sq.*

[4] See below, chap. 2, p. 35. [5] King, *Letters*, 3 229.

in the course of the following pages, and may serve as illuminating specimens of the manner in which justice was administered in Babylonia in the twenty-third century before Christ.

But this king has other claims which we cannot ignore. The generally accepted identification of the name Ḫammurabi with that of Amraphel, king of Shinar (Gen. 14 1, 9), the tradition that Abraham came from Ur of the Chaldeans, a city which is actually mentioned in the Prologue to the Code, are interesting links in themselves, but when it is added that Ḫammurabi extended his sway over Canaan, that the dynasty to which he belonged was of foreign—perhaps Canaanite—origin, and that monotheistic ideals and the conception of the Divine Essence as a unity have been claimed for this dynasty, it is obvious that the value of the Code is immeasurably enhanced, and at first sight it would appear almost incredible that it should not have fundamentally influenced the laws and institutions not only of the Canaanites, but of the later invading children of Israel.[1]

Accordingly, the question of the origin of the dynasty of Ḫammurabi becomes one of peculiar

[1] So Delitzsch, after a discussion of the old Babylonian laws which had previously been known (p. 3 above), concludes that Babylonian law and justice must have influenced to the deepest extent the legal principles and procedure of the immigrating Hebrew nomads, and he expresses the hope that in the course of time, as the Babylonian laws become more completely known, light may be thrown upon the origin and development of the Mosaic law-giving (*Beitr. z. Assyr.* 4 87). These words, it is interesting to remember, were written before the Code was discovered.

importance for the study of the Code. If it could be proved that the dynasty was North Semitic, and therefore of the same stock as the later Phœnicians, Moabites, and Israelites, might it not be plausible to suppose that the Code was based upon legal institutions which were familiar to those peoples? But the question in the present state of knowledge cannot be placed beyond dispute, and there are Assyriologists, whose opinion must carry great weight, who have argued in favour of an Arabian origin. This, in like manner, if it could be conclusively maintained, would be of the utmost interest for our study. If the kings of the first Babylonian dynasty came from Arabia, would it not be reasonable to infer that the legal elements in the Code were specifically Arabian?—one immediately recalls the important part played by (North) Arabia in the early history of the Israelites, the traditions of the wanderings in the wilderness, and the influence of the Midianite Jethro on Moses' work, which is described in the most explicit manner by the Elohist in Exod. 18. Apart from these questions, it will be necessary to inquire also whether Israel was as susceptible to outside influence as is frequently assumed, and we must also bear in mind that Jewish law was the result, not of a single promulgation like the Code of Ḫammurabi, but of a gradual development. The preliminary problems, therefore, are intimately connected not only with the Code itself, but with the whole question of the relation of the Code to Israelite law.

# CHAPTER II

## BABYLONIA AND ISRAEL

Ḫammurabi's dynasty of foreign origin—The arguments—Linguistic evidence doubtful—Alleged traces of monotheism—Theory of the Arabian origin of the dynasty—Ancient Arabian culture and its antiquity—Babylonian influence over Canaan—General considerations—Importance of the Code as a test—Legal literature in Babylonia contrasted with the Mosaic laws—Development of Israelite law.

ASSYRIOLOGISTS have for some years past come to the conclusion that the dynasty to which Ḫammurabi belonged was not indigenous,[1] and have associated it with one of those waves of immigration which have recurred from time to time in the history of the Semites. Although the evidence is linguistic—and linguistic arguments, taken by themselves, are extremely precarious—it is striking enough to deserve attention, and may be briefly recapitulated here. The evidence in question is

[1] Pognon, *Journal Asiatique*, 8th ser., 11 543 *sqq.* (1888); Sayce, *Records of the Past*, 2nd ser., 3 ix.-xii.; Hommel, *Ancient Hebrew Tradition*, pp. 89 *sqq.*; and most recently, Delitzsch, *Babel and Bible*, pp. 123-125. An exception, however, must be made in favour of Jensen, who uncompromisingly denies its foreign origin, *Zeit. f. Assyr.* 10 342, n. 1; *die Christliche Welt*, May 22, 1902, col. 491.

chiefly derived from a number of proper names which, it is agreed, are not of the pure Babylonian type. Thus, even the Babylonian scribes regarded the name Ḫammurabi as foreign, and glossed it by *Kimta-rapaštum*, "wide-extended family," obviously regarding the name (which is sometimes written Ammurabi) as a compound, not of *ḥam*, "father-in-law," but of *'amm*, with the meaning "family"; an interpretation which may be claimed also for the Hebrew and Arabic *am(m)*.[1] In like manner, they find it necessary to explain the name Ammi-sadūga, one of Ḫammurabi's successors, by *Kimtum-kēttum*, "just or righteous family."

Further, in names of this dynasty, *s* is used where the older Babylonian employs *š*, notably in Samsu-ilūna as contrasted with Šamšu. The termination *-na* in the above name, which is interpreted "Šamaš our god," is quite distinct from the ordinary Babylonian *-ni*. The imperfect, which usually takes the form *imlik*, appears as *iamlik* in Iamlik-ilu, Iarbi-ilu, etc. There are, besides, a number of minor details, for an account of which reference may be made to the recent discussion by Ranke,[2] who is on the side of Hommel, Sayce, and A. Jeremias, in favouring the Arabian origin of the

[1] See Gray, *EBi.* col. 139, and Robertson Smith, *Kinship*,[2] p. 72 (properly an aggregate or community). The use of *ḫ* for the guttural *'ain* is a familiar feature in the Amarna Tablets (*zuruḫ*, "arm," Heb. *zĕrōa'*; *ḫa-pa-ru*, "dust," Heb. *'āphār*, etc.), and recurs in the well-known *Bīt Ḫumri*, "house of Omri."

[2] *Die Personennamen in den Urkunden der Hammurabidynastie* (Munich, 1902).

dynasty. But Winckler and Delitzsch, who are equally convinced that it was not indigenous, have arrived at a different conclusion. "Linguistic and historical considerations," says the latter, "combine to make it more than probable that these immigrant Semites belonged to the Northern Semites, more precisely to the linguistically so-called 'Canaanites' (*i.e.* the Phœnicians, Moabites, Hebrews, etc.)."[1] And whilst Hommel points out that Ammi-sadūga is identical with the old Arabian Ammi-ṣaduka (Halévy, 535), Delitzsch remarks that *zadūg* (another form of the second element) "may point to a 'Canaanite' dialect, both lexically . . . and phonetically."[2] The suffix *-na*, to which reference has already been made, is no proof of Arabian origin, since not only is it also Aramaic (*-nā*), but Delitzsch points out that "it is at least equally probable that *ilūna* represents an adjective."

Arguments founded upon hypothetical interpretations of proper names can scarcely pass muster, and it is therefore unsafe to find traces of Arabic either in the second element in Ammi-satana, which is explained from the Arabic *sadd*, "mountain,"[3] or in the particle *pa* in Pa-la-samas, which, according

[1] Delitzsch, *op. cit.* p. 124. It is "Canaanite" because the analogies are found at their best upon "Canaanite" soil. A. Jeremias suggests "Amorite" as a preferable term (*Im Kampfe um Babel und Bibel*,[2] p. 8 *sq.*).

[2] *Ṣa-du-uk*, in the sense of 'innocent," is used by Abd-ḫiba of Jerusalem in the Amarna Tablets (*KB* 5 180, l. 32).

[3] Hommel, *Anc. Heb. Trad.* p. 109.

to Hommel,[1] means "Is it not then Samas?" Even if the interpretation were correct, *pa* is by no means necessarily the Arabic *fa*, since it is well known that it appears several times in the old Aramaic inscriptions from Zenjirli in North Syria. The nominal form *maf'ūl* in the names Maknūbi-ilu, Makhnūzu, is certainly common in Arabic, but though rare in Hebrew, it is not unfamilar in Aramaic. Arabian influence has also been claimed for the name Akbaru (*af'al* form), but it lies close at hand to compare the Hebrew *'akbōr*, "mouse." Passing over the isolated examples of mimmation which are claimed by Ranke,[2] we may note that the imperfect form *iamlik*, though it certainly presupposes a Semitic race distinct from the Babylonian, is not necessarily Arabic, since the earliest form of the preformative in North Semitic was originally *ya-*, and probably did not pass over into *yi-* until a comparatively late period.[3] Finally, the element Sumu in Sumu-abi etc., although explained to mean "his

[1] *Op. cit.* p. 99, n. 2.

[2] *Op. cit.* p. 31, Šamaš ba-ni-im (CT 6 23-442). For instances of other Arabisms reference may be made to the notes on *KB* 3 1, p. 111, col. 1, l. 21 *sq.*; p. 115, col. 4, l. 9. It may be noticed that Delitzsch recognises mimmation in the name Ia-ú-um-ilu (*Babel and Bible*, p. 135).

[3] The Septuagint transliterates proper names of this form by *ια-*, *ιε-*, and *ι-* (see *Ezi. s.vv.* Ibhar, Ibleam, Imna, Imnah, Irijah, Iron, Ishvah, etc.). The thinning of *a* to *i* in the Hebrew names Miriam, Gilead, and Samson is later than the Septuagint. Jerome, even, writes *machthab* for the Hebrew *miktāb*, and *magras* for *migrāš* (Wright, *Comp. Gram. of Sem. Lang.* pp. 78-80, 182; P. Kahle, *Massoret. Text. d Alten Test.*, Leipzig, 1902; p. 69 *sq.*).

name" (*sum-hu*), can scarcely be claimed as specifically Arabic, since in the oldest Arabian inscriptions —the Minean—the form would be Sum-su, and Hommel himself, who recognises this difficulty, is forced to suppose that the Minean form of the suffix, with *su* as contrasted with *hu* in the later (Sabean) inscriptions and in Arabic, was in its turn due to Babylonian influence.[1] The discussion is further complicated by the fact that the linguistic phenomena which characterise the names of the dynasty are also to be found upon a number of the Assyrian contract-tablets from Cappadocia, which, though of extremely uncertain age and origin, are necessarily assigned by Hommel to the age of Ḫammurabi.[2]

The truth is, we know too little of the earlier history of the languages of Canaan and Arabia in the time of Ḫammurabi. At that remote period (about 2250 B.C.), to quote Bevan, "Semitic languages may have been spoken of which we know nothing. Words and forms which we are accustomed to regard as characteristically Arabic may then have existed in no Semitic language, or may have been common to all Semites. Even with regard to a much later period, our linguistic information is extremely imperfect; whether, for

[1] *Op. cit.* pp. 99, 103. Under these circumstances, the fact that the Minean forms the causative conjugation with *s*, whilst the Sabean uses the *h* (as in "Canaanite" and early Aramaic), should also for consistency's sake be derived from the Babylonian *š*.

[2] Hommel, *op. cit.* p. 142 *sq.*

instance, the language of the Midianites, the Edomites, or the Amalekites, in the time of David, was more nearly akin to Hebrew or to Arabic is a matter of pure conjecture. Recent discoveries have repeatedly shown the danger of dogmatising on these questions. Thus, for example, we are now aware that a certain reflexive verbal form, which scholars once considered peculiar to Arabic, was used by the Moabites in the ninth century B.C. If this were all that we knew of the Moabite language, we might conclude that it was a dialect of Arabic,[1] but the inscription of King Mesha' proves that in general it closely resembled biblical Hebrew. Again, the Zenjirli inscriptions have shewn that, about the same period, there existed in the extreme north of Syria a dialect which combined certain features hitherto supposed to be specifically Hebrew with other features hitherto supposed to be specifically Aramaic."[2] We do not know with certainty how Moabite, Phœnician, or biblical Hebrew was pronounced. The linguistic test for these names must therefore be given up.

Nor is the evidence derived from theophorous names free from ambiguity. Winckler, commenting upon the reference to Dagon in the Prologue to Ḫammurabi's Code, observes that Dagon is the

[1] (Or, since the form is also found in Assyria, it might have been inferred that it was an Assyrian dialect.)

[2] A. A. Bevan, *Critical Review*, October 1897, p. 412. One may observe also the forms taken by Canaanite words which appear transliterated in the Assyrian and Egyptian inscriptions.

Canaanite name of the deity who is essentially the same with Bel, and that Ḫammurabi is here speaking quite as a "Canaanite." On the other hand, the prominence ascribed to the moon-god Sin in the same Prologue appears to Joh. Jeremias[1] to point to Arabia, where the moon-cult seems to have flourished from an early period. Among other divine names in this dynasty Ranke[2] notes the "new moon" (Hilāl) in Elali-wakar and Arad-elali, the Minean moon-god Wadd in Aḫi-wadum and Šamaš-tabbi-wadi, the goddess 'Anath in Ḫunu-Anati, and Yahu (Yahwè) in Ia-ú-um-ilu, Ia-ve-ilu, Ia-a'-ve-ilu. That the Israelite, perhaps better Kenite, divine name Yahwè was current in Babylonia at the close of the third millennium is no new suggestion, and has so far failed to meet with general acceptance. Even granted that the readings are correct—and it is only right to notice that they have been questioned by Halévy, Bezold, and Zimmern[3]—the result is not helpful for the question under discussion. If the names mean "Ia-u is God," it is still questionable whether Ia-u is the same as Yahwè.[4] This would require the assumption that Yahu or Yah was an earlier form and not

[1] *Moses and Hammurabi*, p. 7, n. 2.

[2] *Op. cit.* p. 51; cp. Hommel, *op. cit.* p. 116.

[3] The subject has been most recently discussed by Delitzsch (*Babel and Bible*, pp. 133-142) and Zimmern (*Die Keilinschriften und das Alte Testament*,[(3)] p. 467 *sq.*).

[4] *EBi.* col. 3322, n. 3. It is not even certain, for example, that the name Joel means "Yahwè is God."

an abbreviation of Yahwè, and Hommel,[1] who adopts this unusual view, identifies it with an Arabian and Babylonian Ai or Ya, whose name, according to Delitzsch,[2] on the other hand, cannot be proved to exist in Babylonian literature. A solution of the problem would be to suppose that Yahwè has been modified from an originally distinct divine name Yahu, but the evidence at present is far too scanty to build upon.[3] At all events, the three Babylonian names are the slenderest of supports for the theory that monotheism prevailed in this dynasty.

Nor is the theory strengthened by reference to the personal names compounded with *il*, which are particularly common during the period of the first Babylonian dynasty, and led Delitzsch to argue that these "North Semitic tribes . . . thought of and worshipped God as a single spiritual being," and were in possession of "religious ideas which differed from the indigenous polytheistic mode of

[1] *Anc. Heb. Trad.* p. 115; *Explorations in Bible Lands* (ed. Hilprecht), p. 746.

[2] *Op. cit.* p. 138.

[3] The meaning of the name Yahwè is disputed. Against the view that it is to be connected with "to be," it has been objected the Phœnician inscriptions use *kān*, not *hāyāh*. In this connection it is interesting to find both words in a letter from the king of Tyre (Amarna Tablets, 149 35-38): "If my lord the king says to me, 'Be (*ku-na*) at the disposal of my deputy,' the servant says to his lord, 'I will be' (*ia-a-ia-ia*)." The latter, it will be noticed, is written with a medial *y*, *i.e.* *hāyāh*, and not the earlier form *hāwāh* presupposed by some scholars.

thought in Babylonia."[1] Such compound names also occur frequently in the old Arabian inscriptions, and on the strength of them Hommel, several years previously, had inferred that these pre-Christian—almost prehistoric—Arabs were monotheists.[2] Following this line of reasoning, it would be equally plausible to argue that such names as Theodoros, Theodotos, Theophilos, and others proved that the Greeks were monotheists. Similar compounds of the word for "God" are found among the Aramæans and Phœnicians, and cannot be claimed to represent any other than the existence of specified local or tribal gods. Henotheism is a long way removed from monotheism; the road to it "lay through a long development in which tribes were welded into nations and the deities were formed into polytheistic pantheons."[3]

It must be mentioned that other indications of tendencies towards monotheism have been brought forward, and a tablet—of the New Babylonian period certainly—is quoted where Marduk is identified with the highest of the deities in the Babylonian pantheon.[4] But from what we read in

[1] Delitzsch, *Babel and Bible*, pp. 129-133.

[2] Hommel, *Anc. Heb. Trad.* pp. 82-84.

[3] Barton, *Semitic Origins*, p. 321; cp. Robertson Smith, *Rel. Sem.*[2] p. 39; Bevan, *Critical Review*, October 1897, p. 413 *sq.*; Gunkel, *Israel und Babylonien* (Göttingen, 1903), p. 29.

[4] Pinches, *The Old Testament in the Light of the Historical Records of Assyria and Babylonia* (1902), pp. 58-60, 160 *sq.*; Delitzsch, *op. cit.* pp. 67-72, 132 *sq.*, 143 *sq.*, 199 *sqq.*; A. Jeremias, *Im Kampfe um Babel und Bibel*,[3] pp. 12-16.

some of the more elevated writings of the Babylonians such syncretism is not unexpected. The advanced conceptions which meet us now and again are not unworthy of a Hebrew prophet; they breathe the loftiest ideals and are inspired with the sublimest postulates.[1] But this is no argument that Israel's monotheism or the ideals of the prophets took their rise upon Babylonian soil, and Hommel has reasonably objected that the dynasty, if "Canaanite," left no traces of its monotheism in Canaan itself. Tendencies towards monotheism are found in early Arabia before Islam,[2] and are not confined to the Semitic field, but they do not admit of being placed upon the same plane with the Israelite conceptions; they are exceptional growths, and the speculations of a few of the more noble minds. "The sublimity which appears in Israel," to quote from a recent able discussion of Semitic religions, "is that of a practical monotheism accepted by the whole nation—men, women, and children; the loftiest thoughts of God applied to daily duties by all."[3]

The theory of the Arabian origin of the first Babylonian dynasty, on the other hand, must be admitted to be extremely plausible. From Arabia, probably the earliest home of the Semites,[4] suc-

[1] One need only refer to the extracts in King, *Babylonian Religion*, chap. 6.

[2] Wellhausen, *Reste Arab. Heidentums*,[(2)] pp. 216 *sqq.*

[3] Barton, *Semitic Origins*, p. 307.

[4] See Wright, *Comparative Grammar of the Semitic Languages*,

cessive waves of immigration have swept northwards, and a certain amount of intercourse with Babylonia is proved by the occasional references to Arabian products in the oldest inscriptions of Gudea, Sargon I., and Naram-sin.[1] Consequently, Hommel is not without the support of analogy when, on the one hand, he ascribes the dynasty of Ḫammurabi to Arabia, and, on the other, seeks distinct traces of Arabian influence in Israel. The hypothesis of a common fountain-head is also adopted by Joh. Jeremias, who, summing up his discussion of the Code of Ḫammurabi, puts forward the hypothesis that the traces of customary law in ancient Arabia—the reference is to the pre-Islamic usages of Christian times—lead us to infer a common tradition of Arabian origin for the laws of Moses and the Code.[2] If Arabia is the cradle of the Semites, and has best preserved the characteristics of the Semitic race, even as the language approximates most nearly to the primitive Semitic tongue, the hypothesis in question is no doubt *a priori* justifiable. At the same time, nevertheless, one must not too hastily accept the theory that Arabia at this remote period was already in possession of a civilisation of a highly developed character that was able to leave its stamp upon

chap. 1; and Barton's discussion of the newer theories in *Semitic Origins*, chap. 1.

[1] Hommel, *Explorations in Bible Lands*, pp. 738 *sqq.*; A. Jeremias, *Im Kampfe um Babel u. Bibel*, p. 21.

[2] *Moses und Hammurabi*, p. 47; cp. p. 7, n. 2.

either the dynasty of Ḫammurabi or the earliest Israelites. This theory of a South-Arabian seat of culture, second only to that of Babylonia, has obtained some currency in recent years, and has become particularly prominent since it has been used in some quarters to support the traditional view of the Old Testament against the results of higher criticism.

Our knowledge of the ancient South-Arabian kingdoms is derived from numerous inscriptions, which fall into two distinct classes, the Minean and Sabean, and belong chiefly to south-west Arabia. The former of these have been ascribed to a period ranging from 1400 to 700 B.C., at which date the inscriptions of the Sabean priest-kings are supposed to begin; the latter go down to about the sixth century of the Christian era.[1] They presuppose a highly developed religious system, with priests and priestesses, whose designation, *lawī*, *lawī'at*, is not improbably to be connected with the familiar biblical "Levite"; they present interesting analogies to Israelite ceremonial laws, and contain terms relating to cult that find their parallels in the priestly writings of the Old Testament. But this is not the place to speak in detail of the state of culture which these inscriptions reveal. However valuable they may be, it must not be forgotten that, unfortunately, there is no certain evidence as to their date, and the authorities to

[1] Hommel in Hilprecht's *Explorations in Bible Lands*, p. 728 *sq.*; cp. Winckler, *KAT*,(3) p. 141 *sq.*

whom we are indebted for their decipherment are by no means unanimous as to the period to which they belong. The above-mentioned dates, which are those recently given by Hommel, must therefore be regarded as tentative, and if that scholar's view be accepted, that the dynasty of Ḫammurabi, and the culture that characterises it, are of Arabian origin, it would be necessary to push back the date (1400 B.C.) another eight centuries at least.

The antiquity which the argument presupposes is considerably shaken by the fact that the one dated Minean inscription belongs to the Ptolemaic age, and that another which has a reference to Egypt and to Minean colonies in Edom is attributed to the time of Cambyses. It would not be unreasonable to suppose that the Minean inscriptions, like those of Assyria and Babylonia, extended over a lengthy period, and one would therefore expect to find a marked change in the language and palæography. This, however, does not appear to be the case, at least as regards the palæography,[1] since the oldest Minean royal inscriptions are most closely related to the oldest Sabean, and only those of the "kings of Saba" present later modifications.[2] It is a far cry from here to the origin of the alphabet, but the question of the date of the

[1] The most important linguistic differences between Minean and Sabean have already been mentioned (p. 24, n. 1 above).

[2] The "kings of Saba" followed the "priest-kings" (not later than about 550 B.C.), and extend to about 115 B.C. (Hommel, *loc. cit.*).

Arabian kingdom actually hinges upon it. The Minean script is now admitted to be derived from the same alphabet as that of Canaan,[1] and the merest glance sufficiently demonstrates the extraordinary modifications it has undergone. The writing, instead of running from right to left, becomes *boustrophēdon* (from right to left and left to right alternately); an intense desire to form the characters symmetrically has changed curves into angles and has caused several of the letters to take a new position; and, finally, additional signs have been formed in order to represent the finer shades of utterance. In Canaan, on the other hand, the earliest specimens of the so-called "Phœnician" alphabet scarcely go back beyond the middle of the ninth century. The Moabite Stone, the Hadad inscription from Zenjirli in North Syria, and the "Baal-Lebanon" bowl of Hiram II.[2] palæographically resemble one another and the earliest European forms so closely, and in the course of the next few centuries begin to diverge from one another so characteristically, that the parent source from which they have severally been derived could not have been in existence any very lengthy period. How long a time one must allow for the gradual modification of this script to the form which it takes in

[1] Hommel, *loc. cit.* See especially Lidzbarski's essay in his *Ephemeris für Semitische Epigraphik*, 1 109 *sqq.* (1902).

[2] So, and not Hiram I., the contemporary of David and Solomon, following von Landau and E. Meyer (*EBi.* "Phœnicia," col. 3753, n. 2).

the oldest Minean inscriptions it is impossible to say, but the most favourable allowance being made, it is most improbable that they can be dated as far back as 1400 B.C.[1] Other arguments against the extreme antiquity of the South Arabian inscriptions have been urged,[2] and an unprejudiced view of the drift of the evidence unhesitatingly forbids us in the present state of our knowledge to assume that Arabian culture could have influenced the earliest Israelites.

The conclusions to which one has been led are negative. There are no cogent reasons for the view that the dynasty of Ḥammurabi was so specifically North Semitic as to suggest that his code was based upon legal institutions which grew up and flourished in the land which many centuries later was occupied by the Hebrews. The occurrence of the name Yahwè in that remote age is uncertain, and the monotheism of the dynasty is doubtful.[3] That the dynasty was Arabian does not yet admit of proof, but the theory has in its favour the fact that it is entirely in accordance with history that immigrants from Arabia should have issued forth from the "Brown Continent," and gained

[1] That the assumed antiquity of the inscriptions should compel us to carry back the date of the parent alphabet is an alternative which will scarcely occur to any one.

[2] Budge, *History of Egypt*, 6 xvi. *sqq.*; G. A. Smith, *EBi.* "Trade and Commerce," §§ 14, 17.

[3] The reference is to the numerous compounds of *il* (p. 27 *sq.* above); the value of the *New* Babylonian tablet first edited by Dr. Pinches is not denied (p. 28, n. 4).

supremacy in Babylonia. The early existence of a seat of civilisation in Arabia is proved by its antiquities that have been discovered, but we are not yet in a position to ascribe them to a date anterior to the entrance of the Israelites into Canaan.

Besides, to what extent is it legitimate to conclude that Canaan, surrounded as it was by seats of civilisation and culture, must have been touched by their influence? Ḫammurabi and Ammi-satana, the eighth of the dynasty, claim to have reigned over the land of Canaan (*māt Amurri* [*Mar-tu*]),[1] and we are told that colonies of "Amorites" were at that time settled throughout Babylonia.[2] Neither of these facts can be taken as proof that the influence exerted by Babylonia over Canaan was at all deep-seated, and the same must be said of the famous Amarna Tablets. The letters between the Egyptian Pharaohs, on the one side, and the rulers of Babylonia, Assyria, Mesopotamia, and Cyprus, or the overlords in Canaan, on the other, are written in cuneiform, and the widest possible inferences have accordingly been drawn. Thus, it has been concluded that the influence of Babylonia upon Canaan must have been of long duration, that Canaan was steeped in Babylonian culture, and was no more than a Babylonian domain when the Israelites appeared

[1] Pinches, *Records of the Past*, second series, 5 104; Winckler, *Altorient. Forschungen*, 1 144 *sqq*; *KAT*[3] pp. 20, 178 *sqq*.

[2] Sayce, *Babylonians and Assyrians*, pp. 187-192; Pinches, *The Old Testament*, pp. 169 *sqq*.

upon the scene. "It was not only the commerce," says Delitzsch, "but also the trade, law, custom, and science of Babylon that set the fashion in the land."[1] Would it not be as justifiable to assume from the contents of the letters themselves that Egyptian influence must have been equally deep-seated? And this would be the more natural, since the circumstance that the tablets are written in Assyrian only proves that as a literary and diplomatic language Assyrian was found to be a better vehicle than the Canaanite, which at that time probably did not exist in writing. The widespread use of Aramaic in later times is another instance of the widespread use of a language for diplomatic purposes, and—to descend to the Christian era—it is well known that the Arabians wrote their public documents in Persian, Greek, or Coptic (in Cufa, Damascus, and Egypt respectively), until the use of Arabic was introduced. The Amarna Tablets, therefore, as many scholars agree, are "no criterion for the state of intelligence and the extent of the penetration of Babylonian culture among the mass of the people."[2]

Or again, if it is stated, on the strength of the claims of Ḫammurabi and Ammi-satana, that Canaan in the time of Abraham was already freely exposed

[1] *Babel and Bible*, p. 40; cp. Gunkel, *Israel und Babylonien*, p. 7.

[2] Budde, "The Old Testament and the Excavations," *American Journal of Theology*, 1902, p. 701; cp. Bevan, *Critical Review*, 1897, p. 410; Barth, *Bibel u. Israelit. Religion* (Berlin, 1902), p. 4 *sq.*

to Babylonian influence, is it not equally plausible to appeal to the historical inscriptions of Thutmosis III., Ramses II., and Šošenk I. (Shiskak), and assert that Canaan, from before the age of Abraham down to the time of Solomon, was constantly open to Egyptian civilisation? This has even been done. It has been recently asserted, for example, that at the period when the Israelites entered Canaan, Arabia was "thoroughly saturated with the elements of Babylonian, and no doubt also of Egyptian, life and thought," whilst "in Palestine a highly developed civilisation had been already in active existence for at least a thousand years."[1]

That the influence of the surrounding seats of civilisation did make itself felt upon the land of Canaan at some period is a fact that cannot be denied.[2] The traces of Babylonian culture are too numerous to be ignored, but to what age do they belong? Babylonian myths could no doubt have found their way in at a remote date, since legendary matter is precisely the kind of material that most readily passes from mouth to mouth. It is noteworthy, however, that the legend of the Flood, even,

[1] Kittel, *The Babylonian Excavations and Early Bible History*, (London, 1903), pp. 24-27.

[2] The traces left by Egypt, however, are of the slightest (cp. Robertson Smith, *Prophets of Israel*,[2] p. 379 *sq.*). Sayce, too, observes that in the Mosaic legislation "it is remarkable how entirely Egypt is ignored" (*Early History of the Hebrews*, p. 210). The recent attempt of Völter to find Egyptian mythology reflected in the traditions of earlier Israelite history (*Aegypten und die Bibel*, Leyden, 1903) is ingenious, but scarcely convincing.

is not preserved in the earliest Hebrew records. It is not until the time of a later Yahwist writer that it finds a place, and from this it would seem that it could scarcely have been familiar to Israel before the end of the eighth century.[1] Again, foreign traders could easily introduce their systems of weights and measures, but it is questionable whether their influence would go beyond this. To take an example: literary criticism includes the interesting account of Abraham's purchase of the cave of Machpelah in Gen. 23 among a series of narratives written by the (post-exilic) priestly writer. The purchase is narrated with great fulness, as contrasted with the single verse which the earlier (Elohist) writer devotes to the similar act in Gen. 33 19 (cp. also 2 Sam. 24 24). Although of later origin, the details are doubtless quite in accordance with ancient practice, since customary usages in the East are changed only with the greatest difficulty and by slow degrees. But viewed in the light of "Babylonian influence," how does the narrative stand? Some writers are struck with the Babylonian colouring, and find in Gen. 23 "a faithful picture of such transactions as they were conducted at the time in the cities of Babylonia. . . . It reads like one of the cuneiform documents; . . . it is conformed to the law and procedure of Babylonia as they were in the patriarchal age. At a later date the law and procedure were altered, and a narrative in which

[1] *EBi.* col. 1059 *sqq.*; Budde, *op. cit.* p. 706 *sq.*

they are embodied must therefore go back to a pre-Mosaic antiquity."[1] Other Assyriologists, however, are well aware that a comparison of the Babylonian contracts with the biblical account of the transaction in Genesis "shows noteworthy differences."[2] The resemblance is only superficial; not only are the most essential Babylonian characteristics wanting, but the chief feature common to both—the transaction of business at the city gate—was, and is, so regular a practice in the East, that it is impossible to find in Gen. 23 10, 18 an indication of Babylonian influence.

The tendency to exaggerate the extent of foreign influence—which has occasionally gone to such a length as to derive the essential features of Israelite culture and religion from outside—takes no account of historical experience. It is a familiar fact that many of the present customs in the East find parallels in pre-Islamic Arabia, in ancient Israel, even in Babylonia itself. In the study of primitive institutions the terms "ancient" and "primitive" are not correlative; that which is chronologically ancient is not therefore old from the point of view of comparative custom. Many Bedouin tribes are, sociologically, older than the earliest historically known Israelites, and the latter, in turn, even in the sixth century are far behind

[1] Sayce, *Early History of the Hebrews*, p. 57; cp. Boscawen, *Journal of the Victoria Institute*, 24 186 (1890-91): it "reads as if it were taken from Babylonian documents."

[2] So, Pinches, *The Old Testament*, p. 238.

the Babylonians of the time of Ḥammurabi. The long years of Roman oppression and the wars of the Crusaders have left their mark upon the land of Palestine, but what traces are to be found among the people? Primitive institutions and beliefs are almost ineradicable; waves of foreign population may flood a land, and leave their traces only in the nomenclature or in the ethnological types. Palestine, at the present day, has preserved primitive Semitic rites and customs, sometimes almost intact, sometimes under a veneer of Mohammedanism,[1] and, speaking generally, it is only in the towns and villages along the regular trade-routes and roads that primitive conditions have undergone any change.

Accordingly, the Code of Ḥammurabi is an important addition to ancient literature for sociological reasons. Apart from the fact that it is the oldest known code of laws, it is especially valuable for the light it may be expected to throw upon the life of the Babylonians at the close of the third millennium before Christ. It follows, too, from what has been said, that it will enable us to determine whether Babylonian influence over Canaan was so strong as to force its code upon its inhabitants. Of greater interest is the question of its relation to the legal institutions of the Old

[1] See the present writer in the *Jewish Quarterly Review*, April 1902, p. 430 *sq.*, and especially the invaluable material collected at first hand by Prof. S. I. Curtiss, *Primitive Semitic Religion To-day* (1902).

Testament. The attempt must be made to see to what extent Israelite law is indebted to the Code, to determine whether Israelite lawgivers framed their laws upon Babylonian models, and if so, at what period. For this purpose it will be borne in mind that the Code was promulgated by a king whom Hebrew tradition knew as a contemporary of Abraham, and even Abraham's traditional home is one of the very cities mentioned in Ḫammurabi's prologue. It is by no means unlikely, therefore, that a copy of the Code was set up in Ur of the Chaldees. In addition to this we must remember that the Code long continued to form the foundation of Babylonian law. Under the name "the Judgment of Righteousness which Ḫammurabi the great king set up," it reappears in the reign of Ašurbānipal (probably 668-625 B.C.), almost contemporary, therefore, with the oldest portion of Deuteronomy and the reforms of Josiah (622-621 B.C.). At a still later period it became a text-book for students in Babylonia, and its laws were divided into chapters with headings.[1] With the decay and fall of Assyria and Babylonia, it is not to be expected that all recollection of the Code died out. Talmudic legislation, with its minuteness of details, may well have borrowed from it, and this is the more probable since the later Jewish contracts contain characteristic reminiscences of Babylonian legal phraseology.[2] Finally, in Syria itself, the

[1] C. H. W. Johns, *The Oldest Code of Laws in the World*, p. vi.

[2] N. M. Nathan, *Orient. Litteratur-Zeitung*, 1903, col. 182-184.

fifth-century law-book, edited by Bruns and Sachau, which influenced later legal procedure from Armenia to Egypt, although a free edition of Roman law, reveals provisions which are neither of Roman origin nor modifications or adaptations of known Roman law.[1]

Babylonia, fortunate enough to possess a thoroughly practical code dating back at least to the twenty-third century before Christ, stands in marked contrast with Israel, whose legislation was the result of a very gradual development from the primitive customary usage of the desert, and did not attain its present form until after the Exile. Jewish theory attributed its origin to Yahwè, who revealed laws through Moses, even as the sun-god Šamaš imparted the laws of the Babylonian code to Ḫammurabi. But there is not the slightest reason to suppose that Ḫammurabi introduced a series of innovations or novelties; his laws have had a lengthy history behind them, and prove themselves to be based upon ancient custom. Israelite tradition, in like manner, presupposes the existence of laws before Moses, and the two systems of legislation have this in common, therefore, that they may claim to be not original productions, but authoritative promulgations. Israelite tradition, moreover, ascribes to the authority of Moses laws that are

[1] *Syrisch-Römisches Rechtsbuch aus dem fünften Jahrhundert aus den orientalischen Quellen herausgegeben, übersetzt und erläutert* (Leipsic, 1880).

clearly of later origin.[1] The conglomeration of civil and religious law in the *Lex Mosaica*, when closely examined, presupposes a variety of conditions which could not have existed at one and the same time; some of the enactments have the appearance of being ancient survivals of nomad days adapted to the changed environment, others are doubtless due to the prophets, the recognised mouthpieces of "instructions" (*tōrōth*), and still others bear a specific priestly stamp, and reflect an exilic background. The disentanglement and separation of this complexity into its component parts is the work of the "literary criticism" of the Old Testament, and its results disclose a development in the history of Israelite legislation, without the recognition of which the law becomes unintelligible and contradictory, and the study of Israelite *jus* would be an impossible task.

The history of the development of law in Israel is divided into four distinct periods, one of which falls outside biblical times.[2]

(1) The civil law of the oldest period, down to the reformation of Josiah, is represented in the so-called Book of the Covenant, Ex. 21-23 (more precisely 21 2-22 17), and is illustrated by the

[1] Notably in the law of war, 1 Sam. 30 24 *sq.*, compared with Num. 31 27 (P).

[2] See especially G. B. Gray, *EBi.* "Law Literature." The synopsis of Israelite laws and institutions in the Hexateuch can be best studied in the tables presented in Carpenter and Harford-Battersby, *The Hexateuch*, 1 222 *sqq.*, 266 *sqq.* (London, 1900).

writings of the Yahwistic and Elohistic schools and the earlier prophets. The existence of a written collection embodying social laws is presupposed for the middle of the eighth century by Hosea 8 12, where the allusion may be to no other than this collection.[1] The Book of the Covenant, therefore, is the oldest civil code in the Old Testament,[2] and it is important to understand its characteristics. On examination it proves to belong to an agricultural people, whose wealth consists of cattle and produce, although money is not unknown. The legal principles are those of the desert-dwellers of to-day—the *talio* and pecuniary compensation; there are no degrading punishments. Women are not upon an equality with men, but, like the slaves, possess certain rights. There is no centralisation of justice; men can resort to any shrine or sanctuary for a divine decision. The structure of society is of the simplest. No doubt other laws came into being as society became more complicated, and towards the close of this period, during the seventh century, we may trace the rise of a greater refinement of morals and ethics, such as is reflected in the Decalogue.[3]

[1] The text is doubtful. Grätz's emendation, "the words of my *tōrāh*," is perhaps the most plausible.

[2] "It may be compared with the Laws of the Twelve Tables, and especially with the legislation of Solon, to which it is probably not much anterior in time" (G. F. Moore, *EBi.* "Exodus," col. 1447).

[3] The contemporary ethics of the Assyrians are to be seen in the ceremonial code quoted by King, *Babylonian Religion*, pp. 218-220.

(2) The period of the reformation of Josiah (621 B.C.) is marked by a pragmatism, the first traces of which begin to appear in the later elements of the Elohistic writings. The code of this period is the Deuteronomic, whose leading feature is the institution of a single sanctuary at Jerusalem, an innovation which would inevitably tend to the centralisation of justice and to the modification of old legal usages. A complete codification of law now became a necessity. Most critics confine the original law-book of Josiah's day to Deut. 5-26, 28, but as a close inspection of their contents proves, these chapters have not come down unchanged. The code has probably drawn upon several older collections, several of which may have been in writing before they were embodied in Deuteronomy. The old laws in the Book of the Covenant are rewritten, expanded, or modified, and primitive usages which for some reason or another were not included in the older code find a place here for the first time. The executive system is more advanced, the *talio* has begun to disappear, and a new form of punishment—the bastinado—makes its appearance, the indication of a change in social feeling.[1] Pecuniary compensations, which had

[1] Robertson Smith, *Old Test. in Jewish Church*,[(2)] p. 368. The introduction of the bastinado into Arabian procedure is probably due to Persian influence (G. Jacob, *Das Leben vorislam. Beduinen*, p. 165, Berlin, 1895). It was a common mode of correction in Egypt and Assyria, especially for lighter offences. In the former land leading offenders of rank were spared this humiliation, and were allowed to commit suicide (Spiegelberg, *Studien u. Materialien z. Rechtswesen d. Pharaonenreiches*, pp. 66 *sqq.*, Hanover, 1892).

previously been left to the injured party or to customary usage, are now legally fixed at a specified sum.[1] Like the Code of Ḫammurabi (which is also characterised by the frequent specification of the amount of compensation), the Deuteronomic code is prefaced by a historical introduction and rounded off with a blessing and a series of cursings (above, p. 15). As a whole, it is marked by the emphasis with which heathen usages are forbidden, and by the mitigation of older rude or harsh institutions. It is a law-book which endeavours to give expression to the ideals of the prophets, whilst presenting a fairly practical system of legislation.

(3) The exilic period is characterised by the largely theoretical and ideal system of legislation which is especially noticeable in Ezek. 40 *sqq.* Early history was rewritten from the priestly standpoint (end of sixth and beginning of fifth century), its chief object being to indicate the divine origin of Israelite institutions. The legislation of Leviticus is pre-eminently ritualistic; only the so-called Law of Holiness (Lev. 17-26) requires special mention. This important collection is of exilic origin, although the sources from which it has been derived are considerably earlier. It is particularly noticeable for its familiarity with the older codes (cp. especially ch. 19),[2] and for the greater minuteness with which

[1] Ex. 22 16 *sq.* contrasted with Deut. 22 28 *sq.*; cp. also Ex. 21 22, 30, with Deut. 22 19.

[2] "Perhaps the best representative of the ethics of ancient Israel" (G. F. Moore, *EBi.* "Leviticus," § 17).

family and social life is regulated. It may owe its ultimate origin to the *tōrōth* or legal decisions of the monarchical age, several collections of which were probably current.[1]

(4) The closing of the Canon did not put a stop to legislative activity. The Mosaic laws were theoretically discussed with an almost inconceivable thoroughness, and their provisions were adapted to the changed conditions of Judaism. Numerous legal usages had come into currency since the Exile, and had passed into the common tradition, and this extra-canonical legislation was likewise attributed to Moses, who, according to the Jewish theory, had handed it down orally along with the written laws of the Pentateuch. The fall of Jerusalem gave occasion for a systematic codification of the "oral" law, which, together with the decisions of the Rabbis, is embodied in the Mishnah (about 200 A.D.). The Mishnah, in turn, formed the subject of the renewed discussions in the rabbinical schools of Palestine and Babylonia which are contained in the "Gemara," and with the Mishnah constitute the Palestinian and Babylonian Talmuds respectively. The scope of the present study does not necessitate a consideration of the later post-Talmudical development of Jewish law, and enough has been said, perhaps, to indicate the fields over which the Babylonian code could exert its influence.

[1] Cp. the series of offences in Ezek. 18.

# CHAPTER III

## ELEMENTS OF LAW AND PROCEDURE

Babylonians and primitive Semites—Tribal custom the foundation of law—Blood-revenge—Judicial authorities—Institution of judges in Israel—Centralisation of justice—Divine decisions—Resort to a deity—Oaths of purgation "before God"—Semitic ordeals—Procedure in Babylonia—Laws relating to judges and witnesses.

THE existence of a lengthy code, which, as we have seen in chap. i., covered a great variety of legal topics, is sufficient proof that in Ḫammurabi's age law and justice had reached an extremely advanced stage of development. It presupposes regularly instituted courts of law with duly qualified judges, and it requires us to conclude, further, that this stage had long been in existence, and that the Code was intended to fix once and for all certain judicial decisions which, if not new, at least required the authority of royal approval to make them general.

The Babylonian Semites and the Semites of the desert lived under entirely different conditions, and whilst the latter, particularly in districts removed from the regular trade-routes, have remained through-

out all ages practically untouched by the influence of the surrounding seats of culture, Babylonian society in the time of Ḫammurabi was a fusion of Semitic and pre-Semitic stocks of obscure origin.[1] What Robertson Smith has said of the religious ideas of Babylonia in their relation to those of the primitive Semites[2] may be applied to its laws. The fusion of races in Babylonia leads to the expectation that the principles of law and justice were an artificial combination of the most diverse elements, and it is therefore obvious that our inquiry must start with the less complicated types from the other regions of the Semitic world.

Here we are at once brought face to face with the fact that among primitive Semitic communities there is, properly speaking, no law and no law-givers. But it would be a mistake to infer that there was lawlessness.[3] Tribal custom—and with it is involved religious custom—is the strongest of laws. A thing is lawful because it has always been considered lawful; things that are unlawful are things that are not wont or ought not to be done.[4] Within the

[1] That the so-called Accadians or Sumerians were not Semites seems to be conclusively proved, but of their nationality and life there is little certain information. Under these circumstances it is scarcely necessary to attempt to discover in what respects the Code is indebted to non-Semitic legislation.

[2] *Rel. Sem.*[2] p. 13 *sq.*

[3] Cp. Benzinger in *EBi.* "Law and Justice," § 1, "Government," § 9.

[4] Gen. 20 9, 29 26 (a reference to local custom); cp. Gen. 34 7, 2 Sam. 13 12.

tribe all men are on a footing of equality, and under a communistic system petty offences are unreasonable. Serious misdemeanour is punished by expulsion; the offender is excluded from the protection of his kinsmen, and the penalty is sufficiently severe to prevent its being a common occurrence. The man who is wronged must take the first step in gaining redress, and when it happens that the whole tribe is aroused by the perpetration of any exceptionally serious crime, the offence is fundamentally regarded as a violation of the tribe's honour, rather than as a personal grievance on the part of the family of the sufferer. Courts, as in Babylonia, for the adequate punishment of offences and legally ordained punishments are not yet in existence. This essential distinction between primitive Semitic and Babylonian procedure comes out most clearly in the case of blood-revenge.

The familiar Semitic conception of the sacredness of blood—whether human or animal—must have long been forgotten among the Babylonians, whose code is characterised by the frequent application of the death penalty. It is unnecessary to point out in detail how the Semites have been influenced by this conception. The inviolable nature of the blood-tie which makes kinsmen brothers, and the responsibility attached to the shedding of blood, lie at the very root of the almost ineradicable system of blood-revenge. If a man has killed one of his own group, he has committed an offence for which he cannot expect to obtain protection from the members

of his tribe. He may be solemnly put to death, and this was primarily effected without the spilling of blood, or he may be formally expelled, in which case he becomes an outlaw.[1] In any case the community must be purged of the presence of the impious member. On the other hand, when the slayer and the slain are of distinct groups, the principle of the sacredness of blood reacts in a different manner. The group of the slain, on the one side, are bound in point of honour not to leave their kinsman's death unavenged; the slayer's group, on the other, so far from being under an obligation to surrender the guilty one, regard it as equally a point of honour to unite to protect him. There is blood-feud between the two groups. Any member of the aggrieved group may retaliate upon any of the slayer's group, and until satisfaction is obtained this state of feud continues. Naturally, under the circumstances, there may be indiscriminate slaughter, and the blood-feud is prolonged indefinitely. So deeply rooted is the practice that blood-revenge holds good among the wilder Bedouin tribes of to-day. Certain modifications, however, were gradually introduced, with the object of preventing the fierce internecine fights and the insecurity of life which

[1] Cp. Gen. 4 12. In ancient Arabia the formula varied: we pronounced so-and-so to be a *ḫalīʿ*, "God put away this man," or "We are clean (innocent) of him" (Procksch, *Über die Blutrache bei den vorislamischen Arabern*, p. 31 *sq.*). For the principles of blood-revenge, see Robertson Smith, *Kinship and Marriage*,[2] pp. 25-27; cp. also W. M. Patton, "Blood-revenge in Arabia and Israel," *American Journal of Theology*, October 1901, pp. 703-731.

the feud entailed. Blood-wit was offered and accepted, the responsibility for murder was confined within limits, and retaliation restricted to the guilty party and immediate relations.[1] The development of the system in Israel will require separate consideration later, where we shall find that as late as the seventh century the murderer is solemnly delivered over into the hands of the slain man's nearest kinsman, "that he may die," and that in other cases where the death penalty has to be enforced it is carried out by the community in general. Even the responsibility of judicial blood-shedding must needs be borne by as many as possible.[2]

It is characteristic of primitive Semitic organisations that there are no specified officials to pronounce or carry out legal decrees. In every tribe there were, and are, certain leading families, often hereditary, whose heads enjoyed certain privileges,[3] in return for which they performed particular duties—the entertaining of guests, the protection of widows and orphans, etc.—but except when the tribe is organised for defence or offence, the office is one of dignity rather than authority. The sheikh may be called upon to settle differences within the tribe, or, if he

[1] Jaussen (*Revue Biblique*, 1903, p. 253) mentions the story of a modern Bedouin who, to protect his kin from blood-feud and to confine a quarrel to his adversary and himself, solemnly repudiated his family. Henceforth he alone became responsible for what followed.

[2] *Rel. Sem.*[2] pp. 284 *sq.*, 304 *sq.*, 417 *sqq.*

[3] Thus the sheikh, in ancient Arabia also called *sayyid*, "counsellor" (cp. Heb. *sōd*), receives one-fourth of all booty.

be of repute, men from outside may appeal to his decision. But he has no judicial powers, and if either of the parties is dissatisfied he cannot enforce obedience. Much less can he himself inflict punishment even upon the poorest man of the tribe. He is not supported by subordinate officers appointed to carry out his decrees; his weapon is persuasion rather than compulsion.[1]

Such tribes, held together by the bond of blood, in course of time united with their neighbours, and became knit together by common interests and practical necessity, and when the occasion arose for joint action, the leading sheikhs of each community consulted together and took the reins of these half-developed states. These steps on the road to kingship[2] were trodden by the Israelites, whose conditions, in the earliest periods of their history, can scarcely have been very different from the pre-Islamic Arabs and modern Bedouin. How utterly removed they were from the advanced organisation of Ḥammurabi's age needs no demonstration.

On entering Canaan, the Israelites found themselves in the presence of a culture superior to their own, through whose influence their primitive tribal constitution in course of time became entirely lost.

[1] See Robertson Smith, *Prophets*, p. 381, *Kinship*,[2] p. 68; Doughty, *Arabia Deserta*, 1 145 (and *passim*); Procksch, *op. cit.* pp. 7 *sqq.*; Lady Anne Blunt, *Bedouin Tribes of the Euphrates*, 2 231 *sqq.*

[2] *Rel. Sem.*[2] p. 33 *sq.*; Blunt, *op. cit.* p. 235 *sq.*

But the superior culture of the Canaanites rested solely in the fact that they were a settled people, who lived in towns and were familiar with agriculture, and the excavations in Southern Palestine, at all events, do not lead us to infer that the stage of civilisation which they had reached was as high as the presumed influence of Babylonia would have led us to expect. The Canaanite communities consisted of cities around which were grouped "daughters," villages which stood in a subordinate relation to them. We are as ignorant of the details of their constitution as we are of that of their northern neighbours, the Phœnicians, although several considerations tend to make it probable that their government was in the hands of an aristocracy, the princes (*śārīm*), elders (*zĕḳēnīm*), or lords (*bĕʿālīm*) of the Book of Judges,[1] who controlled all matters affecting the interests of the city (Judg. 8 *sq.*). That they held legislative powers is doubtless true, in so far as might makes right. Professional judges were not known in the earlier period of Israelite history; even in Egypt it is questionable whether they existed before the New Kingdom.[2] Of the Hebrew terms for "judges," the *šōṭēr* is primarily a military official, and it is not until post-exilic literature that it is applied to one with judicial powers.[3] The *mĕḥōḳēḳ* is a commander or ruler, and the same appears to

[1] Cp. Meyer, *EBi.* "Phœnicia," § 16.

[2] Spiegelberg, *Studien und Materialien zum Rechtswesen des Pharaonenreiches* (Hanover, 1892), p. 63.

[3] See Driver's note, *Deut.* p. 17.

be true of the *ḳāṣīn* (the familiar Arabic *ḳāḍi*).[1] The *šōphĕṭīm* in the Book of Judges are the champions or deliverers of Israel; the term is synonymous with *mélek*, "king," in Hos. 7 7, Ps. 2 10, and as an official title of the chief magistrate or consul in Phœnician cities is interpreted "king" by the Greeks.[2] A noteworthy exception to these terms is the specific designation *dayyān* (Heb. and Aram.), corresponding to the Babylonian *da-a-nu*, *da-ia-nu*; it is, however, extremely rare, and appears only in Ps. 68 5 (6) and 1 Sam. 24 15 (16); even in the latter passage it is questionable whether it belongs to the original text.[3]

That a professional class of judges did not exist is also borne out by the fact that we find no mention of them in the oldest Israel law-book, the Book of the Covenant (Exod. 21-23),[4] and the story of Naboth (1 Kings 21) shews that in the middle of

[1] From Judg. 5 14, Sayce (*Early History of the Hebrews*, p. 121 *sq.*) wrongly argues that there were lawgivers in the oldest period of the Hebrew settlement. There would be no object in lawgivers coming to a military assembly. The *ḳāṣīn* is a petty ruler; cp. Is. 3 6 *sq.*, 22 3 (in Mic. 3 1, 9, parallel with "head," *rōš*).

[2] Meyer, *EBi.* "Phœnicia," § 16; Moore, *ib.* "Judges," § 1.

[3] The LXX. reads, "May the Lord be a judge and arbiter," and Budde (*Samuel*, *ad loc.*) rightly suspects that *dayyān* is an addition. For the sake of completeness mention must also be made of *pillēl*, to mediate, arbitrate; cp. *pĕlīlāh*, an umpire's work, Is. 16 3, in late Hebrew a matter for judgment (*i.q.* Hebr. *pĕlīlī*).

[4] In Ex. 21 22 the text is corrupt. The judges do not appear in *v.* 30, where some reference to them would certainly be expected. 1 Sam. 7 16 *sq.* 8 cannot be taken as evidence for judicial authorities in early times; the passages are late.

the eighth century judicial functions still lay in the hands of the aristocracy and elders. Appeal could be made to the head of the state, and the readiness with which a complainant could gain the king's ear is illustrated by the story of the woman of Tekoa (2 Sam. 14 4 *sqq.*), and the judgment of Solomon (1 Ki. 3 16-28).[1] But as long as judicial powers continued to be exercised by the nobles and highest of the land, there was no higher authority to whom to appeal against injustice, and the passionate outcry of the prophets against the unjust dealings of the royal families of the land (Is. 1 23, Jer. 21 11 *sq.*, Mi. 3 9) stands in unpleasant contrast with Babylonia, where Ḫammurabi, as his letters shew us, investigated the suits of his poorest subjects, and did not hesitate to reverse the decisions of his governors.

The system of electing subordinate judges under the control of a supreme central authority was an innovation in Israel. Tradition itself realised that it was not part of the desert heritage, and ascribed its initiation to the Midianite Jethro, the father-in-law of Moses (Ex. 18), or to Moses himself (Deut. 1 9 *sqq.*). The system is practically one adapted for administrative purposes,[2] and whereas, according

[1] Cp. also 2 Sam. 15 2 *sqq.*, 2 Ki. 15 5. In the Amarna Tablets (25 30-34, 45) the king of Alašia (Cyprus) uses his good offices for the return of the property of one of his citizens who had died in Egypt.

[2] The traces of a parallel account in Nu. 11 are too obscure to build upon with certainty. The divisions into thousands, hundreds, fifties, and tens scarcely originated in Babylonia, where the unit was sixty; Assyrian texts, however, according to Sayce, speak of captains of fifty and ten (*Early History of the Hebrews*, p. 191).

to the Elohist in the former passage, Moses chooses the officers, the Deuteronomist leaves the choice to the people, and Moses only charges them with their duties. The practice of referring difficult or contested cases to a supreme head is similar to that which the Chronicler ascribes to Jehoshaphat (2 Chron. 19), and it is upheld by the Deuteronomist, who emphatically insists upon the sanctity of the priests' decisions (Deut. 16 18-20, 17 8-13). The actual date of its introduction is uncertain. At all events, the "elders" (*zĕḳēnīm*) had been in possession of a certain amount of judicial authority, which they still partly retain in the time of the Deuteronomist (Deut. 19 12, 22 15 *sq.*). It is about the period of Josiah's reformation, or a little later, that the priests, who are the natural intermediaries whenever a divine decision is required, begin to receive greater powers. In Deuteronomy they investigate legal cases, and the evident attempt to place them upon equal footing with the judges (19 17 *sq.*), together with the emphasis laid upon the inviolability of their decrees (17 9*b*, 10*a*, 11*b*), and the consequent weakening of the authority of the elders, suggest that a change in Israelite legal procedure is introduced, which is not improbably foreign to the original scope of that law-book.[1]

In Babylonia, in addition to the judges, it would appear that law could be dispensed by the civil governors and the priests, and Sayce remarks that

[1] See *The Hexateuch* (ed. Carpenter and Harford-Battersby), vol. 2, notes on Deut. 17 8, 19 17 *sq.*, 21 2, 5.

in certain cases, where foreigners were involved, "the elders" of the city take their place among their judges.[1] According to the same authority, the judges probably went on circuit, but this appears to be only an assumption from the allusion to Samuel's activity in 1 Sam. 7 16, and the "royal judges" of Persia; in Egypt, however, the circuit system appears to be vouched for in Ptolemaic times, and Moret finds indications of this early attempt to centralise justice as early as the twelfth dynasty.[2]

Difficult cases are referred to a divine authority. The god is a "giver of decisions."[3] The Arabs of different clans sank all differences, and accepted Mohammed's decisions by reason of his divine authority; in Israelite tradition, the Hebrews of the twelve tribes came to Moses for the statutes and laws of God; and when written laws are introduced, they receive their authority by being ascribed to an Ea, the god of culture, or a Šamaš, the god of law and justice. In Babylonia, from the earliest times, we find that the "gate" was the place where justice was administered. One contract-tablet speaks of litigant parties repairing to the judges, who bring them to the gate (*bāb*) of the goddess

[1] *Babylonians and Assyrians*, p. 198 *sq.* On the *šibutu* (*KB* 4 23, l. 25, 25, l. 23), cp. below, p. 69, n. 1.

[2] Maspero, *Rec. de Travaux*, new series, 1 44-49 (1895). According to Erman (*Life in Ancient Egypt*, p. 87), the administration of justice was thus centralised even under the Old Empire.

[3] *Rel. Sem.*(2) p. 70; cp. n. 2.

Nin-marki, where they duly give evidence; elsewhere the scene is the gate of the god Nun-gal, the house of Šamaš or the gate of Šamaš, and the house of Marduk.[1] The sanctuary is specifically an appropriate place, since the solemn oath, taken in doubtful cases or for the confirmation of the evidence, is made before the deity or his representative.[2] Similarly in Israel the place of resort for judgment might be a sacred site—the three places visited by Samuel had the reputation of sanctity (1 Sam. 7 16, cp. LXX.)—but in ordinary cases the presence of witnesses was all that was required, and the city gate, then as now the scene of business activity, served the purpose of a law-court (Job 29 7 *sqq.*). It was not difficult to collect ten men of repute and standing to act as witnesses (Ruth 4 2), and legal contracts were unnecessary. It strikes one as quite in accordance with the business instincts of the Babylonians that out of the primitive system of administering justice at the gates in the presence of witnesses, the evidence being attested by an oath, they should have developed the practice of building

[1] Meissner, *op. cit.* (below), nos. 43, 78 *sq.*, 100, 110.

[2] So, in CH, § 9, where stolen property is found in the hands of another, the witnesses for the accuser (who know the lost property) and for the accused (who testify that the article was bought in their presence) say out "before God" what they know, and the judge gives his decision. The disputed object is usually brought and deposited with the god (Meissner, *Beitr. z. altbab. Privatrecht*, p. 5). For illustrations of modern procedure among the Bedouin, see Palmer, *Desert of the Exodus*, 1 87 (1871); Jaussen, *Revue Biblique*, 1903, pp. 252 *sq.*, 259 *sqq.*

temples at these places, in order that the oath might be taken under the most sacred surroundings. The primitive Bedouin of to-day considers a solemn attestation sufficient in ordinary disputes—mercantile pursuits, one imagines, had seriously corrupted the inherited simplicity of the Babylonians.

The Code of Ḫammurabi is quite in touch with early Semitic custom when, under certain circumstances where independent evidence is not available, it lays down that a man must appear "before God" (*maḫar ilim*), or undergo an ordeal. To be more specific, the solemn attestation applies to a man who has been robbed and the thief remains at large (§ 23), to a shipowner whose ship is lost (§ 240), to a merchant who would regain the price he paid for slaves (§ 281), to depositors whose deposits have been lost whilst in the keeping of another (§§ 120, 126). In every case the man who would recover his property (money or goods) must assess his loss "before God." A similar procedure is to be observed when a man would clear himself of a charge. Thus, a man from whom a fugitive slave has escaped (§ 20), an agent who is robbed of his merchant's goods (§ 103), the herdsman who has hired an ox, which dies by a "stroke of God" whilst under his care (§ 249), the wife who is falsely accused of adultery (§ 131)—these may protest their innocence and go free. Analogous to the above are the cases where an agent who accuses a merchant of wronging him puts him to account "before God and witnesses" (§ 106 *sq.*), and where the shepherd,

whose sheep are killed by a "stroke of God" or a lion, "declares his innocence (or purges himself) before God" (§ 266). Here also may be mentioned the two instances where the man who has wounded another, or the brander who has made an indelible mark upon a slave, may swear that the act was not done "wittingly"[1] (§§ 206, 227).

In early Hebrew law, in the Book of Covenant, we may also distinguish two methods. The man from whose keeping a neighbour's deposit is stolen can resort "to God" (*ĕlōhīm*) to clear himself (Ex. 22 7 *sq.*), and in like manner a suspected herdsman can take the "oath of Yahwè" (*šĕbū'ath Yahwè*) that he has not put his hands to his neighbour's goods, and go free (Ex. 22 10 *sq.*). These correspond to the second series in the CH (cp. especially §§ 120, 266), and are evidently different from the law in Ex. 22 9, which is couched in the most general terms, and possibly does not refer to deposit, but to stolen property. Here, it is not the accused alone who comes to Ĕlōhīm to clear himself of suspicion, but the passage deals with a dispute between two parties whose case is brought to the "god of decisions" for his judgment (cp. 1 Sam. 2 25*a*). It is the procedure which underlies the ordeal.

In the old contract-tablets the depositions are made before (*maḥar*) witnesses, and the parties to

[1] *ina i-du-u*, "with knowledge"; cp. *bi-bĕlī da'ath*, Deut. 4 42, etc. (the later equivalent being *bi-šĕgāgah*).

the suit swear by (*niš*) the principal deities and the reigning sovereign.[1] In Egypt, a similar oath by the name of the Pharaoh was frequent. A man swore "by Amon, by the prince whose spirits are dead, by Pharaoh my lord," and the "king's oath," as it was called, was usually followed by an imprecation. "May I have a hundred strokes, or give me over to the crocodile," maiming, and exile to the mines of Ethiopia, figure among the oaths sworn by Egyptian suspects.[2] The old Hebrew methods of oath-taking are too well known to need repeating.[3] At the present day, point may be given to an oath by the addition of such a wish as, "He who lies may none be born to him."[4]

The oath of purgation, which thus allows the

[1] *E.g.*, by Nannar, Marduk, and Ḫammurabi (*KB* 4 21), or even by the king alone (*ib.* 4 25). According to Meissner (*Beitr. z. althab. Privatrecht*, p. 5), the oath is taken by the name of the tutelary deity of the city, the principal deity of the land, and other gods, sometimes even by the name of the native city of the contracting parties. The practice is found as late as the time of Darius.

[2] Spiegelberg, *Studien u. Materialien z. Rechtswesen d. Pharaonenreiches* (Hanover, 1892), pp. 70-77 (p. 75, "To him was the king's oath given to say no lies, he [said] Ethiopia"); *Arbeiter und Arbeiterbewegung im Pharaonen-reich unter den Ramessiden* (Strassburg, 1895), p. 20.

[3] See *EBi.* art. "Oath." The later post-biblical usages are illustrated in the Mishnah (tract. *Shebuoth*), where some of the formulæ are given. An accused protests his innocence. The accuser says, "I adjure thee." If the man replies "Amen," and is proved guilty, he is culpable. "Amen" is thus the legal term with which the accused expresses his readiness to accept the adjuration (cp. Hogg, *Jewish Quarterly Review*, 1896, p. 17).

[4] Ewing, *PEFQ*, 1895, p. 172 *sq.*

accused to clear himself of an imputed crime by swearing that the charge is false, is regarded as entirely efficacious, since the deity in whose presence it is taken is confidently expected to avenge himself upon the perjurer.[1] Primarily the ceremony is performed in a holy place before the god himself, or it may be in the presence of the priest, the authorised intermediary of the god. The practice recorded by a writer of the Deuteronomic age, in accordance with which a man could swear his innocence before Yahwè's altar at Jerusalem (1 Kings 8 31 *sq.*), in earlier days, before the institution of the central sanctuary, must have been customary at every shrine or holy place. To take the name of Yahwè falsely, therefore, was to perjure one's self. Under the Deuteronomic reformation the oath of purgation would be taken before the authorised officials (Deut. 19 17), even as among the Bedouins of the present day it may be made before the sheikh.[2] From this oath we must of course distinguish the curse which the victim of a theft calls down upon the thief, or the adjuration, equally based upon a belief in the

[1] *Rel. Sem.* p. 480; cp. Jaussen, *Rev. Biblique*, 1903, p. 259 (a guilty Bedouin agrees to take an oath [*ḥalifa*] at a holy tomb, but on his way, fearing the possible consequences, is filled with terror and confesses).

[2] An interesting development of the oath taken in a holy place is recorded by Baldensperger, where two parties arranged to settle a dispute and agreed to swear by St. George (*PEFQ*, 1897, p. 131). To avoid the trouble of dressing in festival clothes and repairing to his shrine, it was decided to make a mark on the ground to represent the saint's abode ("He is over against us but can be present just as well").

efficacy of the curse, which solemnly calls upon any man who has knowledge of the offence to say all that he knows.

The belief that the deity punishes the guilty one who swears that a charge is false is intimately connected with the theory of the ordeal where it is left to him to indicate in some recognisable manner whether a man is guilty or not. Instead of the oath of purgation a test is employed. The Code of Ḫammurabi uses it only in two cases, and on each occasion it is by water. The river-god (*ilu Nāru*) has to decide whether a man upon whom a spell has been cast has suffered unjustly (§ 2), and whether a wife who has fallen under the suspicion of unchastity is innocent (§ 132). The victim must plunge into the sacred element, which overpowers the guilty and saves the innocent.[1] The revenge taken upon the impious finds analogies in the waters of the Asbamæan lake, the springs near Tyana, and the Stygian waters in the Syrian desert—not to speak of the striking parallel of the "waters of Jealousy" in Israel—which harmed only the perjured.[2] But the river-god, instead of punishing the wicked, may repudiate them, on the principle that impurity and guilt must not come in contact with

[1] Dareste (*Journal des Savants*, 1902, p. 519, n. 1) notes the same principle in the old German custom of testing the legitimacy of children by throwing them into the water; one may compare also the Sicilian oracle where the tablet bearing the oath of the accused floated if true and sank if false (Pseudo-Aristotle, *Mir. Ausc.* 57).

[2] *Rel. Sem.*(2) p. 179 *sq.*

sacred things. So in Arabia, those who were suspected of witchcraft—not their victims, as in Babylonia—were thrown to the water, and since the god would only receive the innocent, the guilty ones were those who floated: the procedure that has prevailed in dealing with suspected witches down to modern times.[1] Arguing from the same point of view, the Laws of Manu allowed a man to justify his oath of purgation by remaining under water a certain length of time (8 114 *sq.*), and—to go still further away from the Semitic world—in Burmah the parties to a suit keep their heads under water, and the one who emerges first is reckoned guilty.[2]

Although the laws in CH relating to judges and witnesses are few, the contract-tablets reveal, as might be expected, a very advanced system of procedure.[3] Evidence was drawn up in legal form and written upon tablets,[4] and each case was examined with commendable thoroughness (cp. CH, § 9). The general principle not to pervert judgment, accept bribes, or to show favouritism—and the frequency with which these exhortations appear in the Old Testament is an indication of the prevalence of injustice in Israel[5]—if not expressed in so many

[1] Cp. Wellhausen, *Arab. Heid.*(2) p. 160 (on p. 189, however, those unjustly suspected of witchcraft *float*).

[2] Frazer, *Pausanias*, 3 388 (other water-oaths and tests, 4 253 *sq.*).

[3] Cp. Sayce, *Babylonians and Assyrians*, chap. 9.

[4] Written evidence appears to be unknown in Israel until the time of the book of Job (13 26, 31 35).

[5] Ex. 23 3, 6-8; Deut. 16 19, 24 17, 27 19; Lev. 19 15, etc.

words, at all events lies at the bottom of CH, § 5. Here, if a judge has judged a judgment (*šum-ma da-a-a-num di-nam i-di-in*), has decided a decision (*pu-ru-uz-za-am ip-ru-uš*), and delivered a sealed sentence (*ku-nu-uk-kam*), and subsequently his judgment is annulled (*di-in-šu i-te-ni*), he is ordered to pay twelve times the penalty he had ordained in his decision, and is openly (properly, "in the assembly," *puḫru*) thrust from the bench; he cannot be reinstated, and is not allowed to sit in judgment with the judges. There are two disputed phrases in the law as it stands. In the first place, the judgment is presumably annulled by an appeal, either to a fresh court or to the king himself. In the contemporary letters of Ḫammurabi and his dynasty, the king is frequently appealed to either directly or after a case had been tried at the local courts. In one instance the litigants, having failed for two years to obtain justice at Sippar, apply to the king, who gives orders for the defendant and the "witnesses who have knowledge of his case" to be brought to him at Babylon for judgment. In another we find Ḫammurabi investigating a charge of bribery against one of his officials; he confiscates "the money or whatsoever was offered as the bribe," and commands the men who had taken it and the witnesses to be sent to him for trial.[1] On the other hand, Scheil and Johns render, "if . . . he has annulled (altered) his judgment," which seems hardly natural, since the judge, however much of a partisan, would

[1] King, *Letters of Hammurabi*, 3 21 *sq.*, 136.

scarcely go back from his written verdict. It is possible that the law refers to judicial error, but the penalty and subsequent punishment would be excessively severe.[1] In the second place, the "twelve-fold" (*a-du* 12 *šu*) penalty has been disputed, and Winckler, in his edition of the Code, understands it to mean that the penalty consists of the sum (in the judgment) together with $\frac{12}{60}$, that is to say, an additional 20 per cent. The addition of a fifth—as in late Israelite law (Lev. 6 5, 27 15 19; Num. 5 7)—is suggestive, but there are serious objections against this view.[2]

Next, attempts to intimidate the witnesses, or the giving of evidence which cannot be proved, is severely punished, and if it be a life or death case (*di-in na-bi-iš-tim*), the offender is killed (§ 3). Bribery is rigorously discountenanced, and the man who has offered corn or money is punished by being made to bear the penalty of the judgment (*a-ra-an di-nim*, § 4). In Israel, false witness, prohibited among the additions to the Book of the Covenant (Ex. 23 3) and in the Decalogue, is punished under the Deuteronomic code in the same manner as in CH: "You shall do unto him as he purposed to do to his brother" (Deut. 19 19); but one can scarcely conclude that the law which is aimed at repressing false accusations (denounced in general terms in

[1] In the case of a judge who has not acted in good faith, later Jewish law required a sacrifice (Mishnah, *Horaioth*, 1 5, etc.).

[2] See Joh. Jeremias, *Moses und Hammurabi*, p. 25, n. 2; Orelli, *Gesetz Hammurabis*, p. 47.

Ex. 23 1) owed its origin to Babylonia. The same ruling held good in Egypt, and, indeed, the principle of the *talio* has prevailed in all primitive judicial systems. The Deuteronomic law is preceded by one in accordance with which serious crimes required the concurrent evidence of "two or three" witnesses as proof of guilt (*v.* 15), particularly in all capital cases (cp. Num. 35 30; Deut. 17 6). The procedure is frequently referred to in the New Testament (Matt. 18 16, 26 60; 2 Cor. 13 1; 1 Tim. 5 19), and must have been general, since it finds a place in the Syro-Roman law-book of the fifth century, which actually preserves the same loose wording, "two or three."[1] In the last-mentioned collection of laws, the penalty for unjust accusation is, as is to be expected, based upon the *talio:* "As he (the accuser) would do unto his companion, so shall it be done unto him."[2]

Legal disqualifications of certain persons to act either as judges or witnesses, and the more minute details of judicial procedure, do not appear to be codified before the time of the Mishnah.[3] The Syrian law-book requires witnesses to be freedmen

[1] Bruns and Sachau, *Syrisch-Römisches Rechtsbuch aus dem fünften Jahrhundert* (Leipsic, 1880), p. 106.

[2] *Op. cit.* p. 70 (no. 75). Examples of the minuteness of the post-biblical Jewish rules relating to false evidence may be seen in the *Jewish Encyclopædia*, 1 394*a*.

[3] Cp. also the fulness of detail in the Mohammedan systems (abstract by Kohler, *Rechtsvergleich. Stud.* pp. 149-161). According to Josephus (*Ant.* iv. 8 15), there must be three or at least two witnesses, reliable men; neither women nor slaves are admitted.

and trustworthy, not slaves, men who have never been convicted of misdeeds—theft, robbery, sorcery (Syr. *ḥarrāšūthā*), and the like—"who have not been guilty of objuration" (? ἐξωμοσία), and are not relations, friends, or business associates of the parties. In Babylonia witnesses appear to have formed an official class;[1] since every act of business, legal or otherwise, had to be set down in contracts, reputed and qualified men were doubtless in frequent demand as witnesses.

The Babylonian system of judicial procedure, it would appear, did not leave its stamp upon early Israelite institutions. Both share, it is true, the sacred oath and the ordeal, but these are common Semitic property, and are by no means confined to the Semitic field. The denunciation of false witness does not become codified until the time of Deuteronomy, at a period when the administration of justice was reconstructed and centralised. On the other hand, the precautionary rule that "two or three" witnesses are required in criminal cases, although fairly widespread, does not find a place in Babylonian law.

Procedure, as we learn from the legal documents of the great law-suit under Rameses IX. (twelfth century B.C.), was no less developed in Egypt. Officers, appointed by the government, sat in judg-

[1] *šibū(ti)*, "witness" (abstract *šibūtu*), properly the elders or "greybeards" (cp. Heb. *šēbāh*?), corresponding to the sheikhs or *zĕḳēnīm* (above); cp. Joh. Jeremias, *Moses u. Hammurabi*, p. 29; Meissner, *Beitr. z. altbab. Privatr.* pp. 5 *sq.*, 95).

ment daily, and received their salary from the fees paid by litigants. The evidence, as in Babylonia, was in writing, and could be extracted from unwilling lips by torture—a method apparently unknown in Babylonia.[1] Under the New Empire the courts of justice differ in name and constitution from those of the Old. The judges were largely priests, supported by permanent officials, including a scribe, but the composition of the court varied considerably.[2] The contrast between the methods that prevailed in Egypt and Babylonia and the simple primitive "courts" of the early Arabians and Israelites is thus sufficiently striking, and we are now in a position to consider more closely the principles of common and statute law as they appear in the ancient and modern Semitic world.

[1] Torture is rarely practised among the Bedouin of the desert (cp., however, Doughty, *Ar. Des.* 1 14).

[2] Erman, *Life in Ancient Egypt*, pp. 130 *sqq*.

# CHAPTER IV

## THE FAMILY

Position of women — Marriage-types — Marriage by purchase — Details — "Breach of promise" — Modifications of purchase-system — Laws of the dowry and marriage-settlement — Survivals of earlier conditions — Wife's position in the family.

In the primitive Semitic social system, where the full-born members were on equal footing one with another, sharing their losses and gains, the clan was no other than a family on a large scale, the position of its "elders" corresponding with that of the heads of the various families. To gauge the character of the Semitic family, we must understand the position assigned to woman. We must ascertain whether she is a free agent or whether she is always in the power of her husband or her male relations; whether she is on an equal footing with man in matters relating to marriage, inheritance, and business, or whether she is denied all independence and authority. Is she numbered among the chattels of her husband, or is she his compeer? In Babylonia, we find that the woman could trade and do business, whether on her own account or in partnership,

she could appear independently in the law-courts as witness or as plaintiff, she could hold private property and dispose of it as she pleased Fr. Delitzsch, who contrasts the position of woman in Babylonia with her Israelite sister, much to the disadvantage of the latter, would attribute this freedom and independence to the civilising influence of the non-Semitic Sumerians,[1] and Sayce, too, observes that whereas "in the old Sumerian hymns the woman takes precedence of the man, the Semitic translation invariably reverses the order: the one has 'female and male,' the other 'male and female,' and this is reflected in the position of the goddess Ištar, who, originally a goddess, the equal of the god, became changed into a male deity in Southern Arabia and Moab."[2] But it will ultimately be made

[1] *Babel and Bible*, p. 202: "The woman [in Israel] is the property of her parents, and, later on, of her husband; she is a valuable element for purposes of work, on whom, in married life, a large part of the hardest business of the home is imposed; above all, she is, as in Islam, incompetent to take part in the practice of the cultus. In the case of the Babylonians all this was managed differently and better. . . . It is just in the domain of questions concerning women that it can clearly be seen how profoundly Babylonian culture had been influenced by the non-Semitic civilisation of the Sumerians."

[2] *Babylonians and Assyrians*, p. 13 *sq.*; cp. Barton, *Semitic Origins*, pp. 123 *sq.*, 140 *sqq.* The reversal of the order "female and male" would if anything indicate that the Assyrians had less chivalry than the Israelites; cp. "mother and father," Lev. 19 3 21 2—the mother's love for her children is surpassed only by Yahwè's tenderness for his people (Is. 49 15, 66 13). But the argument is not conclusive; cp. "father and mother" in the Book of the Covenant (Ex. 21 15, 17). The tenth commandment in Ex. 20 17 includes the wife in the husband's possessions, whilst Deut. 5 21

clear that the woman, notwithstanding this, is the legal chattel of the man even in the Code of Ḫammurabi, and when all the evidence has been reviewed, it will be found that her position is scarcely more independent than it was in early Arabian life. The theory, therefore, of a Sumerian (non-Semitic) state of culture where woman's position was perfectly independent (matriarchy?) must be regarded as questionable for the present.

Now the stages in the evolution of human marriage are still far from intelligible, and the results of investigators in this line of research tend to show that it is impossible to lay down specific laws of universal application. The fundamental idea in CH is the familiar Semitic view that marriage is instituted for the legal perpetuation of the husband's name and estate, and that the woman is a property which can be acquired by purchase, in return for which the buyer receives full marital rights. This type of marriage, which Robertson Smith styles *baʿal* marriage or marriage of dominion,[1] has prevailed among the Semites in historical times, but, as the same scholar has proved, is none the less far from being the primitive type among them. The earlier types, survivals of which are not unknown among

separates her from the house, field, and servants (on the text, cp. *Proceedings of Society of Biblical Archæology*, 1903, pp. 43, 53). Originally the commandment probably ran simply, "Thou shalt not covet thy neighbour's house," the rest being an explanatory addition (*EBi.* col. 1049; Burkitt, *Jewish Quarterly Review*, 1903, p. 405).

[1] *Kinship*,[2] p. 92.

the Bedouin of later times, may be characterised as temporary monandrous marriages. The woman occupies a position of equality and dignity, and is quite at liberty to dispose of herself as she pleases. Her independence is such that she is allowed to receive as her suitor whomsoever she will; the marriage may be of greater or less duration, according to circumstances over which she is mistress, and the children of the union remain in her care and belong to her tribe. Without going into further detail, it is enough to observe how utterly different such a type of marriage is from the *ba'al* marriage, the characteristic feature of which lies in the fact that the woman is not a free agent, but is handed over to a man in return for a payment.

Marriage by purchase can take its rise in that stage of society where the life is pastoral or agricultural, and where individual property is in vogue. It is purely a business affair. At the present day, as in the time of Ḫammurabi, the preliminaries are nearly always arranged by the parents of the contracting parties. The initiative is taken by the father, mother, or brothers of the youth. In CH, §§ 155, 166, it is the father who chooses a bride for his son (cp. Judah, Gen. 38 6); in the absence of the father, it rests with the mother (Gen. 21 21),[1] or even a trusted servant (Gen. 24 4). On the other side, it is for the nearest relatives of the girl to state the terms and to give their consent (Gen. 24 50 *sqq.*;

[1] Cp. Doughty, *Arabia Deserta*, 2 89 (a widow buys a maiden to bring up until she is of a marriageable age for her son).

cp. 34 8 *sqq.*).[1] The formula with which the proceedings opened has probably been quite correctly preserved in the parable of Jehoash (2 Kings 14 9): "Give thy daughter to my son to wife (*iššāh*)."[2] The girl's consent is not necessary, and if occasionally asked (as in Gen. 24 58), it was not required by law. In Arabia, Mohammedan law forbade the guardian (*walī*) to give his ward in marriage without her consent, unless she was under age, but this was an innovation.[3] A Babylonian father, in later times at least, could refuse to acknowledge his son's choice, and if the son persisted, could threaten to reduce the girl to servitude.[4] It is to be noticed that the punishment falls upon the girl. In Israel, the parents might object to a distasteful union, but

[1] In *KB*, 4 186, the (widowed) mother is approached by the intending bridegroom. Similarly, in Ruth 3 17, the gift from Boaz is for Ruth's mother-in-law, her nearest relative.

[2] So, in the New Babylonian contract-tablets: —— son of —— spoke to —— son of ——: "Give —— thy daughter (or thy virgin daughter, *mārat-ka ba-tu-ul-tu*) to my son —— in marriage" (*aš-šu-tu*, cp. late Heb. *iššūth*); see *KB* 4 229, no. xxiii.; when the man makes the proposal (*ib.* p. 187, no. xi.) it runs: "—— thy daughter give, my wife (*aššatī*) shall she be."

[3] *Kinship*,[2] p. 103 *sq.* In CH only the seduced daughter-in-law, the widow, the divorced or deserted wife or concubine, appear to have a right to marry whom they please (§§ 134-137, 156, 172). In the case of the suspected wife, the sick wife, or the wife divorced for her bad conduct, it is only said that she returns to her father's house, and the probability is that she was not free (CH, §§ 131, 142, 149).

[4] In other words, set the brand of servitude (*ši-in-du ša amtu-u-tu*) upon her; cp. Marx, *Beitr. z. Assyriol.* 4 11; Kohler and Peiser, *Bab. Rechtsleben*, 2 7 *sqq.*

no pressure was brought to bear (Gen. 26 35, 27 46; Judg. 14 3).

It will at once be seen that this type of marriage differs entirely from the so-called *ṣadīḳa* or *mot'a* marriage of early Arabia, which required no consent on the part of the woman's father or guardian, but was purely a personal contract of specified duration.[1] Such free unions were condemned by later ages as equivalent to harlotry;[2] they were not unknown in early Israel (Judges 8 31),[3] and there is an interesting allusion to the custom in Judges 14, which subsequent editors sought to obscure. As the opening of the narrative now stands, Samson requests his parents to get the Timnathite woman for him as wife, and in spite of their objections continues to persist, with the result that they yield and go down with him to make the arrangements (*v.* 5). But the bride remains at Timnah, and the marriage is celebrated in the presence of her kinsmen and friends; obviously it was not sanctioned by Samson's parents. A closer examination shows that in the original tradition Samson's marriage was a modification of the *ṣadīḳa* type, which did not require the intervention of the parents. Samson (*vv.* 5-7) takes all the arrangements into his hands,

[1] *Kinship*,[2] pp. 79 *sqq.*, 84. The term *ṣadīḳa* is criticised by Noldeke, *ZDMG*, 40 154; probably *mot'a* would be the better term.

[2] Cp. *Kinship*,[2] pp. 85, 165; Wellhausen, *Ehe*, p. 472. There is a similar distinction between marriage by purchase and voluntary union in the Laws of Manu (3 29-32).

[3] Cp., perhaps, 2 Sam. 17 25 (see Budde, *ad loc.*).

and makes periodical visits to Timnah (15 1). At a subsequent date, when such marriages were no longer recognised, the text was edited to make it appear that the preliminaries were undertaken by the parents (by the addition of "and his father and mother" in *v.* 5*a*; cp. *vv.* 6*b*, 10*a*) in accordance with what had become the prevailing system.

The daughter is an addition to her father's wealth, since by giving her in marriage he is able to add to his flocks and herds (cp. the Homeric epithet "cattle-bringing" applied to girls).[1] The purchase-price is primarily, therefore, a compensation to the father, and makes the girl the property of her *ba'al* ("husband," properly "owner"). This applies not only to the Semites of Arabia and Syria, as Robertson Smith has proved,[2] but as CH, § 129 (*be-el aš-ša-tim*) shews, holds good also for Babylonia, and from the various compounds of *be-el* in the Code, it is clear that the Babylonian husband was as much the *ba'al* of his wife as he was the *ba'al* of his slave, house, ox, sheep, field, corn, or garden (cp. CH, §§ 57, 59, 120, 229, 245, 266, 281). The price paid to the parents (Bab. *tirḫatu*, but Heb. *mōhar*, Ar. *mahr*, Syr. *mahrā*) is originally quite distinct from the *donatio propter nuptias* (Bab. *nudun*[*n*]*u*), which the husband makes over to the

[1] *Kinship*,[2] p. 96. So, without going outside Semitic lands, it is interesting to find that among the Yezidis the daughter who refuses to marry must compensate her father (Chabot, *Journal Asiatique*, 7 (1896), p. 127).

[2] *Op. cit.* p. 92.

wife, or the marriage-portion (Bab. *šeriktu*) which the wife brings with her from her home, and that among the Semites it is simply an act of purchase appears further from the fact that the bride in Syriac is called *mĕkīrtā*, the "sold," and that the Hebrew *'ērasˇ*, "to espouse, betroth" (Deut. 20 7, 22 23, etc.), also found in Aramaic, is, properly speaking, to pay the price and so to gain the right of possession.[1]

The price, however, was not necessarily money; it was frequently paid in kind, or the daughter might be given for deeds of valour (Josh. 15 16; Judges 1 12; 1 Sam. 18 25), or for a number of years of personal service (Jacob and Laban).[2] The letters of Nimmuria to Dušratta and Kallima-Sin in the Amarna Tablets provide an interesting illustration of the preliminaries, and of the gifts that were presented and required by royal personages.[3] The common people were more modest in their benevolence and requirements. The sum agreed upon might be paid in full or in instalments. The father

[1] The root has other meanings of obscure connection, and it is therefore uncertain whether it has anything to do with the late Hebrew *'ārīs*, "tiller" (Schwally, *Christ. Pal. Aram.* p. 115 *sq.*; Wellhausen, *Ehe*, p. 435, n. 3; Robertson Smith, *Prophets*,[2] p. 410). Delitzsch (*Ass. HWB*) cites *ērīšu*, "bridegroom," which is apparently related to the above-mentioned Hebrew and Aramaic usage. In Mohammedan law it is expressly understood that marriage is a sale (Kohler, *Rechtsvergleichende Studien*, p. 22).

[2] So at the present day a boy may be taken as shepherd and receive a girl for his wages (*PEFQ*, 1901, p. 76).

[3] The *tirḥatu* is mentioned in 17 48, 58, 21 23 *sq.*, 23 14.

might refuse his consent until the whole of the stipulated amount has been paid, or half might be paid down and the rest settled upon the wife, to be paid in case of divorce or at the death of the husband. Custom varies as much at the present day as of old. Among kinsmen the price might be made conveniently small—almost to the vanishing-point, but although this is now the case among the poorest nomads, such generosity does not seem to have been practised in early Arabia.[1] It is true that the sum sometimes does not appear to have been paid at all, but it is possible that here the woman occupies a lower standing.[2]

In olden times, no less than at the present day, there must have been innumerable disputes arising out of the purchase-price, particularly in the case of the death of one of the betrothed pair before the marriage-ceremony. The Code of Ḫammurabi, which distinguishes itself by giving three laws dealing with what might be termed "breach of promise" actions, makes no provision for such a contingency, no doubt because the customary usage in such a case was too firmly established to need any authoritative decision. The existence of some traditional usage, however, is proved by the presence of laws which have found their way into the famous Syro-Roman law-book of the fifth century A.D., and thence into Mohammedan legislation. The

[1] Doughty, *Ar. Des.* 1 491; *Kinship*,[(2)] pp. 100-102.

[2] Cp. also Bruns and Sachau, *Syrisch-Römisches Rechtsbuch aus dem fünften Jahrhundert*, p. 59 (§ 41*b*).

Syrian law presupposes that a man has given to a girl or her parents a ring in pledge of the betrothal, and other gifts. Everything turns upon the question whether the girl has been seen or kissed by the man, and this being granted, in the case of death of one or the other, only half is to be returned to the man or his nearest relatives. There is some obscurity attached to the various versions of the law and its relation to Roman legal parallels,[1] which is probably due to its being a modification of native Syrian usage. A very clear trace of the latter, however, is probably to be recognised in the provision appended to the law whereby, if a girl has been "purchased" in her absence, and the complete ceremony has not been performed ("her betrothed has not seen or kissed her"), in the event of death, all gifts must be returned, with the exception of the expenses for "eating and drinking," in which, one must suppose, was included the cost of some betrothal feast.

According to the old Babylonian code, if a man has brought goods (*biblu*) into the house of his father-in-law (*emu*) and has given him the purchase-money (*tirḫatu*), and has afterwards changed his mind (lit. "looked upon another woman" [*zinništu*]), and says to his father-in-law, "Thy daughter I will not take," the father-in-law is entitled to retain all that had been given him (CH, § 159). On the other hand, if the girl's father says, "My daughter I will not give thee," he must return everything in full (§ 160). Provision is even made where the

[1] Bruns and Sachau, *op. cit.*, pp. 259-264.

father's decision has been influenced by libellous slander on the part of a friend of the man; everything must be returned as before, but the slanderer is not permitted to take the girl to wife (§ 161). Among the modern Bedouins, too, where a betrothal has taken place, and the customary ring or presents have been given as a pledge,[1] these must be returned if the betrothal is annulled.[2] The Syro-Roman[3] law is as explicit as the Babylonian: "If a man buys a wife to himself from her parents or relations or any one that is near to her, and gives her a pledge or ring, or any other golden ornament, or money or goods, and after that does not wish to take her as wife, he shall lose the pledge and all that he brought." If, on the other hand, the parents wish to annul the betrothal, and will not give her over to him, they must return to him everything that he brought, but whatever they received on the first day must be given back double.[4]

Whatever independence the wife enjoyed in ancient Babylonia must have been largely due to the law (CH, § 128) under which, if any one has taken a wife and "has not laid down her bonds"

[1] Cp. the presents to Rebekah, Gen. 24 22, 53.

[2] *ZDPV*, 6 90-93. Dareste, *Journal des Savants*, November 1902, p. 588, n. 2, cites a similar provision in the Salic law relating to breach of promise on the part of the man.

[3] Bruns and Sachau, *op. cit.* p. 61.

[4] For cases of deception (as in Gen. 29 25 *sq.*) no provision is made. The rule that the younger daughter is not to be given away before the first-born is enunciated in the Book of Jubilees as a divine law, but there is no hint of it in tradition (28 6, cp. Charles, *aa loc.*).

(*ri-ik-sa-ti-ša la iš-ku-un*), that woman is no wife. As was also customary in Egypt, a contract was required in order that the rights of the newly-married wife might thereby be legally secured, and reasonable provision made in case of her being left a widow or divorced by her husband. The wife brought with her a "present," the dowry or marriage-portion (*šeriktu*), and received from her husband the *nudunnu*, the "gift" or marriage-settlement, the details of which were duly set forth in writing (cp. CH, §§ 150, 171). The Babylonian *nudunnu* would answer primarily to the old Arabic *ṣadāḳ* and *ḥulwān*, and to the Hebrew *nēdeh* and *'ethnan*,[1] of the temporary free marriages, as opposed to the *mahr* or *mōhar* of that type of marriage which gave the husband full rights over the wife.

The degradation implied in the purchase-marriage was removed to a considerable extent by the practice of utilising the purchase-price as a dowry for the wife, either as a gift from the husband or as a settlement from the father upon the daughter. The latter custom appears to have been not unusual in Babylonia from the earliest times (cp. CH, § 163 *sq.*). Under Mohammed the difference between the *ṣadāḳ* and the *mahr* disappears;[2] the *mahr* is looked upon

[1] *Kinship*,[2] pp. 83, n. 1, 93; Wellhausen, *Ehe*, pp. 465 *sqq.* Cp. the "hire" of Arabian marriage (*Kinship*,[2] p. 120, n. 1), and the presents of Judah and Samson (Gen. 38 17, Judges 15 1). The Hebrew terms *nēdeh*, *nadan* (Ezek. 16 33), and *'ethnan* are probably of Babylonian origin (cp. Meissner, *Beiträge zum altbabylonischen Privatrecht* [Leipzig, 1893], p. 149).

[2] *Kinship*,[2] p. 111 *sq.*; cp. p. 121. Similarly the Syriac *mahrā*

as the wife's property, although at the same time a small present from the husband—"be it only an iron ring or half his cloak"—is insisted upon, even as at the present day in Egypt the "price for the uncovering of the face" is always customary.[1] In the New Babylonian kingdom the *nudun(n)u*, originally, as we have seen, the personal gift from the husband to the wife, becomes used for the marriage-portion (*šeriktu*) of the bride,[2] and has passed over into late Hebrew (*nĕdūnyā*) with this meaning. When Rachel and Leah complain that they have no portion or inheritance and are treated as strangers, because their father had sold them and had devoured that which should rightfully belong to them and their children (Gen. 31 14-16, E), it may be legitimately concluded that in Israel, too, it was considered good custom to give the daughter the *mōhar* in the shape of a marriage-portion. The Book of the Covenant implies that some such practice as this was usual, since it enjoins the man who gives a maid-servant to his son to do as is wont with fathers who give their daughters in marriage (Ex. 21 9). So in modern times when the wife brings household furniture it is supplied by the *mahr*, but it is a frequent complaint that the father gives as little as possible towards the dowry.

is used also of the wife's dowry, the Targ. *kĕthūbtā* of the marriage-portion from the father and the husband's settlement, and the Targ. denominative of φερνή of all three (Levy, *Chald. Wörterb.* 2 292a).

[1] Burckhardt, *Ar. Prov.*[2] p. 139.

[2] So, in the New Babylonian law, *KB* 4 323 (col. 3, ll. 32-37), compared with CH, § 163.

In Babylonia the marriage-portion which the wife takes from her home was, like the purchase-price, frequently paid in kind.[1] It was fixed by a contract, and the husband even wrote out a receipt when it had been paid in full. A clause is often introduced to emphasise that the matter has been satisfactorily arranged, a formula that finds a parallel in Egyptian contracts.[2] In one old Babylonian contract a daughter of a priestess of Šamaš takes a man in marriage (*a-na aš-šu-tim u mu-tu-tim i-ḫu-zi*) and receives . . . (?) shekels of silver as *terḫatu* and "is contented." In New Babylonian times we read of brothers "freely" giving their sister in marriage, of a husband "freely" giving his wife a slave worth 1½ mina silver, in addition to 1½ mina in cash. The marriage-portion, too, like the purchase-price, was not always paid at once. It could consist of the rent of a house belonging to the wife's parents, or of an annual share from the fields culti-

[1] The extent of the marriage-portion and purchase-price naturally varied. For the latter, one old Babylonian contract specifies ten shekels; another a slave and a mina and a half of silver. For the marriage-portion, in New Babylonia we find one *GUR* of corn land, or one mina of silver, slaves, or household furniture—further details are collected by Marx from New Babylonian contracts in *Beitr. z. Assyr.* 4 13 *sq.* From Deut. 22 29 one may infer that the purchase-price in Israel was fifty shekels of silver. The general rule that for a widow the amount should be a half (or a third) of that usually paid for an unmarried woman is Mohammedan, and, as regards the value of the marriage-settlement, is found also in the Talmud.

[2] The formula is not confined to marriage-contracts, and has numerous analogies in late Jewish contracts (Pick, *Assyrisches und Talmudisches*, p. 26; Berlin, 1903).

vated by her brothers, and, if unpaid, it could be stipulated that the wife should have the first claim to it from the estate.[1] According to one New Babylonian law, a man who had verbally or by contract promised his daughter a dowry, and had subsequently become poor, might be allowed to pay according to his means, and the law adds that there shall be no cause for complaint between father-in-law and son-in-law.[2] There is a curious development of the law of the marriage-portion in the Syro-Roman law-book, the general purport of which, in spite of a certain obscurity, is fairly evident. If the father has promised his son-in-law a marriage-portion for the daughter, and has written it down in the φερνή, it is to be paid by the third (or fifth) day (after the marriage); the husband writes an acknowledgment, the πλήρωσις, signifying that he has been paid in full; otherwise he receives a fresh deed, and without this documentary evidence his claim upon the wife's family is limited to five years.[3]

We must not expect to obtain such precise details outside Babylonia and Assyria. We hear but little of the marriage-portion in Israel. Laban gives maid-servants to his daughters, and Caleb's daughter, in addition to Kirjath-sepher, acquires, at the instigation of her husband Othniel, springs, without

[1] Marx, *op. cit.* pp. 26 *sqq.*

[2] *KB* 4 323. The dowry is here called *nudunnu*, in accordance with the New Babylonian usage. But the law may rest upon old custom, as, for example, is actually the case with the one immediately following it (cp. p. 87, n. 1).

[3] Bruns and Sachau, *op. cit.* pp. 39, 291 *sqq.*

which land in Palestine is valueless.[1] Solomon's "Egyptian" wife receives from her father the city of Gezer (1 Kings 9 16), and the passage is particularly instructive since it has preserved the old Hebrew name for such a dowry.[2] Written marriage-contracts appear to be quite unknown until late.[3] Where endogamy prevailed, or the wife was not too remote from her kinsmen, she could always reckon upon finding a protector. The possession of a good dowry naturally improved the wife's status, and in the case of an heiress her parents or even she herself could no doubt impose conditions which would not otherwise be accepted. Objection was certainly taken in many cases to the removal of daughters far away from their natural protectors to remote places, and whilst Laban, according to the Elohist, did not scruple to "devour his daughters' inheritance," he is represented by the Yahwist as adjuring Jacob to treat his wives humanely and not to take others (Gen. 31 50). A moral obligation or verbal covenant is referred to in Mal. 2 14 ("the wife of thy covenant") and Ezek. 16 8 ("I sware . . . and entered into a covenant"), probably also in Prov. 2 17, but these need not refer to anything more than a solemn undertaking in the presence of witnesses.

[1] Judges 1 12-15.

[2] *šillûḥîm*, properly the money or parting gift which is given to the bride when she is sent away (cp. Mi. 1 14, a pun upon Moresheth, as though the "betrothed").

[3] Tob. 7 14 refers to a written and sealed document, doubtless containing the details of the marriage-portion (8 21). The sealing of the contract is quite in accordance with Babylonian custom.

Turning now to laws relating to the marriage-portion and settlement, let us endeavour to see what light they throw upon the position of the wife. In the first place, the marriage-portion is the wife's, and on her death goes to the children, and cannot be reclaimed by her father (CH, § 162), but if she dies childless it reverts to her father's house (*bīt a-bi-ša-ma*), *i.e.* her own kindred (Heb. *bēth āḇ*), and the husband has no right to it (§ 163).[1] The latter case is on the assumption that the man's father-in-law has returned the purchase-price. The law, therefore, proceeds to state that if the purchase-price has not been returned, the husband is entitled to deduct it before returning the marriage-portion to her "father's house" (§ 164). In other words, since the wife has died childless, the husband has the right to the price he has paid,[2] whilst the father in

[1] The law reappears in New Babylonian times in a slightly different form :—

*KB* 4 323.

"A man who has given a portion (*nudunnu*) to his daughter, and son or daughter has she not, but fate snatches her away (*šimti ub-lu-uš*) — her portion shall return to her father's house."

CH, § 163.

"If a man has taken a wife, and she has not given him children, that woman has gone to her fate (*a-na ši-im-tim it-ta-la-aḳ*); . . . the portion (*šeriḳtu*) of that woman the husband shall not claim, her portion belongs to her father's house."

According to the Laws of Manu (9 197), the property of the childless wife returns to her parents in the case of the Āsura marriage (one wherein the bridegroom gives wealth to her and to her kinsmen, 3 31).

[2] A form of compensation that is to be found in other lands.

his turn receives back the dowry he had given to his daughter. The modification of this law in Syria in the fifth century A.D. through Roman influence is interesting. The marriage-portion, in the event of the woman's death, passes over to her husband, provided she leaves children. As an innovation, it is provided that if her father is still alive, he and the husband should share it equally. It is not remarkable that the law has been found surprising from the Roman point of view (Bruns and Sachau, *op. cit.* pp. 11, 200 *sq.*).[1]

Now, in Babylonian custom the marriage-portion may be made over for the sole use of the wife or the husband, or it may be joint property. Since there is a possibility of its reverting to the father, it is unalienable during his lifetime, and a case is cited where a slave, who formed part of the wife's dowry, could not be sold without the consent of her parents.[2] It must be given to her in case of divorce or separation. She holds it in trust for her children, and if her husband dies and she marries again, the children of the second marriage—if there are any—share it with those of the first (§ 173 *sq.*). The Syro-Roman law-book allows the wife, if she has no children, and is not under the authority of her

[1] As an illustration of later Jewish law, it may be mentioned that R. Jacob Tam (1100-1171) enacted that if the wife died childless within the first year after marriage the whole amount of the dowry was to be returned to her father. According to a subsequent modification, if she died before the end of the second year only half reverted to her parents (*Jewish Encyclopædia*, 4 646*a*).

[2] Sayce, *Babylonians and Assyrians*, p. 23.

father, to leave half of it to whomsoever she will; the other half is her husband's (Bruns and Sachau, p. 11). Moreover, the marriage-settlement, being originally the husband's property, is not left to the wife to dispose of entirely at her pleasure. If, says the old Babylonian law, a man has made over to his wife, field, garden, house or goods, and has drawn up a sealed contract to this effect, the property remains in her undisputed possession so long as she lives, but it must go to the children when she dies or when, as a widow, she leaves her husband's home to marry again. She is even allowed to give it to a favourite son, but it must be kept in the husband's family, and under no circumstance can she leave it to one of her kin (§§ 150, 171 *sq.*).[1] From CH, § 164, to which reference has already been made, it appears that the marriage-portion was usually larger than the purchase-price. The relation between the former and the settlement made by the husband becomes the subject of legislation in later times, and the Syro-Roman law-book (p. 58), after observing

[1] According to Winckler and Scheil in § 150 the mother may leave all to her favourite son (*a-na mâri-ša ša i-ra-am-mu*) and nothing to a brother, *i.e.* any other son (*a-na a-ḫi-im*). Johns, however, renders, "The mother after her to her children whom she loves shall give, to brothers she shall not give." The interpretation in the text may be justified on the grounds that CH, § 171 *sq.*, proves that the marriage-settlement must go to the sons ultimately, but the wife may give the preference to one of them, even as the father might leave to any one of his sons, "the first in his eyes," a larger amount of property than the rest (§ 165). There are certain cases where the woman's share returns to her brothers, but these apply only to her portion of the father's estate (§§ 178-181).

that in the Western lands the man is expected to settle upon the wife exactly as much as she has brought him, remarks that in the East the settlement is only half the amount.

What has been said regarding the purchase-price, marriage-settlement, and dowry might be further extended if full account were taken of the numerous customary usages illustrated in the contract-tablets of later times.[1] It is important to observe that the practice of returning the purchase-price in the dowry (§ 163 *sq.*) is evidently an attempt to remove one of the humiliating conditions entailed in the *ba'al* type of marriage. In the New Babylonian empire, as in Arabia under Islam, it had become the marriage-settlement, whilst in Israel the father was expected to return it to his daughter in the dowry. In the next place, the father's dowry and the husband's settlement are not at the free disposal of the wife, since the former reverts to the father if she dies childless (§ 163), and the latter cannot be given to any one apart from her children (§ 150). The dowry, therefore, practically becomes the father's contribution to the rearing of his daughter's children. But the daughter has already been purchased by the husband, and, in the event of her dying without children, a crude system of compensation allows him to receive back the price he had paid. These laws must surely represent more than one stage in the evolution of marriage in Babylonia, and it seems probable that the provision in § 163

[1] Reference may be made to Marx, *loc. cit.*; Sayce, *op. cit.* ch. 2.

reflects that type of union where the wife remains in her father's house and the children are counted to her tribe. Under these circumstances the father is naturally expected to provide for his daughter's children, since the husband is only on sufferance, and may belong to another tribe. When, under a different *régime*, the wife passed out of her father's house into that of her husband, there was no objection to her taking with her a dowry, provided she bore children to whom to give it. It may have been considered equitable, therefore, that if the husband had to return his wife's dowry in the event of her bearing no children, the father, for his part, should hand back the purchase-price. Whether this be so or not, these laws must point to a conflict of marriage-systems, and unless it may be conjectured that they reflect a fusion of types corresponding to the *moʿa* and *baʿal* marriages of Arabia, no plausible explanation lies at hand.

According to Peiser, there is evidence that in Babylonia the husband could pass over into his wife's family, and if this is correct, one is tempted to see in it an actual survival of the earlier conditions which we have assumed.[1] But it is necessary to notice that these conditions have not left their mark

[1] *Skizze der babylonischen Gesellschaft* (*Mitteil. d. vorderasiat. Gesellschaft*, 1896, iii.), p. 11. So in CH, § 130, the wife (*aššat*) of a man is still supposed to be dwelling in her father's house, but betrothal makes the woman nominally a wife, and so in Deut. 22 24 the virgin espoused to a man is called his *ēšeth*. In like manner the girl's father is called father-in-law after the betrothal (CH, §§ 159 *sqq.*).

upon the language as has been the case in both Arabia and Israel. The Babylonian husband, as we have already seen, is his wife's *baʿal*, and the usual word to express the "taking" of the wife is *aḫāzu*, which in the New Babylonian period is generally replaced by *rašū*, "possess," whilst Assyrian prefers *liḳū*,[1] corresponding to the Hebrew *lāḳaḥ*. We certainly miss verbs synonymous with the Arabic *malaka* and the Hebrew *bāʿal*, expressive of the bondage of the woman in marriage,[2] but the Arabic and Hebrew linguistic traces of the custom whereby the wife receives the husband in her own tent and tribe,[3] as far as the present writer is aware, are as yet without a parallel in either Babylonia or Assyria. The married woman in her husband's home has scarcely the elevated position that has been claimed for her in Babylonia. If the law allowed her freedom in all that pertained to business, she was in precisely the same position as the modern fellaḥīn women, whose private earnings remain their own property, who may be virtually head of the house and yet subject to periodical chastisement from the husband.[4] In Palestine, no less than in Babylonia, business capabilities advantageously improved the wife's status (Prov. 31 10-31). In Syria, too, according to the law preserved in the

[1] Meissner, *op. cit.* p. 147.

[2] *Kinship*,[(2)] pp. 92, 95. *Bāʿal*, to own, occurs in E (Gen. 20 3), D, and later writings.

[3] *Op. cit.* p. 198 *sq.*

[4] *PEFQ*, 1894, p. 133; 1900, p. 176.

Syro-Roman code, wives were forbidden to bring an accusation (*κατηγορέω*) against their husbands, and the inference is that with this exception women in the fifth century A.D. still possessed the right to appear in law-courts, a privilege which Roman legislation scarcely allowed,[1] but was fully enjoyed in Babylonia from the earliest times.

This independence of the Babylonian woman in business affairs may also be ascribed partly to a theory which fundamentally distinguishes Semitic legal usage from — for example — the Roman. Whenever we find that the wife leaves her home on marriage and settles with the husband, either the woman renounces her own kin and is incorporated into that of her husband, or she retains her own kin and enjoys rights in her new position as the mother of her husband's children rather than by virtue of being his wife. There are, however, no traces of the *patria potestas* among the ancient Semites, and the wife is not even adopted into her husband's stock, and the conclusions that Robertson Smith has drawn from the old Arabian evidence may be illustrated from other Semitic quarters.[2] The modern fellaḥīn woman is still "often considered a stranger in the family to a certain degree. If she

[1] Bruns and Sachau, *op. cit.* p. 198.

[2] *Kinship*,[2] pp. 76 *sq.*; *Rel. Sem.*[2] p. 279. The man has not the power of life or death over his wife that he has over his slave, and in one early Arabian case a man who had accidentally killed his wife was compelled to make compensation to her family (Procksch, *Über die Blutrache bei den vorislamischen Arabern*, p. 61; Leipzig, 1899).

is energetic she can rule the house and command the husband just as well as any Occidental woman may. She is greatly venerated by her children, but is not inseparably attached to the family of her husband."[1] She is "called by her own and by her father's name, never by that of her husband, and as soon as she has a child she takes her name as its mother."[2] The wife takes a by no means prominent part in the mourning for a dead husband—a usage that goes back to early Arabian times,[3] and the husband in his turn pays comparatively slight regard to the death of his wife. In Israel, according to the Law of Holiness, the priest is forbidden to mourn for a dead member of his clan (*'am*), an exception being made in the case of his immediate "kin (*šĕ'ēr*) that is near unto him,"[4] and it is noteworthy that no mention whatever is made of the wife (Lev. 21 1 *sq.*). Marriage removes the girl from her kin as long as her husband lives or she has children by him. The same collection of laws distinguishes between the priest's sister, "a virgin, not given to a man," and the "married sister" (Lev. 21 3 *sq.*).[5] The latter, being outside the kin, may not be mourned for, and so in Lev. 21 12 *sq.* the priest's daughter who has married outside is a stranger and has not the right to eat of the holy

[1] Baldensperger, *PEFQ*, 1900, p. 176.

[2] *Id.* 1901, p. 75.

[3] *Kinship*,[(2)] p. 77, n. 1; cp. Wellhausen, *Ehe*, p. 450, n. 2.

[4] *Šĕ'ēr*, lit. flesh (cp. the Arabic analogies cited in *Kinship*,[(2)] p. 39, n. 1).

[5] Reading *bĕ'ūlath ba'al* in *v.* 4, with Baentsch and Bertholet.

food, but if she is a widow, or has been divorced, she again comes into her father's kin, provided she has no children. The children give the stamp to the mother's kin, and, as we shall see in a subsequent chapter, the position of the woman in the house of her husband is fundamentally based upon the question whether she has or has not children.

# CHAPTER V

## THE FAMILY (*continued*)

Bars to marriage—Babylonian laws against incest—Chastity and slander—Parallel Hebrew laws—Laws of adultery—Ordeals—Childlessness and bigamy—Polygyny in the Old Testament—Sarah and Hagar—Other laws of separation or divorce—Divorce in Israel—Wife's ability to divorce herself—Later Syrian laws.

AMONG the primitive Semites, as among other peoples in an early stage of development, ideas of refinement in all sexual matters were the result of a very gradual growth. The laxity of morals which was in evidence in early Arabia[1] is not without its parallels both in Israel and in modern Bedouin life, and, as is proved by the excesses of the Ištar cult, was particularly prevalent in Babylonia.[2] Certain restrictions, however, appear as early as the Code of Ḫammurabi, and these, viewed in the light of the Babylonian evidence from other sources, have important results for the study of early comparative custom. The most instructive are those which

[1] *Kinship*,[(2)] chap. 4.

[2] Cp. also the story of Eabani in the Gilgameš epic (Barton, *Semitic Origins*, p. 43 *sq.*).

relate to marriage, and it will be convenient, in the first place, to notice the extent to which marriage within the kin prevailed among the Semites.

Bars to marriage spring up under a variety of conditions, and, as Robertson Smith has demonstrated, appear to have been confined originally to the woman's side.[1] To start with the Old Testament: marriage with the half-sister was customary even in Ezekiel's day;[2] it is vouched for in Phœnicia (Tabnith) and Egypt, and one instance from Babylonia of the time of Cambyses is mentioned by Sayce, who rather unnecessarily supposes that it was an imitation of the Persian custom.[3] Moses was the son of marriage between a nephew and a (paternal) aunt (Ex. 6 20, Num. 26 59), and there are several allusions to the deep-seated custom of taking over the (dead) father's wife along with the inheritance.[4] The last-mentioned is the subject of the earliest prohibition of forbidden degrees (Deut. 22 30). Other prohibitions, which appear to belong to another collection of laws, mention only the stepmother, the mother-in-law, and the sister (Deut. 27 20-23). The Law of Holiness (Lev. 18, 20)

[1] *Kinship*,[2] ch. 6.

[2] Ezek. 22 11; cp. Gen. 20 12 (Abraham and Sarah), 2 Sam. 13 (Absalom was probably Tamar's uterine brother, hence his intervention). In the Book of Jubilees marriage with the sister ceases with Kenan (4 14 *sq.*).

[3] *Babylonians and Assyrians*, p. 31. Illustrations from other fields are given by Frazer, *Pausanias*, 2 84 *sq.*

[4] For the practice in general, cp. Gen. 35 22, 49 4; 2 Sam. 3 7, 16 22; 1 Kings 2 22.

extends the list of restrictions, although, probably through an error, it does not include the father and daughter; it will be noticed that even for the marriage of nephew and aunt there is no penalty, but the punishment of childlessness is threatened (20 20; cp. *v.* 21). These prohibitions are no doubt to be regarded as representatives of successive advances in the marriage law of Israel.[1]

In early Arabia the strictest bars seem to have been restricted to the mother, the uterine sister, and the daughter, to which Mohammed adds prohibitions against the mother-in-law and stepdaughter, and, as regards the wife, the father-in-law and stepson. These and other additions, as far as their principle is concerned, may be of Jewish origin, although, as Robertson Smith points out, this cannot apply to the details.[2] Marriage between cousins has been

[1] So Robertson Smith, *Old Testament in the Jewish Church*,[2] p. 370, n. 1; Carpenter and Harford-Battersby, *The Hexateuch*, 1 223 ("Without laying too much stress on the argument from silence, it seems natural to see in the increasing stringency of D, and still more of the Law of Holiness, an evidence of a progressive strengthening of old custom into detailed law. No doubt the prohibitions in the Law of Holiness had been frequently issued as oral *tōrōth* before being codified, but the crystallisation in the code is the significant fact"). *Gillāh kānāph* ("uncover the skirt") could be used of legitimate as well as of illicit intercourse, and has Arabian analogies (Robertson Smith in Driver, *Deut.* p. 259; similarly *gillāh ʿerwāh*, Lev. 18 6; cp. Freytag, *Ar. Prov.* 1 234).

[2] *Kinshiṗ*,[2] pp. 195-197. For the prohibitions among the modern fellaḥīn, cp. *PEFQ*, 1894, p. 132 *sq.*; 1900, p. 182. The bars mentioned by the Syro-Roman law-book comprise uncle and niece, aunt and nephew, son and father's wife (stepmother) or concubine, deceased brother's wife, deceased wife's sister; the possession

and still is particularly common in the East (cp. Gen. 24 4, 29 19; 1 Kings 14 31 and 15 2), and the tie between them is closer and more sacred than that between an ordinary couple (Burckhardt, *Ar. Prov.*(2) no. 620). In early Arabia, the man had the first claim to the hand of his cousin on the father's side,[1] and this claim is even enforced at the present day.[2] In Babylonia, on the other hand, the contracts reveal scarcely any traces of intermarriage, and perhaps the only instance even of the marriage of cousins appears in the genealogy of the famous banking-house of Egibi, where Nergal-itir marries Sukaiiti, the daughter of his father's brother.[3]

of wives in common is strictly forbidden (Bruns and Sachau, *op. cit.* pp. 254 *sqq.*, 279 *sq.*). Fellowship in women (polyandry) has left traces in Arabia (*Kinship*,(2) pp. 156 *sqq.*), and appears to have been in vogue among the lower classes in Egypt (Spiegelberg, *Arbeiter und Arbeiterbewegung im Pharaonenreich unter den Ramessiden*, p. 10 *sq.*; Strassburg, 1895).

[1] *Kinship*,(2) p. 163 *sq.* This intermarriage was sometimes objected to on the score of health (Wellhausen, *Ehe*, p. 441; cp. *ib.* p. 436 *sq.*).

[2] In one instance a man demands his cousin who had been taken in marriage by another. The husband thinks it a matter of compensation, but the cousin requires either the girl herself, or four other daughters in her stead. As a preliminary, it is discussed whether the case should be tried by Bedouin or Mohammedan law. According to Mohammedan law, a second daughter offered by the father would be sufficient reparation, whereas Bedouin right annuls the marriage, or at least entitles the claimant to his cousin's dowry. Ultimately the cousin's claim was considered valid, since, although he has put off marrying her from year to year, the girl ought to have taken steps to force him to make her his wife (Lady Anne Blunt, *Bedouin Tribes of the Euphrates*, 2 105 *sqq.*).

[3] Kohler and Peiser, *Babylon. Rechtsleben*, 4 22 *sq.*

Sayce, however, in addition to a marriage with the half-sister (referred to above), also adds instances where the bride is the sister-in-law and the niece.[1]

The prevalence of greater freedom in the older times is proved by the Code of Ḫammurabi, which contains four specific laws on the subject:—

(*a*) The man who has known (*il-ta-ma-ad*) his daughter is driven out of the city (§ 154).

(*b*) The man who has betrothed a bride (*kallatu*)[2] to his son, and has had intercourse with her (*i-na zu-ni-ša it-ta-ti-il-ma*), receives a punishment which varies according to whether the marriage has or has not been consummated. In the former case, the man is bound and cast into the water (§ 155); in the latter, he pays half a mina of silver and returns to her all that she has brought from her father's house, and she is free to marry the "man of her heart" (§ 156).[3] The law, as it stands in § 155, reads, "that man one shall bind, and cast *her* into the waters" (Johns). Father Lagrange's

[1] *Op. cit.* p. 31.

[2] Presumably the young betrothed could be taken to her father-in-law's house before marriage; at all events, the married son may remain in his parents' house, and in this case they receive the wife's dowry (cp. Kohler, *Beitr. z. Assyr.* 4 424). *Kallat* in Heb. is used of the betrothed or the daughter-in-law, in Syr. of the bride or daughter-in-law, and in Ar. (*kanna*) of a man's own wife, or that of his son or brother (cp. *Kinship*,[2] p. 161; Barton, *Semitic Origins*, p. 65).

[3] Under Islam, also, a man was forbidden to marry a woman who had been his son's wife (*Kinship*,[2] p. 52); cp. Lev. 20 14. In Amos 2 7 the allusion is to immorality in the service of Ashtōreth (Ištar).

suggestion,[1] that both were bound and cast into the water, on the analogy of the penalty for adultery (§ 129), is plausible, but Scheil's conjecture (which Winckler adopts), that "her" is an error for "him," is to be preferred, and is supported by the parallel law in § 130. Here, the man who is caught violating another man's wife (*aššatu*), who is living in her father's house, and has not known the male (*zi-ka-ra-am la i-du-u-ma*),[2] is put to death, and the woman goes free (§ 130).

(*c*) Intercourse with a man's own mother (*ummu*) is punished by burning the pair together (§ 157).[3]

(*d*) The man who has intercourse with her "who brought him up" (*ra-bi-ti-šu*), and has borne children, is cut off from the paternal home (*bīti a-ba*; § 158). Whether the man is an adopted son or the woman is a stepmother is not stated, but it is remarkable that the penalty is comparatively light. Have we here a survival of the old custom of marrying the widowed stepmother?[4]

In Babylonia the chastity of the wife is expected, and can even be certified in the marriage-contract;[5]

[1] *Revue Biblique*, 1903, p. 38, n. 1.

[2] Cp. Heb. use of *yādaʿ*, especially with *miškab zākār* (Judg. 21 11 *sq.*, Num. 31 17 *sq.*). Note the synonymous *iltamad* (CH, § 154).

[3] The grossness of the crime appears also from the solemn formula of divorce in Arabia (*Kinship*,[2] p. 193). For the nature of the punishment, cp. p. 106 *sq.*

[4] So also Orelli, *Gesetz Hammurabis*, p. 20.

[5] In a contemporary tablet quoted by Pinches, *op. cit.* p. 173 *sq.*, it is declared: "Ana-aa-uzni is a virgin, no one has anything to say

adultery is severely punished, and the libellous slanderer meets with a just reward. The wife who has been slandered by her husband, but has not actually been caught in *flagrante delicto*, may declare her innocence by a solemn oath,[1] and is free to return to her house (§ 131). For the slight that has been cast upon her she is allowed to separate from her husband. But if that woman "has had the finger pointed at her on account of another male," but as before there is no clear proof, she must plunge into the holy river (§ 132). Here the presumption is that the scandal has become public property, her guilt is more probable, and the decision is left to the river god (*ilu nāru*). From the nature of the ordeal, and on the analogy of the law in § 2, it would seem that if she floated it would be concluded that the deity was not angered against her, and that she was innocent (p. 64 above).

The Code does not forget the slanderer (cp. Lev. 19 16, Ps. 101 5). The man who has caused a finger to be pointed against a votary[2] or a man's wife, and has not proved his case (*la uk-ti-in*), is brought before the judge and is branded on the forehead (§ 127). The precise nature of the penalty (*mu-ut-ta-zu u-gal-la-bu*) is not clear. It is conceivable that the forelock, the mark of the freedman, was cut off, but the same word is used elsewhere of the branding

against Ana-aa-uzni"; cp. p. 177. The subject is treated *ad nauseam* in the Talmud (*Kĕthūbōth*).

[1] *ni-iš i-lim i-za-kar-ma*, *i.e.* "swear by the name of God."

[2] See below, p. 147 *sq.*

of slaves.[1] When the wife is actually caught in the act of adultery with a male (*zi-ka-ri-im*), the pair are bound together and thrown into the water, unless the "owner of the wife" (*be-el aš-ša-tim*) would preserve his wife, or the king his servant (*ardu*; § 129). Drowning, it will be noticed, is also the penalty for the wife who repudiates her husband and says, "Thou shalt not possess me,"[2] whilst in one New Babylonian contract the wife who is an adulteress is put to death with an iron sword.[3] Intrigue comes into consideration in § 153 (see below), where the wife who has plotted her husband's death for the sake of another is impaled.[4]

The early codification of such laws as the foregoing stands in marked contrast with what is found elsewhere among the Semites. The lack of refinement in ancient Israel need not be dwelt upon; it is sufficient to recall the stories in Gen. 19, Judg. 19, etc. Even the restrictions in Lev. 21 7, 14, apply only to the priests. The old law in Ex. 22 16 *sq.* regards the seduction of a virgin as an injury to the father, and the man must pay the father the purchase-price (*mōhar*) and marry her.[5] The amount of the

[1] In Arabia the forehead of slaves and captives was shaved (Wellhausen, *Arab. Heid.*[2] p. 198).

[2] § 142. In the old law cited in *KB* 4 320, the formula is, "Thou art not my husband."

[3] Marx, *op. cit.* p. 7. The verb is *tamātu*; cp. Heb. *yūmāth* in the laws Ex. 21 20, Lev. 24 21, etc.

[4] *i-na ga-ši-ši-im i-ša-ak-ka-an-nu-šim.* In the Syro-Roman law-book intrigues are regarded as especially due to intermarriage (Bruns and Sachau, *op. cit.* p. 33, § 108).

[5] So in Egypt; cp. *Revue Égyptologique*, 1 117 *sq.*

price rests with the father, and if he refuses to give his daughter in marriage, the man must pay the average customary sum ("according to the price of virgins"). It is presupposed that she is not already betrothed (*'ōrāśāh*), otherwise the offence would doubtless be equivalent to adultery, and the man would have to settle with her husband, or be put to death (cp. Deut. 22 23-27). The account of the seduction of Dinah (Gen. 34) is unfortunately too composite, and the older elements too fragmentary, to be used as safe evidence for the actual working of old custom in Israel. Shechem, according to both J and P, offers the purchase-price, and, according to the latter, includes an additional gift (*mattān*) as compensation. The older narrative does not actually state that this was accepted, but that it was becomes highly probable from *v.* 26 (J), where Dinah is in Shechem's house; there was no occasion, therefore, for the blood-revenge that ensued, and Gen. 34 30 *sq.*, 49 7, prove that it was distinctly opposed to the custom. At the present day, one or both of a guilty pair may be killed on the spot, or, as in old Israel, the father can force the man to marry his daughter after paying the purchase-price. Blood-revenge follows most naturally when no attempt is made to offer compensation.[1]

The old law is developed with greater precision in Deut. 22 23-29. The seducer of a damsel, a virgin,

[1] Doughty, *Arabia Deserta*, 2 114; Jaussen, *Revue Biblique*, 1901, p. 596.

who is not betrothed, pays fifty shekels of silver to the father, and is obliged to marry her without the right of divorce (*v.* 28 *sq.*). If she is betrothed, and the presumption is that she was unwilling, he is put to death, and the girl is blameless (*vv.* 25-27). If the crime has not been committed in the open field (cp. Ruth 2 22), but in the crowded city, the presumption is that she consented, and both are stoned to death (*v.* 23 *sq.*), the penalty for adultery.[1] It will be observed that the purchase-price, which, in the Book of the Covenant, was either fixed by the father or was according to customary usage, is now specified. In addition to this, the law in *v.* 28, in agreement with *v.* 22, implies that the pair are found in the act. This is particularly striking, not only on account of its parallelism with CH, § 130 ("one has caught him"; cp. § 129, and contrast § 131 *sq.*), but also because of its development in later times, when the law came to require the minutest details before adultery could be legally punished.[2] Hence then as now the injured husband commonly took the revenge into his own hands.[3]

The growing strictness of the law of chastity

[1] A fragment preserved in Lev. 19 20 deals with the case where the woman is not free, but belongs to her master. The meaning is rather obscure; apparently there is a judicial inquiry (*biḳḳōreth*, AV, "scourging," follows Jewish tradition and the Mishnah), but the man is not put to death because she is not a free woman (so following the text as emended by Baentsch).

[2] Cp. *PEFQ*, 1897, p. 127.

[3] Prov. 5 9 (the injured husband is fierce, *'akzārī*), 6 34 *sq.* (will not always accept compensation, *kōpher*).

in Israel is illustrated by three closely-related narratives in the patriarchal history, which are characterised by a common motive. In Gen. 12 10-20, a narrative which seems to owe its inclusion to J, Abraham does not consider it reprehensible that his wife should have been taken into Pharaoh's house. Gen. 26 6-11, a parallel story, also due to J, relates a similar incident of Isaac and Rebekah in Gerar, and shows that adultery would have entailed blood-guiltiness (*'āšām*, primarily a fine or compensation). Finally, E's story of Abraham at Gerar in Gen. 20 1-17 displays a great advance in morality; the sin of adultery is condemned in the most emphatic terms, and it is regarded as a capital offence.[1] The stress here laid upon the iniquity marks a stage in ethics comparable only with the Decalogue, where adultery is prohibited, and with the Deuteronomic code (22 22), where also the penalty is death (stoning; cp. Ezek. 16 40, 23 47; John 8 5).[2] In later times the death-sentence was carried out by strangulation;[3] burning, the penalty for the erring priest's daughter (Lev. 21 9) or for union with a woman and her mother (Lev. 20 14), was exceptional, and was scarcely common in old

[1] Gen. 12 10-20, though probably due to a secondary element of J, has preserved older features. Pharaoh's presents to Abraham in 12 16 (as purchase-money) are given as compensation in 20 14-16; in 26 13 Isaac's wealth is due to his own labours.

[2] Cp. Job 31 11: it is wickedness (*zimmāh*; cp. Lev. 18 17, 20 14) and a punishable offence.

[3] This was assumed to be the form of death whenever it was not explicitly stated (Mish. *Sanhed.* 11 1).

times (but cp. CH, § 157, above). The Book of Jubilees (20 4; cp. 41 25 *sq.*) enacts burning for all fornication, a clear divergence from Old Testament law, which scarcely finds support in Gen. 38 24. The Talmudists were forced to assume that Tamar was the daughter of a priest, and the same solution of the difficulty is accepted by the Targum Jonathan.[1] This is of course a mere conjecture, and an unnecessary one. Unchastity is a stain upon the honour of the kin, and the relatives themselves are expected to take vengeance upon the guilty woman; it is a personal matter, therefore, and before the introduction of legal penalties the punishment can take any form the avenger pleases.[2]

As regards slander and accusation, it is not until Deut. 22 13-21 that the law intervenes. But the law in question is hardly to be regarded as entirely an innovation of the Deuteronomic reformation; it is evidently a survival of primitive custom—which is still in existence in the East—but its most important feature is that it takes the charge out of the hands of the husband and leaves the decision to the elders. If the accusation is false the man is publicly reproved (chastised? *yissar*), and is ordered to pay a hundred shekels to the father-in-law, but if it is

[1] Cp. Charles, *The Book of Jubilees*, p. 230. In Jubilees 41 25 *sq.* the penalty is enforced more particularly in the case of the mother-in-law and daughter-in-law.

[2] Cp. *PEFQ*, 1897, pp. 125-127. Burning as a penalty suggests a sacrificial rite, and, indeed, as Robertson Smith has shown, the execution of criminals is frequently carried out on the analogy of a sacrifice (*Rel. Sem.*(2) pp. 285, 418 *sqq.*).

proved that the wife had been guilty of unchastity before marriage she is stoned to death by the community. The punishment of the wife is in agreement with 22 24, and in view of what was actually written down in some Babylonian contracts, it may perhaps be inferred that some guarantee similar to that quoted above (p. 101, n. 5) was made by the father to the husband. The amount paid by the slanderous husband, it will be noticed, is exactly double the penalty for violation (*v.* 29), and in neither of these cases is the husband allowed to divorce the wife.

A man suspected of adultery by a woman's husband could no doubt be made to take an oath of innocence, as is still the custom.[1] A similar procedure might be adopted by the husband towards a suspected wife (cp. § 131), although where there were the strongest grounds for suspicion a rite preserved by P in Num. 5 11-31[2] subjects the woman to an ordeal.[3] The test, analogous to that in CH,

[1] Cp. *PEFQ*, 1897, p. 131 (a man accused of adultery swears his innocence in the Church of the Nativity in Bethlehem).

[2] Two distinct rituals have probably been fused into one: a curse upon the guilty woman, and an ordeal (*Oxford Hexateuch*, *ad loc.*), but a perfectly satisfactory separation of the two seems impossible (cp. G. B. Gray, *EBi.* "Jealousy, Ordeal of"). Ordeals for suspected wives are cited by W. R. Smith, *Rel. Sem.*(2) p. 180, n. 3; *Kinship*,(2) p. 123; in one case a charge of unchastity which is presumed to be false is to be referred to a diviner for an authoritative decision.

[3] The grounds upon which the suspicions are based are given in *v.* 13; the additional reason in *vv.* 14, 30 ("*or* the man over whom passeth the spirit of jealousy") is scarcely original.

§ 132 (above), was by water, but instead of leaping into the holy river, the woman is obliged to drink of a potion which, on the principle previously noticed in chap. 3 (above, p. 64), is only harmful to the guilty.

Later Jewish law modified the severity of the penalty for adultery, and by requiring the clearest and most convincing proofs of guilt practically rendered conviction impossible. The husband, however, in no way suffered under this new development, since his freedom of divorce gave him every power of putting away the wife whose chastity he suspected. The initiative, it will be noticed, is in the hands of the husband, and the principle is the same as in CH, § 131, where the suspected wife who takes the oath of purgation returns to her father's house, not as a punishment, but presumably in consideration of the humiliation entailed by the false charge that had been brought against her. Since, therefore, the laws in Deut. 22 13-21 and Num. 5 11-31 do not allow the innocent wife to leave her husband and return to her home, it seems a fair inference that they have modified older custom in accordance with that tendency to place restrictions upon divorce and separation which is characteristic of the Deuteronomic code. This being granted, the assumption that older law under these circumstances gave the wife her freedom seems to throw some light upon the amount of the penalty in Deut. 22 19. The law fixes it at exactly double the purchase-price (*v.* 29), that is to say, it is the

purchase-price—which by this time probably formed the wife's dowry — together with an additional (equivalent) sum as compensation or for her divorce.[1]

There are other grounds for separation or divorce besides adultery, and a consideration of them will illustrate what has been said above in regard to the position of the woman among the Semites. To trace the development of Semitic marriage-systems would take one too far afield from the Code of Ḫammurabi, although the investigation is one that is most intimately bound up with the question of divorce. As a general rule, however, it may be held that wherever the *ba'al* type exists, the woman is not a free agent, but is almost entirely deprived of the right of claiming divorce, whereas if she is not purchased, but can give herself away in marriage and consult her own inclinations, the husband is retained and dismissed at will.[2] Under the *ba'al* type, further, the woman's status naturally depends upon the question whether she is her husband's only wife or whether she shares the position with others, and if polygyny is disallowed by the law, it is necessary to ascertain whether this was evaded by the abuse of the husband's freedom to obtain divorce.[3]

"To have a numerous progeny was the desire of

[1] Cp. CH, § 138, p. 119 *sq.*, below.

[2] *Kinship*,[(2)] pp. 80 *sqq.*; cp. above, chap. 4, p. 74.

[3] As is frequently the case under Mohammedan law (cp. Doughty, *Ar. Des.* 2 25 *sq.*).

every one in ancient Israel,"[1] and the desire is shared by all the Semitic races. To the father, the possession of sons adds warriors to his tribe, or, in agricultural communities, brings fresh hands to help in the field; daughters, if less welcome, were an addition to his property, since, as we have seen, the father receives a compensation when he gives them away in marriage. To the mother, it is the children who add to her dignity and authority; they immeasurably increase her status, since by granting her husband sons her chances of being divorced are greatly diminished.[2] Childlessness is still one of the commonest reasons for divorce or for taking additional wives (under the Mohammedan law) in the East, as it was four thousand years ago in Babylonia. A small series of laws concerns itself with this possibility. It shows that if a man's wife[3] was childless, he was allowed to take a concubine (*šu-ge-tum*) and bring her into his house, but he was not to place her upon an equal footing with the wife (§ 145). Or the wife might give her husband a maid-servant (*amtu*), and if she brought up children (*marē uš-tab-ši*), he was forbidden to take in addition a concubine (§ 144). Here it is not explicitly stated that the wife is childless, and elsewhere in the Code (§ 170 *sq.*) it is presumed that a man has children by both the wife and the maid-servant.

[1] Benzinger, *EBi.* "Family," § 7.

[2] This is the point of Leah's words in Gen. 29 34, 30 20.

[3] The ideogram is explained as *aššatu* by Scheil and Winckler; Johns, however, renders "votary." See below, p. 147 *sq.*

Either the maid-servant or the concubine might be legitimately taken, but not both, and the law sees that the position and dignity of the wife are not injured thereby. The maid-servant who places herself upon an equality with her mistress (*be-el-ti-ša*) may be "sold for money" if childless, but if she has borne[1] children to her master, "her mistress, because she has borne children, cannot sell her for money, but shall put a 'mark' (*ab-bu-ut-tum*) upon her, and reckon her among the female slaves" (§ 146 *sq*).[2]

The man, therefore, may take a concubine when his wife is childless, or his wife may give him a maid, but under no circumstances is either of them of equal standing with the lady of the house. From the point of view that childlessness is a justifiable cause for bigamy, another law is easily explained. A man whose wife has been seized with a sickness (*la-aḫ-bu-um*),[3] and has set his face to marry a second, may do so, but he is not permitted to put away[4] the first one; she must remain in his

[1] There is usually a difference in the wording: the wife grants children (§§ 137, 145), whereas the concubine bears them (*alādu*, § 146 *sq*.).

[2] Although the same word (*amtu*, pl. *amāti*) is used in both cases, a distinction is evidently made between the servants and the slaves branded with a mark. For the penalty here referred to, cp. *Beitr. z. Assyriol.* 4 11, and p. 102, above. Winckler, however, translates "servitude" (properly, "shackles").

[3] A "wasting" sickness (cp. Syr. *nĕḫeb*)? Winckler "climacterium?"

[4] *ezēbu*; in Heb. *ʿāzab* (leave, forsake) is used of a divorced wife in Is. 54 6 (*iššāh ʿazūbāh*); in Ethiopic of a widow. The ordinary

house,[1] and he must give her maintenance as long as she lives (§ 148). If, on the other hand, this woman (*zinništu*) is unwilling to live with him, he must pay her the marriage-portion (*šeriktu*) which she brought from her father's house, and she is free to depart (§ 149). In another law (§ 167), where a man has had two wives it is explicitly stated that he has taken the second after the first "has gone to her fate" (*a-na ši-im-tim it-ta-la-ak*), and although in certain New Babylonian contracts we find a case where a man married two sisters, there is nothing to show that this comes under the head of bigamy, and Marx plausibly argues that the first had died before the second was taken in marriage.[2]

CH, §§ 144-147, are particularly interesting, not only for the biblical parallels, which will be considered presently, but also for the illustration they receive from a couple of contemporary documents relating to the marriage of Arad-Šamaš with Taram-Sagila and her sister Iltani. The two are not blood-sisters; probably Iltani was adopted by the father of Taram-Sagila, although this cannot be regarded as certain.[3] Iltani's position is inferior; her

Hebrew words for "to divorce" are *šillaḥ* (Deut., Jer.), and later, *gāraš* (in *gĕrūšāh*, Lev. 21 7 14, Ezek. 44 22, etc.).

[1] *i-na bît i-pu-šu*, "in the house he has built" (*i.e.* not elsewhere; Winckler).

[2] *Beitr. z. Assyr.* 4 24 *sq.*

[3] Pinches, *The Old Testament*, p. 174 *sq.*; Sayce, *op. cit.* p. 27 *sq.*; cp. Meissner, *op. cit.* no. 89. In one contract they are given in marriage by their father Uttatum (Meissner, Šamaš-šatum), in the

duty is to wash the feet of her sister and to obey her in all things; apparently she is Taram-Sagila's waiting-maid. In one contract, the ordinary stipulations are made in case of repudiation: he may throw them down from the tower if they deny him, and can pronounce the formula of divorce and send them away "from house-goods." The other is drawn up for Iltani, but applies to both. The children they have borne and shall bear are "their children" (recognised by him). Clauses are introduced against the repudiation of one sister by another. Arad-Šamaš may divorce his wives for one mina of silver, and if they deny him he may strangle (?) them and throw them into the river (*a-na nāri*). The wives bring no dowry, and Taram-Sagila has a seat in the "house of her god," *i.e.* the house of Marduk—it is possible that they were connected in some way with the temple. In another case, Bunini-ābi and Bēlisunu his wife buy Šamaš-nūri "for Bunini-ābi a wife, for Bēlisunu a servant"; the price paid is five shekels, and the only stipulation is that Šamaš-nūri shall not repudiate the authority of her mistress. If she does this, it is agreed that they shall shave off her hair and sell her for money.[1]

Nowhere in the Semitic world do we find polygyny so restricted as in Babylonia. In the

other Iltani is the daughter of Sin-abu-šu, who is one of the witnesses to the first deed.

[1] Pinches, *op. cit.* p. 185. The penalty is the same as that in Iltani's contract.

Old Testament, with which we are here more closely concerned, there are numerous references to the custom, particularly during the Monarchy, and if the example was set by the kings we may be sure it was followed by the wealthy (2 Sam. 5 13, 1 Kings 11 1-3; cp. Deut. 17 17). Undoubtedly the ideal marriage in Israel, as represented in the prophets' figures of Yahwè's relation to Israel and in the later gnomic references, is monogamy,[1] but one must hesitate before assuming too confidently on the strength of Gen. 2 24 that this ideal reaches as far back as the time of the Yahwist. Jastrow's theory that in the original form of the narrative in Gen. 2 man was like Eabani in the Epic of Gilgameš, and that *vv.* 21 *sqq.* reflect the institution of a new order, at all events has this in its favour, that it is supported by the frequency with which unnatural offences are denounced throughout the laws.[2]

Of the earlier examples of polygyny one or two may require sifting. Gideon contracted a marriage of the *ṣadīḳa* type at Shechem, and no doubt elsewhere; the reference to his "many wives" in Judg. 8 30 belongs to a post-exilic hand, and is perhaps based upon 9 2 (E). Bigamy was regularly practised, and its extent is proved by the fact that the word for a fellow or rival wife is common to all the Semitic languages.[3] It is not to be supposed

[1] Cp. Benzinger, *EBi.* "Marriage," § 5.

[2] Exod. 22 19; Lev. 18 23, 20 15 *sq.*; Deut. 27 21. See Barton *Semitic Origins*, p. 43 *sq.*

[3] Heb. *ṣārāh*, denominative "to take a second wife" Lev. 18 18.

that the custom only prevailed where the first wife was childless (as in 1 Sam. 1 2, Gen. 16 2, cp. 11 30, 30 1 *sqq.*, 9), since the only law on the subject is of the time of the Deuteronomic reformation, and its sole concern is to ensure that the superior rights of the first-born of the first wife are not ignored (Deut. 21 15-17). A distinction is to be observed between the marriage of two or more free wives, and the custom of taking in marriage the maid-servant (*āmāh*). In the former case the two are on an equality, although the tendency of the age did not render the position of the first, if childless, a tolerable one;[1] in the latter case, especially if the mistress (*gĕbéreth*, Gen. 16 4) herself had given her husband a maid-servant, it was to her interest to see that her own dignity did not suffer.

The story of Sarah and Hagar is a case in point, and affords an interesting commentary upon ancient custom when considered in the light of CH, §§ 144-147. There are two parallel versions, Gen. 16 and 21, from J and E respectively. In the former, Hagar's contempt for her childless mistress moves Sarah to appeal to Abraham for justice, and

In Ass. *ṣirritu* = *tappattu*, "female companion" (Delitzsch, *Ass. Handwörterb.* p. 712 *a*).

[1] *ed-durra murra*, "the second wife is bitter," runs a modern Arabic proverb (L. Einsler, *Mosaik aus dem heiligen Lande* (Jerusalem, 1898), p. 80, no. 80); cp. 1 Sam. 1 6, 10. Illustrations of the working of the system are given by Baldensperger, *PEFQ*, 1899, p. 139, and Jaussen, *Revue Biblique*, 1901, p. 597 (a woman, no longer young, at the funeral of her only son, persuades her husband to take another wife).

Abraham's words in 16 6 are so far quite in conformity with the law in CH, § 146; Hagar is in her hands, let her do to her as she pleases. Compelled by Sarah's harsh treatment, Hagar flees from the face of her mistress into the desert. According to the Elohist's account, Hagar's child has been legally recognised by Abraham (as heir, 21 10), and Abraham condemns Sarah's proposal to expel the child and his mother, and only consents to it after receiving a revelation. The result, it will be noticed, is the same in both instances. Naturally, these stories of the origin of the Ishmaelites, whose descent is thus regarded as inferior to that of the Israelites,[1] cannot be made to mean too much. It is not safe, therefore, to assume too confidently that Sarah's persecution, which Abraham tacitly allowed (according to J), was, under the circumstances, contrary to usage[2]—CH, § 146, it will be remembered, only empowers the mistress to degrade the arrogant handmaid—or that Abraham's hesitation in the story as related by E was entirely due to the fact that Ishmael had already been recognised as his son and heir. But it is permissible perhaps, on the other hand, to trace a growth in the development of custom between J and E. In J, Sarah's persecution forces Hagar to flee, and Abraham does not interfere; in E, Sarah's intention is grievous in the patriarch's eyes, and he

[1] Noeldeke, *EBi.* "Hagar," § 1.

[2] Contrast the comparatively humane treatment of captive women in Arabia even before Islam (cp. *Kinship*,[3] p. 89 *sq.*).

only permits it to be carried out after receiving the divine command. This growing tendency towards a more humane treatment of the maid-servant is quite in accordance with the Book of the Covenant, where her status is legally secured, and the harmonising addition in J's narrative (16 9-10) not only reconciles the two stories, but effectively softens the harshness of the incident by indicating that Hagar returned again to the tent of Abraham.

That the husband is allowed to take a second wife when the first suffers from an incurable sickness (CH, § 148 *sq.*, p. 112 above) is a provision which finds an interesting parallel in the Syro-Roman law-book. Here, if the wife suffers from some affliction "of the sort that separates the wife from the man," and he desires to put her away and take another, he must give her the marriage-portion and her settlement. If, however, he does not wish to divorce her ("by reason of their first love"), he must set apart for her a dwelling-place, and her maintenance according to her due.[1] Closely related to this is the law for the wife who is found to be possessed with a demon (Syr. *šēda*). An inquiry is held in order to determine whether the evil possession dates from before or after the marriage. If the latter, she takes on her divorce her marriage-portion and his settlement; otherwise, it is assumed that it must have been known to her parents, and that the man has been deceived, and the wife consequently receives only her marriage-portion.[2] These laws, as Bruns

[1] Bruns and Sachau, *op. cit.* § 115. [2] *Op. cit.* § 114.

observed, contain scarcely more than an echo of the corresponding Roman practices, which is not to be wondered at, since it now becomes possible to conclude from the discovery of the Code of Ḫammurabi that they are survivals of ancient custom, with the introduction of slight modifications adapted to the different conditions of the age. The relationship of the law of separation from the sick wife to CH, § 148 *sq.*, is undeniable, although it will be noticed that the latter says nothing about the settlement. Probably it was an understood custom that the wife took this also, since we find from other laws in the Code that when the husband "has set his face" (*pa-ni-šu iš-ta-ka-an*) to put away the wife, she invariably receives some additional compensation over and above the marriage-portion which is returned to her.[1] The laws in question (CH, §§ 137-140) presuppose no offence on the part of the woman, and fall under two heads. The wife or concubine who has borne children receives her marriage-portion and the usufruct (*mu-ut-ta-at*) of field, garden, and goods in order to bring up the children. When they are grown up these give her a share corresponding to that of one son, and she can marry the "man of her heart" (*mu-tu li-ib-bi-ša*).[2] On the other hand, if it

[1] In one old contract the husband gives Šaddašu his divorced wife a female slave, with full right to possess any children which the latter may bear. He recognises Šaddašu's daughter Zabinikbiša, and undertakes that his sons shall have no claim upon her henceforth (*KB* 4 47).

[2] § 137; cp. the extract quoted by Meissner, *op. cit.* p. 150, where the divorced wife is free to marry whomsoever she will.

is a young wife[1] who has not borne children, the husband must give her the amount of her purchase-price (*tirḫatu*), and her marriage-portion which she has brought from her father's house, and shall put her away (*i-zi-zi-ib-ši*, § 138).[2] If there was no purchase-price he must give one mina of silver for the divorce (*uzūbu*), or, if he be a poor man,[3] one-third only (§ 139 *sq.*).

There are other divorce-laws to notice. If the wife of a man who is living in his house has set her face to go out, and has acted extravagantly, "has wasted her house" (*bīt-za u-za-ap-pa-aḫ*), and has neglected her husband, one can bring her to justice, and if her husband formally divorces her, with the words "I repudiate her" (*e-ṣi-ib-ša*), she goes her own way and receives no *uzūbu*. If the husband does not pronounce this formula, and takes another woman (*zinništu*), she remains in his house as a maid-servant (§ 141). The wife, too, has the right to claim divorce. If a woman hates her husband[4] and says, "Thou shalt not possess

[1] *ḫīrtu*, "the elect" (Delitzsch). The verb used is *alādu* ("to bear," not "to grant"; cp. p. 112, n. 1).

[2] One may compare Deut. 22 19, where the man who unjustly charges his wife must pay twice the amount of the purchase-price; see p. 109 above.

[3] *muškīnu*, the name given to a class frequently mentioned in CH, apparently between the freedman (*amēlu*) and the slave (*ardu*); cp. Johns, *American Journal of Semitic Languages*, 1903, p. 97 *sq.* He seems to enjoy more rights than the early English villein.

[4] *mu-za i-zi-ir-ma*, according to Winckler, "disagrees or quarrels with" ("streitet mit"); see below, p. 125, n. 4. The husband divorces his wife (*aššatu*), but it is the "woman" (*zinništu*) who would

me,"[1] an inquiry is held and her past behaviour examined, and if she has been thrifty and free from fault, and it is her husband who has gone out and neglected her, the woman is judged free from blame; she is allowed to take her marriage-portion and return to her father's house. But if the blame is on her side the woman is thrown into the waters (*a-na me-e i-na-ad-du-u-ši*; § 142 *sq.*). The law is expressed with greater terseness upon a tablet in the British Museum:[2] if a wife hates her husband and says, "'Thou art not my husband' (*ul mu-ti at-ta*), one shall throw her into the river (*a-na na-ar-u*)." The wife's attempt to divorce the husband is apparently presumed to be due to some guilty reason, and thus the same punishment is inflicted as for adultery (§ 129). Another law allows for the possibility of a woman plotting her husband's death:—"If the wife of a man on account of a male has caused her husband to be killed she shall be impaled" (§ 153).

Poverty arising from a lengthy enforced absence of the husband is regarded as a legitimate reason for separation. If a man has been taken captive, and his wife leaves his house and enters that of another, the law has to decide whether he had left sufficient to maintain her (lit. something to eat, *akalu*). If this be the case, "because that woman

divorce her husband. Perhaps there is just a suspicion of contempt in the phraseology.

[1] *u-ul ta-aḫ-ḫa-za-an-ni*. The verb is used elsewhere of "taking" a wife; cp. above, p. 92.

[2] *KB* 4 320.

has not guarded her body" ([*pa*]-*gar*(?)-*ša*), she is put to judgment and thrown to the waters (§ 133)—again the penalty for adultery. If, however, there was no maintenance, the woman is free from blame (§ 134). It seems most probable that the woman is put to account by her husband's family, and not by the man himself, since the possibility that the man will regain his city comes under consideration in a separate law. Here it is provided that if the wife had entered into the house of another and had borne children, in the event of the return of her first husband she must go back "to her bridegroom,"[1] and the children remain with their father, *i.e.* the second husband (§ 135). On the other hand, the rights of the deserted wife are protected: if a man leaves his wife and city, and his wife enters another man's house, if he returns, he cannot seize (*iṣ-ṣa-ba-at*) her, and she remains with her second husband "because he had hated his city and fled" (§ 136). To forsake one's city is an inexcusable offence, therefore, by which the deserted wife benefits. The question of the woman's freedom to marry again after the prolonged absence of her husband engaged the attention of the later Jewish doctors and the Mohammedan jurists. The former, it may be observed, required the wife who had married again to go back to the first husband on his return,[2] among the latter there were varying

[1] *ḫa-wi-ri-šu*; cp. *ḫirtu*, p. 120, n. 1 above.

[2] Talm. *Jebamoth*. 10 1 *sqq*. Under ordinary circumstances, if the wife was in great poverty she could appeal to the Rabbis, who

opinions: the Shiites, for example, allowed remarriage after an absence of four years, and if the lost husband returned he had no claim upon her.[1]

The conditions which these laws reveal are illustrated by the contract-tablets, where the possibility of divorce is often taken into account. In contemporary contracts the man provides for the divorce of his wife with the formula "Thou art not my wife," whilst in those of the New Babylonian period it is more explicitly worded, "If —— takes another wife," or "If —— leaves his wife." The compensation appears to be generally 1 to 1½ mina of silver; in one case it is as low as 10 shekels,[2] in another case as high as 6 minas.[3] An old Babylonian law from a fragment in the British Museum fixes it at only half a mina.[4] In one "letter of divorce" of the old period the wife goes away with her *ziku* (?) and *uzūbu*—the latter being the compensation—and the husband leaves the wife free to marry again.[5] The liberty granted to the divorced wife appears notably in one instance where, as Peiser has shown from a comparison of two contracts, a divorced woman was eight months later married to another, her first husband being still alive.[6]

sold the husband's estate and granted her alimony (*Jewish Encyclopædia*, 1 399).

[1] See the abstract in Kohler's *Rechtsvergleich. Stud.* (Berlin, 1889), p. 21.

[2] Meissner, *op. cit.* no. 90.

[3] Marx, *op. cit.* pp. 5, 7.

[4] *KB* 4 320.

[5] Meissner, no. 91, *KB* 4 17.

[6] *Babylon. Rechtsleben*, 2 13 *sqq.*

The result of the foregoing has been to shew that in Babylonia the husband is granted a greater facility of divorce than the wife. This is quite in accordance with Semitic custom, wherever the *baʿal* type of marriage prevailed. The frequence with which divorce was practised in Israel is to be gathered not only from the denunciations of the prophets, but more particularly from the Deuteronomic code, which makes no attempt to forbid the practice, but humanely endeavours to restrict it. The wife who had been unjustly slandered by her husband, or who had been taken in marriage by her seducer in accordance with the law, could never be divorced (Deut. 22 19, 29).[1] With these exceptions divorce could be freely obtained under certain conditions. A properly attested bill of divorcement (*sēpher kĕrīthūth*) must be drawn up and served upon the wife, who becomes free to marry a second time; but if the second husband divorces her or dies, the first husband is forbidden in the most emphatic terms to take her again (Deut. 24 1-4).[2] Similarly, according to Babylonian law, the husband was forbidden to have intercourse with his divorced wife.[3] The Deuteronomic prohibition is in conformity with Jer. 3 1, and is probably to be regarded as an innovation; it is obviously aimed at existing

[1] Later Jewish law, according to the Mishnah, adds the wife who is insane (cp. CH, § 148 *sq.*), a minor, or one who is in captivity.

[2] The later law which forbids priests to marry a divorced woman (Lev. 21 7, 14) is an extension of the standpoint in Deut. 24 4, and indicates a further step in the development of morality.

[3] Meissner, *op. cit.* p. 14 (after Bu. 88-5-12, 157).

practices.[1] To understand the provision it is necessary to notice that the divorced wife is not free to marry again unless her husband has pronounced the divorce in accordance with the legal formula or has given her the required permission.[2] The power which the husband has acquired over the wife by paying the purchase-price is not annulled by any ordinary act of repudiation or separation, and under early Arabian custom the husband or the heirs retain a claim upon her after her divorce. Not until the formula has been repeated three times is the dismissal complete, and a case is even cited where after a year's interval the husband was indignant to find that his wife was receiving other suitors.[3] The grounds upon which the man may divorce his wife are not specified in detail by Hebrew law; dislike or unseemly, immodest behaviour are sufficient, and the ambiguity of the terms gave free scope for legal discussions in later Jewish times.[4]

Since the wife is entirely the husband's property,

[1] Cp. 2 Sam. 3 14 (1 Sam. 25 44), Hosea 2 *sq.*, Judg. 19 2-4. The possibility of the divorced wife being taken again by her husband is contemplated also in Is. 54 6.

[2] Cp. Josephus, *Ant.* xv. 7 10, and for modern times, Jaussen, *Revue Biblique*, 1901, p. 596.

[3] *Kinship*,[2] pp. 113 *sqq.*

[4] CH, § 137, has only "if a man has set his face"; Deut. 24 1 is no less loosely expressed. *'erwāth dābār* is something short of actual immorality, and was variously understood by the Rabbis (cp. Driver's note, *Deut.* p. 270 *sq.*). Hatred (*v.* 3) is not necessarily a violent aversion, but is simply the antithesis to love (*e.g.* Deut. 22 13, Gen. 29 31-33); cp. CH, § 142, where the woman hates her husband (*izīr* as opposed to *rāmu*).

she can scarcely be expected to have absolute freedom in the way of obtaining divorce. She must be divorced by the husband, with permission to marry again, and only under special circumstances can she force a separation. Salome's action in dissolving her marriage with Kostobarus, as Josephus observes (*Ant.* xv. 7 10), was not in accordance with Jewish law, which allows only the husband the right to send the bill of divorce, and forbids the wife who has deserted to give herself in marriage again unless she has been legally put away (cp. Mark 10 12). The wife who insists upon a separation forfeits the dowry which would otherwise be hers (wholly or partly), or must make some kind of compensation to the husband. This is the general rule at the present day: the woman who is divorced by her husband receives part or whole of the *mahr*, but if it is at her initiative it is retained or claimed by the husband.[1] The *ḫol'* ("divestiture") of Mohammedan law, as contrasted with the *ṭalāḳ* ("dismissal"), was previously "a friendly arrangement between the husband and his wife's father, by which the latter repaid the dowry (purchase-price) and got back his daughter";[2] when the purchase-price had passed into the hands of the wife in the shape of the dowry or marriage-portion, the compensation was naturally no longer paid by the father or the nearest relatives, but by the wife herself. It was not other-

[1] Burckhardt, *Ar. Prov.*[2] no. 649; *PEFQ*, 1894, p. 134; *Revue Biblique*, 1901, p. 596.

[2] *Kinship*,[2] p. 112 *sq.*; cp. Wellhausen, *Ehe*, p. 449.

wise in ancient Egypt; the wife who repudiated her husband and loved another returned the marriage-settlement together with an additional payment as compensation.[1]

Finally, as an example of the Semitic law of divorce modified by Roman usage, a glance may be taken at the Syro-Roman law-book. The general regulation provides that the man who divorces his wife without any blame on her side must return the whole of the *φερνή* and *δωρεά*, but if the wife leaves her husband without any lawful reason, she can take neither. In every case a letter must be drawn up stating the grounds of the divorce. The man is allowed to divorce his wife if she has committed adultery, has passed the night in the house of another without his consent, or has gone to the *θεατρόν*, but under these circumstances she cannot take her *φερνή*.[2] The wife may claim a divorce when she can prove ill-treatment, or such offences as sorcery (Syr. *ḥarrāšūthā*), theft, adultery, or if the husband has brought a whore into the house or has set a concubine in her place, and on these grounds she can recover her *φερνή*. No mention is made of the *δωρεά*, whereas in another law[3] it is explicitly stated that the wife who has sinned against her husband receives the *φερνή*, whilst the husband retains the *δωρεά* on account of her offence (Syr. *saklūthā*).

[1] *Revue Égyptologique*, 2 270.
[2] Bruns and Sachau, pp. 58 (§ 41a), 67 (§ 64).
[3] *Ib.* p. 57 (§ 38).

# CHAPTER VI

## THE FAMILY (*concluded*)

Parental authority—Old Babylonian family-laws—Adoption of children—Special laws bearing on the same—Limits to disinheritance—Wills and division of property—Rights of concubines and maid-servants—Position of the widow—Ability of women to inherit—Laws for special classes—The votary—Law of intestacy.

THE family system in Babylonia had reached a stage of development which in some respects is strongly reminiscent of ancient Rome. The father's authority over his children was not so despotic as that of the *pater familias*, but it was far greater than that exercised by the parent in Israel or Arabia. Parental authority is nowhere so weak as among the dwellers of the desert, and even where the community has become more advanced it disappears when the sons have passed beyond childhood. Jacob had not the means to restrain his grown-up sons (Gen. 34), and even in the much-quoted illustration of paternal power in Gen. 38 24, it was a female and not a son upon whom Judah proposed to inflict punishment. Disobedience and contempt towards parents bring

their own reward (Prov. 30 17), but they are not offences punishable by law, and such legislation as finds a place in the Hebrew codes can scarcely ever have been put into practice.[1]

The relation between parents and children in old Babylonian times is set forth with precision in four so-called "Sumerian" laws.[2]

1. "If a son says to his father, 'Thou art not my father' (*ul abī atta*), one shall brand him, set a mark[3] upon him, and sell him for silver."

2. "If a son says to his mother, 'Thou art not my mother' (*ul ummī atti*), one shall brand his forehead,[4] deny him (residence in) the city, and expel him from the house."

3. "If a father says to his son, 'Thou art not my son' (*ul mārī atta*), he shall leave house and home."[5]

4. "If a mother says to her son 'Thou art not my son,' he shall leave house and goods."[5]

These laws, as we see from the oldest contract-tablets, applied also to adopted children.[6] They do not find a place in the Code of Ḫammurabi, probably

[1] Robertson Smith, *Rel. Sem.*(2) p. 59 *sq.*, *Kinship*,(2) p. 68; Doughty, *Ar. Des.* 1 240 *sq.*

[2] Meissner, *op. cit.* p. 15.

[3] *abbuttam*, "shackles" (Meissner; cp. CH, § 146, p. 112, n. 2 above).

[4] The same punishment was inflicted upon the slanderer (CH, § 127).

[5] In no. 3, *bīti u igārum* (lit. wall enclosure); in no. 4, *bīti u unāti*.

[6] Meissner, *op. cit.* nos. 93 *sqq.* Fr. Delitzsch, arguing that father and son, mother and daughter, are paired (cp. Mi. 7 6), explains the second and fourth of the above laws to apply to the daughters.

because they were too well known; but they appear to be presupposed by it, and have undergone a certain amount of modification.

Until the children are grown up they are under the immediate care of the mother. They were often handed over to a wet nurse (*mušeniḳtum*),[1] and it is characteristic of the versatility of the Code that it contains a law dealing with a crime which was evidently not unfrequently practised by foster-mothers. The law in question (§ 194) enacts that if a child dies whilst with the nurse, and the nurse without (the knowledge of) the parents procures another, she shall be put to account and her breasts cut off. Somewhat similar to this is the case which was brought to Solomon for his decision (1 Kings 3 16-27), although the simplicity with which the trial was conducted stands in strong contrast with procedure in Babylonia. Not only does the mother rear the children, but she also takes them away with her when divorced. In such a case provision was made for them, and on reaching a certain age they no doubt returned to their father's house (the father has the greater claim; cp. § 135). The custom holds good at the present day among the nomads, and is also Mohammedan law, opinion differing only as to the length of time the mother is entitled to retain

[1] Cp. Meissner, *op. cit.* p. 15, n. 3, where a child is thus handed over to the charge of a nurse, and an allowance of food, oil, and clothing for three years is promised her. The Ass. term is the Shaphel of *ēniḳ*, "to suckle," and corresponds to the Hebrew Hiphil *mēnēḳeth* (Gen. 358, etc.).

the children under her charge.[1] One late Babylonian contract,[2] wherein a man promises his wife and son a regular allowance of food, wine, sesame, salt, and wool, is probably an example of alimony under the provision of the Code (§ 137, above, p. 119). Further, provision is made for the child when the father is an official away on the king's business and his son is too young to manage the estate; the mother is allowed by the Code to take a third to pay the expenses incurred in rearing him (§ 29).[3]

It has already been observed that the man whose wife was childless could take a concubine, or his wife could give him a maid-servant. As another alternative, a child might be adopted, and the laws and contracts shew that this practice was frequently followed, the object being to obtain an heir, in order that the estate might not pass over into the hands of strangers. A contract of the New Babylonian period illustrates the issues which might depend upon such a procedure. Bel-kāṣir, son of Nādin, who had been adopted by his uncle, married a

[1] Jaussen, *Revue Biblique*, 1901, p. 596; Kohler, *Rechtsvergleich. Studien*, p. 70 *sq.* According to later Jewish law the children remained with their mother, but the boys could be claimed by their father when they reached the age of six (*Jewish Encyclopædia*, 4 628). Doughty relates an instance of a chief of a nomad tribe who in addition to his wife carried along with him a divorced wife, the mother of his only son, and another cast-off wife, the mother of a ward (*Ar. Des.* 1 222).

[2] Marx, *op. cit.* p. 41; Kohler and Peiser, *op. cit.* 4 13 (1898).

[3] The estate in question is a benefice under the crown; cp. pp. 184 *sqq.*, below.

widow with one son; he has no children, and proposes to adopt the stepson. The uncle, however, objects, since under this arrangement his property would pass through Bel-kāṣir into the hand of strangers, and it is accordingly agreed that if the marriage continues to be without children Bel-kāṣir must adopt his (own) brother as heir.[1] Children were adopted for other purposes. Sometimes the man already had a family, and in this case the probability is that the child was adopted as an apprentice. Even slaves were taken, and under these circumstances they gained their freedom, which, however, they might forfeit if they failed to carry out the provisions of the contract.[2] The adoption of a daughter, too, was not uncommon, and a contract might be drawn to secure for her the possession of any gifts or property which her new parents might have given her.[3]

If a man adopted a child (*a-na ma-ru-tim ilki*), and its parents objected, he must restore the infant

[1] *KB* 4 239 (cp. Sayce, *op. cit.* p. 28 *sq.*, 37). The tablet is unfortunately broken at the end, and as there is some reference to a sister, it is evident that we are not in possession of full details.

[2] So, in a New Babylonian tablet (*KB* 4 245; Sayce, *op. cit.* p. 40 *sq.*), Iḳīša-aplu freed Rīmanni-Bil alias Rimūt on the understanding that the slave should nourish and look after him. But Rimūt does not perform his duty, and his master breaks the "tablet of adoption" and gives him to his daughter-in-law.

[3] Meissner, *op. cit.* no. 99; cp. Pinches, *op. cit.* p. 177, where the adopted daughter whose blamelessness is attested (see p. 101, n. 5, above) is promised a husband. In Egypt, also, a man might adopt a female slave in order to marry her (*Rev. Ég.* 2 189-191, *temp.* sixth cent.).

to its father's house (CH, § 186). The Code does not specify any reason, but since they usually received some kind of compensation for the loss of the child, it is obvious that the amount offered might not always be considered satisfactory, and disputes could easily arise. The law, accordingly, appears to be directed against forcible adoption.[1] If an artisan (*mār um-mi-a*) took a child to rear, and taught him his handicraft, the child could not be reclaimed (§ 188); but if he had neglected to teach him, the child was free to return to his father's house (§ 189). A young child who had been adopted *i-na me-e-šu* and had been reared up could not be claimed (§ 185). The Assyrian phrase is variously rendered "with his name" (Scheil, Winckler), or "from his waters" (Johns). Now, the child who was formally adopted into a family had certain claims which were ensured by his tablet of adoption or sonship (*duppu aplūtišu, marutišu*), and as long as this was not broken and the seal remained uninjured his position was secure. He was recognised as the son of the father who had adopted him, and if he had not been formally acknowledged the law allowed him to return to his father's house (CH, § 190). The crucial point of § 185 must lie in the fact that it has to do with a child against whom no one could lay claim; it is a

[1] Scheil and Winckler understand the law to mean that the child rebels against the parents who have adopted him. Johns, however, has, "If . . . when he took him his father and mother rebelled, . . ." and this gives a preferable sense.

babe taken "from the waters" upon which it had been cast adrift. The motives need not be inquired. Apart from the circumstance that there appear to have been certain classes who do not appear to have any legal claim to their children (see below), even the great Sargon himself was cast upon the waters by his mother, a vestal (*enītu*), and the parallel story of Moses recounted by the Elohist in Ex. 2 only needs to be mentioned.

The classes of individuals upon whose children no one has any claim are the palace favourite (?) and the courtesan (§ 187),[1] and if the son of one of these should say to the father or mother that brought him up, "Thou art not my father, thou art not my mother," the tongue, the offending member, is cut out (§ 192), and if he has found out his father's house and has hated (*i-ṣi-ir-ma*) the parents who have adopted him, and goes to his father's house, his eye is torn out (§ 193).[2] The extreme severity of these penalties, viewed in the light of the old family-laws quoted at the beginning of the

[1] *NER-SE-GA mu-za-az ē-kal . . . zinnišat zi-ik-ru-um.* The meaning is obscure, and Johns renders "a *NER-SE-GA*, a palace warder or a vowed woman"; see his discussion in the *American Journal of Semitic Languages*, 1903, pp. 98 *sqq.*, where he argues that the palace warder was one of the royal bodyguard living in the palace grounds (p. 103).

[2] Again the offending member suffers (cp. § 195). Samson, according to the Rabbis (Mishnah, *Sotah*, 1 8), lost his eyes because he had sinned in following his eyes (Delilah); Winckler renders the law rather differently: "If . . . he longs after (?) his father's house and left his foster-parents and goes to his father's house."

chapter, proves the exceptional character of these classes.

The family-laws, in turn, appear to have been regarded as too harsh, since both in the contracts and in the Code itself we find certain modifications. The adopted son who is repudiated does not always leave house and home, but takes his share (*zittu*), which sometimes consists of house and garden; even the son who repudiates his parents is allowed to depart with his portion.[1] The Code of Ḫammurabi does not contain the laws for the repudiation of an ordinary adopted son by his parents or the reverse,[2] but two statutes have been framed in order to secure his position. The child who has been taken to sonship and brought up, and has not been counted among his father's sons, is allowed to return to his (own) father's house (§ 190).[3] The man who has adopted a child, and has afterwards "made a house for himself and acquired children," cannot disinherit (*na-sa-ḫi-im*) the child, but must give him one-third of a son's share (lit. of his sonship, *aplūti-šu*) from the household goods only, not of the estate (field, garden, or house; § 191). These two laws pre-

[1] *KB* 4 5 *sq.* (time of Rim-Sin); cp. Meissner, *op. cit.* p. 16, and nos. 97, 98.

[2] See, however, Scheil and Winckler's rendering of § 186 (p. 113, n. 1).

[3] The impcrtance of the formula of recognition is illustrated by the contracts, in one of which the man explicitly says of an adopted child, "He shall be his son and inherit with his sons" (Meissner, no. 96). Cp. the similar formula employed by Jacob, "Thy two sons . . . shall be mine" (Gen. 48 5, P).

suppose two distinct conditions. According to the former, the son has been adopted into a man's family, and no provision is made for his future; according to the latter, he is taken by a childless man, and has the chance of becoming his heir. When the man has sons of his own body, the rights of the adopted son can be secured by the formal recognition, but as this is not mentioned in § 191, the presumption is that the man proposes to disinherit him in favour of his own children. The law, however, whilst forbidding this, restricts the adopted son's portion to the goods; the estate is to be reserved for the sons of the man's body.

A father could not disinherit his son on his own responsibility. If he has said to the judge, "I will expel my son" (*māri-i a-na-za-aḫ*), an inquiry is made into the case,[1] and if the son has not committed a grave crime that justifies expulsion, the son cannot be cut off from sonship (§ 168). Further, even if the son's conduct to his father has been sufficiently base, a First Offender's Act was in vogue whereby the judge "brings back his face" (*pa-ni-šu ub-ba-lu*) for the first offence, but for the second the father has the power of expelling him (§ 169). The penalty ("cutting off from sonship"), according to Winckler in his note on the law, does not go beyond disinheritance from participation in the estate; absolute expulsion from the *familia*, in his opinion, is not

[1] *wa-ar-ka-su i-par-ra-su-ma;* the phrase recurs in §§ 18, 142, 172, and may be translated "inquire into his past."

intended.[1] With these laws one may compare the Syro-Roman law-book, where neither sons nor adopted sons (lit. "strange sons") are to be disinherited without good cause, but complete disinheritance in the case of the former is forbidden.[2]

If a son strikes (*im-ta-ḫa-aṣ*) his father his hand is cut off (§ 195). The law reminds one of Ex. 21 15, where the son who smites (*hikkāh*) father or mother "shall certainly be put to death"; Hebrew law pronounced the same penalty for cursing the parents (Ex. 21 17, Lev. 20 9; cp. Pr. 20 20, Mt. 15 4). The stubborn and rebellious son (*sōrēr*, *mōreh*) who paid no regard to his parents, and though they admonished (*yissar*) him, heeded not their voice, is brought before the elders of the city and is put to death by the whole community (Deut. 21 18-21). The Deuteronomic code, it will be observed, pronounces a curse upon him who belittled his parents (27 16), and in the later writings moral motives are urged for honouring parents. It may have been necessary to threaten evil-minded sons with the death-penalty, but it rested with the parents to bring the charge and with the elders to decide upon it, and it remains questionable, therefore, whether these severe laws were often carried out.[3]

[1] Cp. *apla kun-na it-ta-saḫ*, "he has disinherited a legitimate son" (Muss-Arnolt, *Ass. Dict.* p. 700 *a*). But *nasaḫu* in Assyrian seems to mean to pluck out, eradicate, to transplant (people) by force; cp. the Hebrew use of *nāsaḥ* in Deut. 28 63, Prov. 2 22.

[2] Bruns and Sachau, *op. cit.* pp. 18 (§ 58), 47 (§ 4), 69 (§ 72), 188 *sq.*

[3] Cp. above, p. 128. Herod the Great's treatment of the two sons

In Babylonia the sons possess property during the father's lifetime, but probably only with his consent (cp. CH, § 7), and at his death they share the estate equally. Some kind of testament was known, and we even find the testator handing over his property to an heir, stipulating only that he shall receive the usufruct of it.[1] Where there were no testamentary documents the father doubtless made known his wishes in some recognised oral manner, probably in the presence of witnesses (cp. Gen. 24 36, 2 Sam. 17 23, 2 Kings 20 1).[2] The division of the inheritance was made by the priests or by the eldest son in the presence of the priests, and a contract was drawn up to certify that the work had been accomplished to every one's satisfaction.[3]

The children share equally in the household goods (§ 165), but it is possible that the landed estate was held in common until some occasion arose for partition.[4] If the father had presented (*iš-ru-uḳ*) to a favourite son, "the first in his eyes" (*ša i-in-šu maḫ-ru*), field, garden, or house, and had secured it by a sealed deed, the son was still entitled

of Mariamne was exceptional (Josephus, *Ant.* xvi. 11 2 *sqq.*; cp. generally Jos. *ib.* iv. 8 24).

[1] Cp. Kohler and Peiser, *Bab. Rechtsl.* 4 18 *sq.* (1898).

[2] In the two latter passages "set one's house in order," lit. "give commands to one's house" (*ṣiwwāh le-bēth*).

[3] Cp. Meissner, no. 106, ". . . have divided the whole of the property of their father from mouth to gold (*bi-i a-na ḫurāṣi*, from slaves to money?), . . . brother against brother shall not dispute." A specimen of a contemporary account of the division of property may be seen in *KB* 4 17-23.

[4] As at the present day, *PEFQ*, 1894, p. 130.

to take his share with the others in the division of the property (§ 165).[1] Further, if the father had taken wives for his children, with the exception of a young son who was unmarried, when the division was made, this son received over and above his share the money for the purchase-price (*kaspu tirḫa-tim*), and his brothers caused him to take a wife (§ 166). A similar rule prevailed for the unmarried sister (§ 184).

With these exceptions the Code does not favour the rights of primogeniture, and this is the more remarkable since from other evidence it would appear that the eldest brother (*aḫū rabū*) was entitled to a larger share. The superior rights of the first-born are emphatically insisted upon in Hebrew law,[2] although there were occasions when a younger son received the double portion or the favourite wife endeavoured to obtain the benefit for her eldest son. The latter act seems to have been sufficiently common to require the law's interference, and the Deuteronomic code strictly forbids the father on the day he divides his inheritance to leave

[1] So Esarhaddon was the favourite but not the eldest son of Sennacherib (see the list of his presents, Sayce, *op. cit.* p. 35). According to § 150 the mother also had this right, and in Meissner, no. 39, two brothers buy property with the money which one of them had received from his mother, and in no. 7 an heiress gives her property to her daughter who is about to be married, but the husband is also mentioned, and it is possible that he had to approve of the transaction.

[2] In Arabia, also, the law of primogeniture appears to be unknown (cp. *e.g.* Jacob, *Altarab. Parallelen*, p. 13; Berlin, 1897).

the double portion (*i.e.* two sons' shares) to any other than the first-born of his first wife (21 15-17).[1]

The mother's marriage-portion (*šeriḳtu*) and settlement (*nudunnu*) fall to the children.[2] Sons and stepsons share equally in the father's property, but the *šeriḳtu* of each mother is divided separately among her own sons (CH, § 167). If, in addition to a wife (*ḫirtum*), a man has had a maid-servant (*amtu*),[3] and has had sons by both, these share equally in the goods of the father's house, provided he had recognised the sons of his maid-servant by calling them "my sons" (*marē-u-a*), and had reckoned them among his children, but the children of the wife have a higher standing, and when the goods are divided they obtain the first choice (*i-na-za-ak-ma i-li-ki*, lit. they choose and take; § 170). If the father has not recognised the children which the maid-servant bore him, they have no share in the goods, but receive their freedom along with their mother, and the sons of the wife have no claim upon them for service (§ 171).

Hebrew custom provided for the recognition of the children of the maid-servant (Gen. 30 3),[4] and

[1] In a New Babylonian contract the mother leaves her dowry to her eldest son (Sayce, *op. cit.* p. 34, n. 1).

[2] Or to grandchildren (so in the will cited by Sayce, *op. cit.* p. 29). See above, pp. 87, 89.

[3] It is not stated that the wife is dead; contrast § 167, where the second wife is taken after the first "has gone to her fate."

[4] Adoption appears to have been rarely practised among the Israelites (cp. *EBi.* "Family," § 14), although there may be a few references to it in the later literature (*e.g.* Ps. 27 *sq.*).

Ishmael according to the Elohist (Gen. 21 10) was co-heir with Isaac. In the older narrative, on the other hand, Isaac is the sole heir, and the sons of the concubines are sent away with gifts (*mattānōth*; Gen. 24 36, 25 5 *sq.*, J). There is a greater humanity in the Elohist narratives towards the inferior wife and her children, and when Jephthah was thrust out of his father's house, his complaint implies that the sons of concubines were entitled to certain rights by custom (Judg. 11 7, E; cp. *v.* 2, P).[1] But even where the children of inferior birth receive equal rights of inheritance their social position must have been below that of the sons of the well-born mother. So in Arabia, Nöldeke (*ZDMG*, 40 153, n. 3) cites the case of a man whose father was one of the noblest of the Fazāra but his mother was a slave, on which account he was unable to take a wife from the tribe. Similarly, Jazid II., called Ibn Ātika after his mother, by reason of his superior birth was selected above his step-brother Maslama, who though of equal repute was the son of a slave.[2]

On the death of her husband the widow[3] is entitled to her marriage-portion and the settlement which he had secured for her in writing,[4] and is

[1] The later law of Syria and Arabia required the children of inferior birth to be recognised before they could obtain a share in the inheritance (Bruns and Sachau, *op. cit.* p. 12).

[2] Wellhausen, *Arab. Reich u. sein Sturz*, p. 194 *sq.* (Berlin, 1902).

[3] A new law commences in the middle of § 171 (col. xii., l. 78).

[4] The rights of the wife to the *nudunnu* are laid down in § 150, where the property which is given to her by deed cannot be disputed by her sons (p. 89 above).

allowed to live in her husband's dwelling-place (*šu-ba-at*). She cannot dispose of them, however, and at her death they go to her children (§ 171).[1] If her husband had not given her a settlement she takes a son's share of the goods (cp. § 137), and if her sons would compel her to leave the home the judge must examine into her past (*wa-ar-ka-za*), and if the fault lies with them she need not go out of her husband's house (§ 172). If the widow has made up her mind to leave, she can only take with her the *šeriktu* (*i.e.* her own family's gift), the *nudunnu* which her husband gave her must be left for her sons, and she is now free to marry the "man of her heart."[2] If she has borne children by the second marriage, her marriage-portion is divided between the sons of both unions; otherwise it reverts to those of her former husband (*ḫa-wi-ru*; 173 *sq.*).[3]

The widow's position is thus secured in so far as it is compatible with her children's interests. She has a home and a share in her husband's estate, and she

[1] So, in one case a son recovers a slave which his mother had sold (Marx, *op. cit.* p. 65, cp. p. 53). The marriage-settlement reverted to the sons in later Jewish times; cp. *Keth.* 4 12 [10]: "The sons that shall be to thee from me inherit the money of thy *kĕthûbtā*." See pp. 87, *sqq.* above.

[2] The last sentence in § 172 (col. xiii. l. 27) forms a new law.

[3] Sayce's observation (*op. cit.* p. 22 *sq.*) that the children of the first marriage received two-thirds and the others a third only, may hold good for later times. In Meissner, no. 109, a mother gives to three sons, and they have no claim upon whatever she or her other children may possess. Whether the former are children by another husband or the recognised sons of a concubine is not stated.

is free to marry again.[1] If the children are still young, she cannot enter "a second house" (*ana bītim ša-ni-im*) without the consent of the judge.[2] An examination is made of the extent of her husband's estate, and it is entrusted by deed to the widow and her second husband, who act as trustees and rear up the little ones. Not a vessel (*u-ni-a-tim*) may they sell, and whosoever is found buying of the property must return it "to its owners" (*a-na be-li-šu*) and forfeit his money (§ 177)—the punishment for the seller is not stated.[3] It is possible that under certain circumstances the judge might refuse his consent, and in one late contract-tablet a widow promises not to enter into the "house of a male" (*bīt zi-ka-ri*), but to dwell with her sons and bring them up, and it appears that as long as she does this she enjoys an allowance.[4]

[1] There is no law as to the length of time she must remain a widow, but it was probably not very long (cp. p. 123). The Syro-Roman law-book gave the widow who remained ten months in her husband's house full possession of her linen and one-third of the jewels; the law is scarcely of Roman origin (Bruns and Sachau, pp. 63, 193).

[2] Cp. § 137 (p. 119 above), where the divorced wife or concubine may marry after her children are grown up.

[3] In a contract of the time of Samsu-iluna, Ḫammurabi's successor, the three sons of Namiatu dispute with their mother Yašuḫatu about the contents (? *mi-im-ma nu-ma-at*) of their father's house; the case is settled and the sons agree not to bring complaints against Yašuḫatu, Idin-Rammān (her second husband ?), and their children (Meissner, *op. cit.* no. 100).

[4] Kohler and Peiser, *Bab. Rechtsleben*, 29 *sq.* (citing Cambyses, no. 273); cp. Doughty, *Ar. Des.* 289 (the widow regarded as the guardian of her sons' inheritance).

The Code does not take into account the rights of the childless widow. A New Babylonian law, however, enacts that if the marriage-portion (here called *nudunnu*) had been taken by her husband it was to be paid in full from his possessions (*nikāsi*), if her husband had given her a gift (*šeriḳtu*) she was entitled to claim it and leave, whilst if she had received no *nudunnu* the judge, after an examination of the estate, was to give her in proportion to its extent.[1]

There are no traces in Babylonia of that widespread objection to the re-marriage of a widow which still lurks in Palestine and elsewhere,[2] nor is there any evidence for Delitzsch's suggestion that the husband's next-of-kin had duties to perform similar to those of the Hebrew *gōēl*.[3] Babylonia had passed far beyond that stage where the next-of-kin inherits the widow and has the first right to her,[4] and her position was a surer one than in Israel, where widowhood was a reproach (Is. 4 1, 54 4).

[1] *KB* 4 323.

[2] *PEFQ*, 1894, p. 138 *sq.*; cp. Frazer, *Paus.* 3 198-200.

[3] *Babel and Bible*, pp. 14, 92 *sq.* The evidence is founded upon Sargon's statement that "his father's brother took no care for his widowed mother." But as the widow is not childless, there can be no possibility of a levirate, and the words are usually rendered otherwise (*EBi.* col. 3207). Delitzsch's conjecture, if it could be proved, would only serve to show that the Babylonians in Sargon's day were sociologically more akin to the Israelites than they were sixteen centuries later under Ḫammurabi.

[4] Cp. *EBi.* "Marriage," § 8. The practice is still prevalent; the nephew will marry the widowed aunt, even when, as in one case, he had murdered her husband, his uncle (Doughty, *Ar. Des.* 1 506, 2 26).

Here, she either remained under the care of her husband's family, or more often, perhaps, returned to her own kin (Ruth); in neither case was her lot a fortunate one, unless she was influential[1] or married a second time. The original Book of the Covenant does not interest itself on her behalf (Ex. 22 22 is a later expansion), in marked contrast with the humane exhortations of the Deuteronomic code. Later Jewish law gave the widow certain rights of inheritance (cp. Judith 8 7), and, the husband might insert a clause in the marriage-settlement giving her the right to dwell in his house after him, and to be nourished from his wealth all the days of her widowhood (*Keth.* 4 12 [10]). The Judæan custom, however, made this privilege depend upon the goodwill of the heirs who had the power to give her the settlement (*kĕthūbtā*) and send her away (*ib.*).

Primitive Semitic law does not recognise the ability of daughters to inherit. In Arabia all women were excluded from inheritance previous to Mohammed, whilst in Israel the law which allowed the daughters to inherit in default of sons belongs to the very latest part of the Hexateuch (Num. 27 36). The Code of Ḫammurabi concerns itself with sons rather than with daughters,[2] but there are sufficient indications to shew that the daughter's right, if re-

[1] Cp. Wellhausen, *Ehe*, pp. 456, 467, n. 1. Tamar returned to her father's house but was not free (Gen. 38 11); Abigail, notwithstanding Nabal's wealth, comes to David with her servants only (1 Sam. 25 42).

[2] Orelli's suggestion that daughters are included in the sons does not seem very probable (*Gesetz Hammurabis*, p. 44, n. 1).

stricted, was more generously regarded in Babylonia. The Code insists, for example, that the daughter of a concubine[1] shall receive a marriage-portion (*šeriḳtu*), and if her father has given her one by deed, and married her to a man (*a-na mu-tim id-di-iš-ši*), she takes no share in the goods (§ 183). Failing this, it is left for the brothers to give her a portion according to the extent of the estate (*e-mu-uḳ bīt a-ba;* § 184). The daughters of the high-born mother were probably not treated so summarily, but no doubt received a small share in the estate in addition to the marriage-portion, and this is illustrated by a contract of the time of Sumula-ilu, one of Ḥammurabi's predecessors, in which three brothers record that they have given their sister her share.[2] It is not likely that the daughters in such cases had full rights to dispose of their portion; like the daughters of Job, they held an "inheritance in the midst of their brethren"—mentioned as an exceptional piece of generosity on the part of the father (Job 42 15)—and received the usufruct. From Babylonia the custom passed to the Jews of the post-biblical period, and a father could assure his wife in his testament that "the daughters, females, that shall be to thee from me shall dwell in my house and be nourished from my wealth (*nĕkāsīm*) until they are married."[3] The care taken by the

[1] *marti-šu šu-ge-tim*, according to Johns, "his (the father's) daughter, a concubine."

[2] Pinches, *op. cit.* p. 181; cp. Marx, *op. cit.* pp. 18-22.

[3] Mishnah, *Keth.* 4 12 (10). When the father was no longer alive,

Code to ensure the rights of a man's daughters by his concubine finds an analogy in the Book of the Covenant, which introduces laws relating to the maid-servant (p. 166 below). Custom had already established the rights of the well-born daughters, it was only those of inferior birth who were likely to suffer.

Further, the Code presents a group of laws providing for the class of women to which reference has already been made—the votary and the courtesan *zinnišat zi-ik-ru-um*). The rights of inheritance of the daughter of this description who has received a marriage-portion[1] from her father depend upon the wording of the tablet or deed. If he has written, "After her whatever is good to her to give" (*wa-ar-ka-za e-ma e-li-ša ta-bu na-da-nam*), that is to say, if she has full choice, she can leave it as she will and her brothers can have no claim (§ 179). If this clause is wanting, the brothers take her field and garden—her share in the estate—and pay her corn, oil, and wool according to its value, and if she is not satisfied with this, she gives them to a cultivator (*irrišu*) who shall provide for her. She enjoys the usufruct as long as she lives, but she cannot sell it for money nor dispose of it in any way, since her

if the heirs paid the minimum dowry (fifty *sūtim*), the sister could claim the balance when she attained her majority; the court estimated how much the father would probably have given her, or, if they have nothing to guide them, she received one-tenth of the estate (*Jewish Encyclopædia*, 4 646a).

[1] The question must be left open whether *šeriktu* in this group of laws should not be rendered simply by "gift."

"sonship" (*ap-lu*) belongs to her brothers (§ 178). The daughter, whether a bride or a courtesan, who has not received a marriage-portion, on the father's death takes a share of the goods like one son, she has the use of it as long as she lives, and when she dies it is her brothers' (§ 180). If the father has vowed to God (*a-na i-li iš-ši-ma*) a hierodule (*kadištu*) or a virgin,[1] but has not given her a marriage-portion, she receives a third of a son's share as long as she lives, which, as before, reverts to her brothers (§ 181); if the votary of Marduk of Babylon[2] has not received a marriage-portion, she is still entitled to one-third of a son's share, and can leave it after her as she pleases (§ 182).[3] Possibly these receive less owing to the character of their position.

The votary of Marduk is the god's wife[4] vowed to perpetual chastity, and is therefore distinct from the devotees of Ištar. Like the ordinary courtesan (*zinnišat zi-ik-ru-um*), these formed a separate class[5] and enjoyed special privileges.

[1] *NU-PAR;* the translation follows Scheil and Winckler.

[2] According to Winckler, this includes the two classes of temple women in § 181.

[3] The law also contains an obscure provision (*il-kam u-ul i-il-la-ak*) which probably means that she shall pay no tax (so Johns). As Jeremias observes (*Moses u. Hamm.* p. 17, n. 1), she was perhaps expected to leave her inheritance to the temple.

[4] The ceremonies relating to the consecration of the god's couch are given at length in K 164 (*Beitr. z. Assyr.* 2 635) and K 629 (C. Johnston, *Epistolary Literature of the Ass. and Bab.* p. 155; Baltimore, 1898).

[5] Cp. the similar class in Egypt, Burckhardt, *Ar. Prov.*[2] pp.

The statement of Herodotus (1 199) that a great system of prostitution prevailed in Babylonia has as yet failed to find support in the tablets, and the presence of certain clauses in the marriage-contracts to which reference has already been made[1] is decisive for earlier times at least. No doubt to the foreigner there was much that was unintelligible, and the historian has probably exaggerated what at all events was sufficiently common (Baruch 6 43). There are, however, many indications which, considered in the light of comparative custom, go to prove that Babylonia legalised and sanctified immoral practices which in the rest of the Semitic world higher ideals gradually endeavoured to repress.[2] The priestesses of the temple, many of whom were of high rank, carry on business, the profits of which doubtless went to swell the temple funds; one of these ladies on a contract bears the characteristic name Amat-Šamaš, "handmaid of Samas."[3]

A curious law in CH, § 110, threatens the votary, who was not living in a convent (*E-GI-A*), who dared to open a tavern (*bit GES-TIN-na*) or to

173 *sqq.* The Heb. *sānāh*, as the Arabic usage shews, was originally used in quite a harmless sense (Wellhausen, *Ehe*, p. 472, n. 2; cp. further Nöldeke, *ZDMG* 40 155 and n. 1; Robertson Smith, *Kinship*,[2] p. 151).

[1] P. 101, n. 5, p. 132, n. 3, above.

[2] It is sufficient to recall the denunciations of the Hebrew prophets (cp. *EBi.* "Harlot"). A contract referred to by Peiser (*Skizze d. babylon. Gesellsch.* p. 13) illustrates the prevalence of a practice against which Lev. 19 29 is urged.

[3] *KB* 4 43, cp. pp. 29, 37; Scheil, *Sippar*, i. 1 107, 120, etc.

enter one to drink with death by burning, the same penalty that was inflicted upon the man who committed incest (§ 157). It has been conjectured that the votaries were Nazarites and were under the Nazarite vow to abstain from wine. This, however, seems hardly probable, and the term Nazarite is only fitting to the extent that the Syriac *nĕzīr* is applied to the maidens who were consecrated to the service of Beltis. The drinking-shop was kept by women, sometimes by female slaves,[1] and the Code imposes upon the keeper the necessity of maintaining order, and condemns her to death if she does not drive off any riotous assemblers to the palace-guard (CH, § 109). In post-biblical times the *lupanar* and the tavern are practically synonymous, and tradition accordingly assumed that Rahab kept a *πανδοκεῖον*.[2] The Babylonian wine-shop was probably a similar institution, on which account the votary, owing to her sacred office, was naturally prohibited from associating with the frequenters of such houses of ill-fame.

The absence of further material in the Code makes it unnecessary for us to deal at greater length with the rights of inheritance of women in Semitic

[1] So in a contract of the sixth year of Cambyses referred to by Sayce (*op. cit.* p. 72). In Meissner, *op. cit.* no. 35, Ibik-Ištar buys a beer-house with an underground cellar.

[2] Cp. the references in Levy, *Chald. Wörterbuch*, p. 271 *sq.* An obscure allusion cited by Erman (*Life in Ancient Egypt*, p. 144) may imply that the women of the harem in Egypt were not supposed to enter taverns. Meissner (*l.c.*) cites from a collection of Ass. precepts: "Sir (*bēlum*)! enter not into the drinking-house."

law or with the laws of intestacy. The remarkable features of the latter as they appear in the Syro-Roman law-book do not require consideration, therefore, and it will be sufficient in concluding our survey of the family to notice as briefly as possible their bearing upon the present subject. The underlying principles, as Bruns[1] has pointed out in the course of his valuable investigation, are characteristic partly of Jewish, partly of Roman law, but there is no sound reason for the supposition that the fifth century should have produced any artificial or arbitrary combination of two such distinct systems. Under these circumstances he argues that the kernel of the laws existed in old customary usage in Syria, and the resemblance which they have with Jewish law is naturally to be ascribed to the close relationship between the peoples of Syria and Judæa. The analogies with Roman law, on the other hand, are not sufficiently characteristic to suggest borrowing. It is in the nature of things that like laws should take their rise under like conditions among the most widely separated peoples, although Bruns is careful to observe that here, as in certain other cases, the resemblances which were already in existence have doubtless been enhanced by jurists who were well acquainted with Roman procedure. To this we need only add that analogies in the Syrian collection with Babylonian law have been and will be noticed in these pages from time to time, and when it is remembered that the general principles

[1] Bruns and Sachau, *op. cit.* pp. 303-316.

of the Babylonian family system are distinctly reminiscent of ancient Rome,[1] it seems difficult to resist the conclusion that the curious likeness of the Syrian laws of intestacy to Jewish and Roman procedure is directly due to their Babylonian origin. On this account, therefore, it is much to be regretted that the Code of Ḫammurabi, in spite of the fulness with which it deals with the family, has little to say on the subject of intestacy.[2]

[1] P. 128, above; cp. Meissner, *op. cit.* p. 15, n. 1.

[2] Peiser (*Bab. Rechtsleben*, 2 16-18) has concluded that the estate of the man who left no son would pass to the man's parents, brothers, or sisters; females, provided they had male descendants, could only enjoy the usufruct.

# CHAPTER VII

## SLAVES AND LABOURERS

Slaves in Babylonia—Their protection—Rights of slave-owners—Slavery for debt—Marriage-laws of slaves—Their position in Israel—Laws for Hebrew slaves—Humane tendency of Deuteronomy—Status and wages of hirelings—Responsibilities of labourers—and of shepherds—General resemblance of laws among pastoral folk.

SLAVERY in the East was not the institution that it became in Italy and Greece or in the mediæval and modern world. The rights which a man could exercise over his slave did not differ so widely from those which he held over his family. The slave could attain high positions, he could marry free women, or be adopted into his master's family. He was not debarred from holding private possessions or from trading on his own account, and by this means he was able, if fortunate, to purchase his freedom. In a pastoral community where wants are few and easily supplied there is little requirement for slave labour, but with the growing strenuousness of daily life, with the pursuit of agriculture and commerce, and with the growth of luxury, there is the desire to avoid manual labour and to utilise the cheap services

of slaves, and slavery becomes ultimately an indispensable factor in the ancient social economy.

Slavery was the penalty for certain offences, it was often the unfortunate climax of unsuccessful commercial transactions, and it was frequently the lot of captives taken in military expeditions. The slave's standing was necessarily below that of the hired servant, although the latter might easily sink into slavery from which he might never emerge. The *glebæ adscripti* were under an obligation to perform a certain amount of work for their owners, and a man's slaves were able to amass property which remained—partly at least—in their own keeping.[1] A distinction is always maintained between the labourer and the slave, but under the latter term it is not infrequently difficult to determine the degree of servility that is implied. In Babylonia the slave forms a distinct class, *ardu*, fem. *amtu*, corresponding to the Heb. *'ebed*, fem. *āmāh*, and includes man (maid)-servant as well as male (female) slave. That the Hebrew *'ebed* is often applied to no more than a trusty retainer is familiar, and it was not otherwise in Babylonia.[2] The terms servant and slave must, therefore, be regarded as synonymous to some extent in these pages.

In Babylonia slaves do not appear to have been very numerous, and as a rule the contracts only refer

[1] But it was strictly forbidden to do business with a slave, except with contracts and in the presence of witnesses (CH, § 7).

[2] Thus CH, § 146: the *amtu* whom the wife has given to her husband in marriage is degraded and counted among the *amāti* (female slaves).

to two or three at a time. The relations between master and slave were legally secured to a greater degree in Babylonia than in Israel. The servant is the property of his owner (*be-el ardi*),[1] a valuable asset whom it is his master's interest to protect, and for whose loss his owner is entitled to compensation. If through the negligence of another (*e.g.* a physician or a builder) the servant dies, the offender is ordered to render "servant for servant" (§§ 219, 231). If a servant dies through a distraint in the house, "of blows or of want," or if he is gored to death by an ox which should have been kept under restraint, the compensation is one-third of a mina of silver (§§ 116, 252).[2] This is also the penalty for the maid-servant who dies from a particular kind of injury (§ 214). If the servant has been assaulted or negligently doctored, and loses an eye or a limb, the compensation is fixed at half his price (§§ 199, 220). The owner, for his part, was bound to regard the health of his slave, and pay his doctor's bill, though the fees in this case were considerably reduced (two shekels, §§ 217, 223). The man who hired a slave from his master was bound to feed and clothe him, and according to one old Babylonian law, if the hired slave died through overwork, fled, or became enfeebled, the hirer was open to a penalty.[3]

[1] He is entered in contracts as I *SAG ardu*, "one piece (head) slave"; cp. Gr. *σῶμα ἀνδρεῖον* (*γυναικεῖον*). As among the Greeks and Romans, the Semitic slave has no genealogy.

[2] The amount represents the average price of a slave (cp. Sayce, *op. cit.*, pp. 69 *sq.* 75 *sq.*).

[3] *KB* 4 340: the ten *KA* of corn which the law fixes as the

One of the worst of crimes was to assist a runaway slave. The man who brought a palace slave (*arad ē-kal, amat ē-kal*) or a poor man's slave out of the city gate (*abullī*) was put to death (§ 15). The penalty is the same as for theft, and the wording of the law suggests that it applies to all slaves, from those of the palace to those of the poor man inclusive. The death-penalty was also inflicted upon the house-owner who sheltered a slave from the palace or the poor man, and refused to hand him over at the command of the constable (*nāgiru;* § 16).[1] The civil authority probably had the power to search all houses.[2] Appeal could be made to them by the owner of the lost slave, and in a letter of Abēšu, the eighth of the dynasty of Ḫammurabi, a man enlists the aid of the officials in his search after a fugitive female servant, and the king himself, having learned of her whereabouts, gives orders for her to be returned to Babylon.[3] If a man found a fugitive slave in the open country (*i-na ṣi-ri-im*), and the slave would not name (*la iz-za-kar*) his owner, he was brought to the palace and an inquiry held into his past (*wa-ar-ka-zu*), after which he was restored to his owner (§ 18). If the fugitive was detained in the house of the man who found him and was caught in the man's possession, that man was to be

penalty appears to be paid daily until the length of time for which the slave was hired had elapsed.

[1] Probably an overseer or commander.

[2] This could be done, also, in search of stolen property; cp. p. 218, below.

[3] King, *Letters*, p. 134.

put to death—a case of theft (§ 19), but if the slave escaped from the finder, the man could swear (*i-za-kar-ma*) by the name of God and be acquitted (§ 20). Finally, the man who found a fugitive slave in the open country and drove him back to his owner became entitled to a reward of two shekels of silver (§ 17). Laws relating to fugitive slaves are practically the same everywhere[1]—with the notable exception of the Deuteronomic code to be noticed presently—the concealment of a runaway is regarded as theft, but the death-penalty is modified. According to the Syro-Roman law-book, a man who took a slave that was not his, knowing that he was a fugitive, was condemned to slavery, which, as Bruns observes, is not in accordance with Roman law, which only requires pecuniary compensation or a restitution of one or more slaves.[2]

The slave was bought on approval, and the Code lays it down that if he had not fulfilled his month (*arḫu-šu la im-la-ma*) and sickness (*bi-ēn-ni*)[3] fell upon him, he was to be restored to the seller and the money returned (§ 278), and if a slave was bought and a dispute (by a third party) arose, the seller was to be held responsible (§ 279). These laws are illustrated by the contracts,[4] where it is

[1] Dareste, *Journal des Savants*, 1902, p. 521, n. 2.

[2] *Op. cit.* p. 215.

[3] Scheil suggests paralysis. At a later date a hundred days was allowed for the *bennu* to show itself. Mention is also made in contracts of the *tepitum* for which one to three days was allowed (*e.g.* *KB* 4 41, 45).

[4] Cp. *KB* 4 41, and frequently.

guaranteed generally that no one has a prior claim to the slave, that he (or she) did not belong to the royal household, and had not been adopted by any one. Thus the attempt to dispose of a slave who suffered from an incurable disease was frustrated, and the responsibility for any dispute that might arise in case of contested ownership fell upon the right shoulders. The system of purchase upon approval, which, by the way, was not restricted to slaves,[1] passed into the Syro-Roman law-book, where a slave is taken for six months and the detriments consist of disease, demoniacal possession, prior right, etc.[2]

If a merchant bought foreign slaves in another land, and on his return these were recognised by their former owner, the buyer swore "before God" the price he had paid for them and restored them to their owner, in return for which he received the amount in question (§ 281). On the other hand, if the slaves were natives (*marē ma-tim*), *i.e.* Babylonians, and their former owner recognised them, they must be given back without compensation (§ 280). In the latter case it is presumed that the

[1] Kohler, *Beit. z. Assyr.* 4 428, cites Cambyses, 153, where goods are thus taken; so in the Laws of Manu (8 222) property may be purchased on ten days' trial. In China, too, the slave was usually taken for a month on approval (Letourneau, *Property*, p. 166).

[2] *Op. cit.* §§ 39, 113. The Babylonian phraseology is most marked in the Jewish contracts (cp. *Gitt.* f. 86*a*), where it is certified that the slave is free from blemish, is not liable to emancipation, that no one has a prior right, and that he is under no obligation to the king or queen (see the quotations by Nathan, *Orient. Litteratur-zeitung*, April 1903, col. 184; Pick, *Assyrisches und Talmudisches*, p. 25).

buyer should have known that they belonged to a Babylonian owner and should have protected himself in the contract recording the sale. Both Scheil and Johns understand that the buyer must grant the slaves their freedom, but this would not benefit the former owner, and is improbable in view of the laws relating to fugitive slaves.[1]

The slave—not the servant—was branded with a mark which usually appears to have been delible, in order that it might be replaced by a fresh one when he changed hands. Each owner probably had some special mark to distinguish his property, similar to the Arabian *wasm* or *nār*,[2] which was placed upon the slave's face or ear.[3] If the brander (*gallabu*)[4] without (the consent or knowledge of) the owner branded an indelible mark, his hands were cut off (§ 226); and the man who feloniously caused him to

[1] *ana du-ra-ar-u-šu-nu iš-ta-ak-ka-an;* cp. § 117 (p. 229 below), where Scheil translates "to their first condition he shall restore them" (of the freedom granted to a man's wife and children after three years' enslavement for debt).

[2] *Rel. Sem.*(2) p. 480; *Kinship*,(2) p. 247 *sqq.* The custom of branding slaves was prevalent; cp. Herod. 7233 (Persia) and Wiedemann, *Herod.* p. 183 (Leipzig, 1890).

[3] Cp. Meissner, *op. cit.* p. 152, who cites Cambyses, 291, where the slave has a brand-mark on the ear. Cp. also *KB* 4167 and Peiser's note. In a contract of the twenty-sixth year of Darius, two female slaves have the name of their owner tattooed upon their wrist (Sayce, *op. cit.* p. 185). In later Jewish times reference is made to a seal upon the slave's neck or clothing (Talm. Bab. *Shabb.* f. 58*a*).

[4] The Hebrew *gallāb* is used of the barber; in a Phœnician inscription from Citium (*CIS* 1 no. 86), the *gallāb* figures among the temple-servants. On the Ass. word, see Meissner, *op. cit.* p. 152.

make an indelible brand was killed and buried in his own house, whilst the brander, by swearing, "I did not brand him wittingly" (*i-na i-du-u la u-gal-li-bu-u*), was acquitted (§ 227).[1] The amputation of the hands, and the specific mention of the burial of the criminal, are features which recur elsewhere in the laws dealing with theft (§§ 253, 21), and may be reserved for later treatment.[2] Branding was also the punishment inflicted upon the man who unjustly libelled a woman (§ 127), and upon the owner's handmaid who arrogantly set herself upon an equality with her mistress (§ 146). It seems to have been regarded, therefore, as a sign of degradation[3] which reduced the bearer to a lower rank than the ordinary servant, and since it was possible under ordinary circumstances for a man to rise or even to receive his freedom, the punishment for making the brand indelible was naturally heavy. If this interpretation be correct, the interests of the slave, as well as of his owner, are protected by these two laws. The slave who repudiated his owner with the words, "Thou art not my master" (*u-ul be-li at-ta*), is charged, and his master cuts off his ear (§ 282). The same punishment is meted out for a particular kind of bodily assault (§ 205), and it is possible that it was a mark of perpetual slavery.

[1] Cp. above, p. 61, n. 1.

[2] P. 212 *sq.* below. The subject of "accessories" is but rarely handled in the older Semitic legislation (see the *Jewish Encyclopædia*, *s.v.*).

[3] In ancient Greece, it was inflicted upon slaves who stole or ran away (cp. the δραπέτης ἐστιγμένος of Aristophanes).

A man might pledge or sell his wife and children for a debt,[1] but at the end of three years they were to be returned (§ 117). The slaves, on the other hand, who were delivered over in order to work off a debt, might be removed or sold by the merchant (the creditor) at his will, and no objection could be raised (§ 118). An exception, however, was to be made in favour of the female servant who had borne children for her master; she must be ransomed for the amount that her owner had received for her (§ 119). The last-mentioned law is extended by another which has survived in a British Museum tablet of the New Babylonian age. Here, if a man sold a female slave (*a-mi-lu-ut-ti*), and reserved the right of repurchase, if children were born, he could not buy the mother without the children, and for the latter he must pay at the rate of half a shekel of silver each.[2] Other privileges of the maid-servant who had become her master's concubine have been noticed in previous chapters (pp. 112, 140 above), and may be briefly recapitulated. It is only when childless that she can be sold for misdemeanour (§ 147), otherwise she is branded and counted among the slaves (§ 146). Her children share in the estate, provided they have been recognised by the father, and under no circumstances have the other sons claim upon her or her children for servitude (§ 170 *sq*).

[1] Under ordinary circumstances a woman could be seized by her husband's creditor (CH, § 151); see below, p. 228 *sq*.

[2] *KB* 4 320.

The slave might contract a marriage with a woman of rank superior to his own.[1] The Code enacts that if the slave of the palace or the slave of a poor man (*i.e.* any slave) has taken in marriage (*i-ḫu-uz-ma*) the daughter of a freeman (*a-wi-lu*) and she has borne sons, his owner has no claim upon them for service (§ 175). If the woman brought with her a marriage-portion (*šeriḳtu*) from her father's house, and they both acquire goods (property), when the slave dies the woman takes for herself and for her children the marriage-portion and one-half of the goods which they acquired since their marriage, and the owner of the slave takes the other half (§ 176*a*). The same applies also to the woman who had no marriage-portion (§ 176*b*).[2] The children are free, and the goods that have been amassed by the slave and his wife are equally divided, doubtless because the owner is entitled to a share of his slave's profits. The slave did not always possess a house of his own, and part of the expenses probably rested upon the owner. A very similar principle is to be observed in the Syro-Roman law-book,[3] in the law

[1] So in a Nabatæan inscription from the neighbourhood of Damascus, Hāni'u is both the freedman and husband of Gadlu; their sons are adopted by 'Abd-māliku, whose relation to the couple is not stated (*C.I.S.* 2, no. 161; dated A.D. 94).

[2] The identical wording of the two parts of this law is somewhat perplexing. One expects the owner to be compelled to give the woman an additional compensation. Possibly § 176*b* is an afterthought. At all events one may contrast the Hebrew method of stating a similar case in Ex. 21 31.

[3] The law relating to the marriage of a slave with a free woman

dealing with the separation of a man and his wife. If the wife brought female slaves or herds, and there are young ones, the wife took with her all that she brought and half of all that was born (children or cattle), after the marriage; the remaining half belong to the husband "because they have been nourished at his expense."[1]

If the slave's rights were less fully secured by law in ancient Israel, his position at all events was more tolerable. In Israel, as in Babylonia, many of the slaves had grown up in their master's service and had become trusted servants, like Eliezer,[2] who was regarded as heir (Gen. 15 1-4) and acted in Abraham's stead (Gen. 24), and that this was no isolated case is clear from Prov. 17 2, 30 23. So, too, a man gives his daughter to a servant who was not of his tribe (1 Chron. 2 34 *sq.*), and the *'ebed* accompanying the youthful Saul is really a guardian who has money, and is treated as his young master's equal (1 Sam. 9 3-8, 22). Ziba, who belonged to Saul's household, had twenty servants under him and was perhaps a polygamist, and to him was entrusted the duty of managing his young master's estate

in this collection is in accordance with Roman principle (Bruns and Sachau, *op. cit.* p. 215, § 48). The children belong to the owner of the slave, and according to later Mohammedan law, if the parents were the property of separate owners these share them equally (Kohler, *Rechtsvergleich. Stud.* p. 13).

[1] Bruns and Sachau, § 105, p. 275 *sq.*

[2] The retainer is also designated *na'ar*, *nda'rāh*, in the pre-exilic literature, but the terms are by no means exclusively restricted (see the details in Brown-Driver-Briggs, *Heb. Lex. s.v.*).

(2 Sam. 9). Even in the latest legislation it is assumed that the bond-slave could earn and save up money (Lev. 25 49), and a just master piqued himself upon the regard he paid to the complaint (*mišpāṭ*, lit. suit) of his servants (Job 31 13-15).

The roseate picture which we have drawn of the slave's position in ancient Israel—and it is not very different in some primitive Semitic communities of to-day—was not without its analogies in Babylonian life, but there is very good reason to believe that on the whole it was less tolerable there. The Israelite man-servant was of his master's religion and shared in his master's cult. It is true he was lightly esteemed; he was his master's property, and his master might be expected to take some care of him, but beyond this his life was of little save monetary value.

Early Hebrew law concerns itself with the *Hebrew* slave only (Ex. 21 2 *sqq.*): it is not the home-born (*yĕlīd bayith*) or one who is "bought with money" (*miḳnath késeph*) from strangers,[1] but the native, probably one who has been sold or has sold himself for a debt. He was to serve six years, and in the seventh year he was to go free without payment of any ranson.[2] He was to go out as he came in. If he was the possessor of a wife (*baʿal iššāh*), his wife—and doubtless the children—go out

[1] For the terms, cp. Gen. 14 14, Jer. 2 14, and Gen. 17 12.

[2] Cp. the wording of CH, § 117, the wife, son, or daughter given for a debt, "for three years they shall work (*i-ib-bi-šu*) . . . in the fourth year they shall be free."

with him, and if his lord (*ădōnīm*) gave him a wife, and she had borne him children, he must leave these behind. In the latter case we must understand either that the slave married with his master's consent or that one of the female slaves was given to him.[1] Under these circumstances the slave might prefer to remain with his master; his helpless position exposed him to every hardship, and it is not until the introduction of the Deuteronomic Code that the master is exhorted to send his slave away with a liberal present. Accordingly he is brought by his owner "before God" and his (right?) ear is bored with an awl. The rite, in view of the Babylonian law (above, p. 160), is peculiarly suggestive, and one is led to conjecture that it is not to be associated in any way with the sacredness of the door-post or threshold, but is a modification of the mark of perpetual slavery which the Code inflicts upon the thief.[2] The custom of boring the ear is too common, at all events, to lead to the conjecture that the Israelites borrowed the idea from Babylonia.[3]

[1] Benzinger (*EBi.* col. 4655) unnecessarily supposes that the Hebrew master either took the female slave himself or gave her to his son, in which case the slave's wife would be a foreigner; but see below, p. 167, n. 2.

[2] The usually adopted view that the slave's ear—his obedience—is thus firmly nailed to the house and pledged to it for the future seems to require some qualification. The door and the post would seem to be mentioned only as typical places where the ceremony could be performed.

[3] Cp. *inter alia* Clermont-Ganneau, *Rec. d'Archéologie Orient.* 5 323 *sqq.* (1903). According to *Ḳidd.* 1 2, the slave who has

The Book of the Covenant has an important law on the rights of the female slave (*āmāh*) who had been married by her owner.[1] The woman who is sold by her father—no reason is offered—was not to be treated like the men-servants, and if she no longer found favour in her master's eyes, he was not permitted to sell her to strangers. He might allow her to be ransomed, or transfer her with a marriage-portion to his son, or even retain her and take another (maid-servant), without curtailing any of her rights (clothing, food, marriage-rights). In default of all these she goes out free (Ex. 21 7-11).[2] Reading between the lines, we may suppose that the law is a novelty. It raises the position of the married slave rather nearer to that of the free woman, and leads to the inference that the status of the latter was correspondingly higher. It was also good custom in Arabia not to sell the concubine or to give her in marriage to another.[3]

Still more notable is the advance in the Deuteronomic legislation. The freedom of the Hebrew

undergone this rite becomes free at the year of Jubilee or at his master's death.

[1] Early Hebrew usage may have distinguished between the *āmāh* and the *šiphḥāh*, the latter perhaps occupying a more humble position (cp. 1 Sam. 25 41 ?). This does not hold good for later times, however, where the former is preferred by E, the latter by J, respectively. The ordinary female servant is also called *na'ărāh*, *e.g.* in 2 Kings 5 2-4, where the standing of a captive girl in the house of her mistress (*gĕbéreth*) is illustrated in a pleasing manner.

[2] On the passage see Robertson Smith, *Zeit. d. alt-test. Wissens.* 1892, p. 163; *Kinship*,[2] p. 111.

[3] Cp. Dillmann and Ryssel, *Exod.* p. 253.

slave after six years' service is now extended to the female (Deut. 15 12, 17), and in recognition of the length of time which he had served for nought, the Code exhorts the master when he sets him free to give him a share of the agricultural produce (flocks, crops, and wine), adding as a promise that it is well worth his while to be generous (15 13-18).[1] That the rite whereby the slave became his master's property perpetually is performed at the latter's house and not "before God" follows from the Deuteronomic system of centralisation. In addition to the inclusion of women in the law of release, it is also noteworthy that the rights of the foreign female slave are not neglected—the statute in Ex. 21 7-11, which finds no place here, being obviously presupposed.[2] A month must elapse before the captive may be taken to wife, and if her master afterwards has no desire to retain her, she could be set free; but she was not to be sold, nor could she be dealt with maliciously or masterfully (Deut. 21 10-14). The

[1] A modern Arabian slave-owner, if a man of wealth, will after a few years give his slaves their freedom, and will not send them away empty, but will give them in marriage and endow them with some of his own substance (Doughty, *Ar. Des.* 1 554; cp. 2 140, and Baldensperger, *PEFQ*, 1899, p. 134 *sq.*).

[2] No doubt the rights of the Hebrew concubine had now become clearly established. Benzinger (*EBi.* col. 4657) infers that by this time the custom according to which the female slave was her master's concubine no longer prevailed. This seems to rest upon a misapprehension of Ex. 21 7-11, and is disproved by the regulation in the Law of Holiness (Lev. 19 20). The old Law in the Book of the Covenant relating to female slaves deals only with the concubine and not with every slave as he supposes.

mourning rites (*v.* 12) are those of the widow,[1] and the month evidently corresponds to the Arab *'idda*, the length of time after divorce, or after the husband's death, before the widow was allowed to marry again. Naturally, for a woman who was a slave, and was therefore of lower standing, the length of time is shorter.[2] Marriage by capture had evidently become common. It was especially prevalent in Arabia, although Mohammed endeavoured to soften some of the hardships of the captured woman. It is to be observed that in Arabia, too, a woman who had thus been taken by her captor in marriage could be neither sold nor ransomed, and her children, unlike those of the slave women, were both free and legitimate.[3]

Aliens—like the Gibeonites, Josh. 9—and male captives were probably enslaved, although their utter destruction was not forbidden, but even required, by the Deuteronomic law (Deut. 20 13 *sq.*), in its ardent desire to remove as far as possible the possibility of the introduction of heathen cults into Israel. According to old Arabian custom, captives who did not embrace Islam or were not redeemed were put to death, and probably Israelite custom

[1] Robertson Smith, *Old Test. Jew. Church*,[(2)] p. 368; *Kinship*,[(2)] p. 209 *sq.*; Wellhausen, *Arab. Heidentum*,[(2)] p. 171.

[2] So, at least, in Mohammedan law 1½ to 2 months in the case of a slave, but 3 months for a free woman (Kohler, *Rechtsvergleich. Stud.* p. 63 *sq.*). But the length of mourning in Israel appears to have been regularly thirty days only; so even for Aaron and Moses (Num. 20 29, Deut. 34 8 P).

[3] *Kinship*,[(2)] pp. 89-91; cp. Kohler, *op. cit.* p. 15 *sq.*

similarly allowed captives to turn proselytes. In default of this they were doubtless sold, at all events the law was scarcely meant to be carried out literally.[1] To kidnap and sell an Israelite was a capital offence (Ex. 21 16, Deut. 24 7), similarly in the Babylonian Code the man who stole the son of a freeman was put to death (CH, § 14).

The institution of the monarchy and the rise of a luxurious court brought in its rear many calamities for the people of the land. Under ordinary circumstances, when all men aid in the tilling of the soil, there is no need for absolute poverty; the poor man is helped by his brethren, and the tribe interferes on his behalf against aggression from without. The growth of the commercial spirit, the tendency of land to fall into the hands of a few, and occasional disasters such as drought and famine effected serious changes. Not only were parents reduced to such straits as to sell their children to obtain money, but the children might even be seized by the creditor who was unable to obtain his due (2 Kings 4 1, Am. 2 6).[2] Hunger compelled others to place themselves under bondage in order to obtain bread (1 Sam. 2 5).

[1] As Driver points out, the law is only to be resorted to after favourable terms have been offered and refused, and no sanction or excuse is implied for such atrocities as those alluded to in Am. 1 3, 13, Hos. 13 16, 2 Kings 8 12, or for the torture of captives which was practised by the Assyrians. In 1 Kings 20 39 *sq.* a captive is valued at a talent of silver!

[2] So, in the Amarna Tablets, 55 15 *sq.*, 64 39 *sqq.*, men give their families to Yarimuta "for their sustenance" (*i-na ba-la-aṭ napišti-šu-nu*). Cp. above, p. 161.

The Law, it is true, endeavoured to ameliorate the lot of such by the regulation of a six years' servitude, but it was far from being observed (Jer. 34 8 *sqq.*), and the latest legislation prolongs the period to the Jubilee and requires them to be treated not as slaves but as hired servants (Lev. 25 39-55). Only foreigners were to be lifelong slaves.[1]

The owner was required to treat his slave with humanity. If the servant died under his hand from ill-usage, "vengeance must certainly be taken" (Ex. 21 20), but the punishment is only pronounced in a half-hearted manner when it is contrasted with the penalty for killing a freeman (*v.* 12, "he shall surely be put to death"). If death does not immediately ensue the owner is unpunished; the slave is bought with his money (*v.* 21), and it is to his interest not to render his property useless. If the slave is maimed in consequence of his cruelty (mention is made of the loss of an eye or tooth) he is to be freed (*v.* 26 *sq.*).[2]

Reserving these and other cases of assault for a later chapter, we may next notice that the general rule that slaves were to be treated humanely is characteristic of the Deuteronomic reform. The harder stress of life had not only made slavery more

[1] Later Jewish law laid it down as a fundamental principle that no Jew could be a slave; even the thief who was sold for his crime was not to be regarded as a slave (Benzinger, *EBi.* "Slavery," § 5).

[2] The Talmud enumerates six ways by which the slave might obtain his freedom: redemption, letters of emancipation, testament or will, tacit recognition, proselytism, and marriage with a free woman (for the last-mentioned, see above, p. 162, on CH, § 175).

prevalent, but had increased its hardships. Runaway slaves were no doubt never rare (cp. 1 Sam. 25 10, 1 Kings 2 39), and under the old state of affairs would find protection in other clans and tribes. The decay of the old tribal life and the growth of commercial and mercantile habits had altered this, and the legislation finds it necessary to insist that the fugitive was entitled to his freedom. He was not to be delivered over to his master (*ădōnīm*), but might dwell where he liked without fear of oppression (Deut. 23 16 *sq.*).[1]

The disabilities under which the slave suffered were compensated to some degree by the fact that he had a guardian. In this respect he was in a better position than the hireling (*śākīr*), on whose behalf the law only intervenes in order to ensure that he was paid promptly and in full (Deut. 24 14 *sq.*, Lev. 19 13, etc.; cp. Jer. 22 13, Mal. 3 5).[2] The free labourer was answerable to no one, and in return there was no one to protect his interests. In primitive organisations where land is common property and all share in the produce, each man labours for his neighbour and receives only his food. Such was, and still is, the custom in Palestine,[3] but from the causes already indicated, it can scarcely have

[1] Under the tribal constitution the refugee could count upon receiving protection from the tribe to whose tents he had fled. In the society reflected in CH, §§ 15 *sqq.*, the slave's position had evidently become considerably worse than in Israel in the seventh century.

[2] The prompt payment of the labourer is insisted upon in the so-called "Sumerian farming-laws," see p. 190, below.

[3] Cp. Talm. *Bābā Meṣia*, 5 8 (11), and for modern times, Doughty, *Ar. Des.* 2 116.

been very prevalent in Israel after the monarchy had been established. It is not until the time of Deuteronomy that the law above referred to makes its first appearance, and the biblical references to labourers are neither extensive, nor of a kind that require lengthy consideration in the light of the Code of Ḫammurabi.[1]

The laws in the Code concern themselves with the wages and responsibilities of labourers; nothing is said of their rights, although there are indications from other sources that they were not to be treated oppressively as slaves or captives. In one of his letters Ḫammurabi deals with a case where certain workmen have been negligent, and orders that they are not to be put to forced labour.[2] Labourers were to be fed and clothed, and stood under the protection of a *patronus;* more important still, they were not mere objects like the slave, but were designated with the determinative *amilu*, "man."[3]

The Code enacts that the hireling (*amil agrūti*) is not to be paid at the same rate throughout the year. From the beginning of the year (April) to the fifth month, when the days are longer and the harvest is on, he receives six *ŠE* of silver a day, whilst for the rest of the year the payment is five *ŠE* (§ 273).[4] The wages of the artisan (*mār um-mi-a*)

[1] Reference may be made to the material collected by W. H. Bennett, *Expository Times*, May 1902, p. 381 *sq.*

[2] King, *Letters*, no. xxxix. (p. 85).

[3] Meissner, *op. cit.* p. 11.

[4] 180 *ŠE* made one shekel.

vary; the brick-maker (*GAB-A*) and the tailor (*amil KID*) receive five *ŠE* of silver a day, whilst the carpenter (*nangar*) takes four (§ 274). Owing to the mutilation of a portion of the stele, the hire of the stone-cutter (??) and the builder (*amil banū*) is missing, as is also the class of the artisan at the head of the list. Two kinds of farm-labourers receive respectively eight and six *GUR* of corn a year, and the fact that the payment is annual makes it difficult to suppose that they can be engaged for such temporary work as threshing or harvesting (§ 257 *sq.*).[1] The herdsman (*na-ḳid*)[2] for the cattle and sheep receives eight *GUR* of corn a year (§ 261).

Among the scanty details in the Old Testament we read of ten shekels a year for the young Levite (Judg. 17 10), a drachma a day for the angel Raphael (Tob. 5 14), and a denarius a day for the labourers in the vineyard (Matt. 20 1 *sq.*). Labourers were usually paid by the day—whence the Deuteronomic injunction (above)—in later times, at least, by the year (Lev. 25 53). In the latter case some kind of agreement was doubtless required (cp. Job 41 4), though whether it was in writing, as was the usual custom in Assyria and Babylonia, may be doubted.

The laws in the Code relating to the responsi-

[1] *AK-ŠU* (harvester, Scheil, Johns); *ŠAB-GUD* (thrasher, Scheil; ox-driver, Johns and Winckler). When the labourer is hired by contract for a specified length of time, an instalment is sometimes paid down at once (Kohler and Peiser, *Bab. Rechtsleben*, 2 52 *sq.*).

[2] Heb. *nōḳēḏ*, sheep-raiser or dealer (cp. Arab. *naḳad*, a kind of sheep with very woolly fleece).

bilities of labourers are not quite clear. If a labourer has been hired to look after a field, and tools (?)[1] and oxen have been entrusted to him, and he has stolen grain or plants, and they are found in his hands, his hands are cut off (§ 253). If he takes the tools (?) or wears out the oxen, he must restore the corn which he has received to sow (? § 254),[2] If he lets out the oxen on hire or steals the grain and has not caused the field to bring forth produce, he is put to account and must pay 60 *GUR* of corn per *GAN* (§ 255). If his prefect (*bi-ḫa-zu*) is unable to make restitution, he is left on the field among the cattle (§ 256). The last law is particularly obscure, and Johns translates, "if his compensation he is not able to pay, one shall remove the oxen from that field." According to Johns, therefore, the hireling suffers no penalty and the cattle are simply taken away from his care. The law as otherwise rendered by Scheil and Winckler expels the man from the village and presupposes that the responsibility for the labourer is undertaken either by a superior official (Scheil)[3] or by the community or clan (Winckler).

[1] *al-da-a-am*, seed? (Winckler).

[2] *ta a-na še'i ša im-ri-ru i-ri-ab*, "from the seed which he has hoed he shall restore" (Johns).

[3] Cp. *KB* 4 49 (no. iii.), where a man hires himself out for a month and gives the name of his guarantor (*ga-ag-ga-di-šu*, lit. his head). The phrase *šum-ma bi-ḫa-zu a-pa-lam la i-li-i* must be considered along with *šum-ma še'am ri-a-ba-am la i-li-i*, § 54, and *šum-ma šar-ra-ga-nu-um ša na-da-nim la i-šu*, § 8, where it is certainly a question of compensation; *apālu*, "to answer for," as in §§ 152, 206.

The responsibilities of the herdsman (*ri'u*) are laid down at greater length. If he loses an ox or sheep he must restore to the owner ox for ox, sheep for sheep (§ 263).[1] He is bound by a contract to produce a specified number of young ones, and if he has received his wage, whatever was arranged, and was contented therewith, and has diminished the number of the oxen and sheep, and decreased the offspring (*ta-li-id-tum*), he must hand over offspring and produce (*bi-il-tum*) according to the contract (§ 264). Dishonest dealing, such as selling the cattle or making false returns, is punished by a tenfold restitution of what he has stolen (§ 265). If in the sheepfold (*tarbaṣu*)[2] a disaster[3] occurs, or a lion kills one of the herd, the herdsman may clear himself (*u-ub-ba-am-ma*) "before God," and the owner of the sheepfold must face the misfortune of the sheepfold (*mi-ki-it-ti tarbaṣi*; § 266).[4] On the other hand, if the shepherd has been at fault, he must make good the loss and restore (*u-ša-lam-ma*) oxen and sheep to the owner (§ 267). The importance attached to cattle-raising appears, also,

[1] Of the preceding law (§ 262) only two out of nine lines have survived: "If a man, an ox or a sheep to . . ." Jeremias (*Moses und Hamm.* p. 33) has conjectured that it dealt with the theft of cattle; but this is dealt with in § 265, above.

[2] Heb. *rébeṣ* (*EBi.* col. 713).

[3] *li-bi-it ili*, lit. a stroke of God.

[4] The law recurs in later times in Sm. 26, with *i-ši* instead of *ili* (see Delitzsch, *Beit. z. Assyr.* 4 84). The same rule holds good in the case of the hired animal (CH, §§ 244, 249). Note that the two latter laws have here been combined to form one.

in the letters of Ḫammurabi, where we find the king sending instructions to his officials to inspect the royal herds of cattle and sheep, or to see that they are properly tended and that their number is not diminished, whilst, on another occasion, he forwards a list of names of shepherds who are to be brought into his presence in order that they may render their accounts.[1]

The Israelite laws relating to the shepherd are not unlike those in Babylonia. He is paid in coin or in kind (Zech. 11 13, 1 Cor. 9 7), and the story of Jacob and Laban (Gen. 30 31 *sqq.*, 31 7 *sq.*, 38 *sq.*) probably presents no overdrawn picture of ancient custom. The shepherd is asked what he requires,[2] and in the episode in question the herd-owner frequently changes the arrangements in order that his shepherd's share of the flocks may not increase. According to the law in the Book of the Covenant, if a man has taken an ass, ox, sheep, or any beast, to guard or herd (*šāmar*, cp. Hos. 12 12), and it dies, is injured, or is carried off,[3] and there are no

[1] King, *Letters*, vol. 3, nos. xxx., xxxv., and xxxi. As among the more pastoral Hebrews and Arabs, sheep-shearing appears to have been a function of some importance at which the governors of the other cities were present. It took place in the House of the Feast of the New Year, but at various dates: Adar or Šebat (King, pp. 78, 162 *sq.*; cp. *Rel. Sem.*(2) p. 254).

[2] Cp. Doughty, *Ar. Des.* 2 242, where a young lad requires the usual wages, "four she-goats at the year's end and a cloak and a tunic," besides a fill of milk; in a few years' time the young herdsman would thus possess a small flock of his own.

[3] Holzinger rightly observes that "carried off" (*nišbāḥ*) can refer only to whole herds, and suspects that it is a gloss. If not a corrupt

witnesses to support his statement, he must swear the "oath of Yahwè" that he has not put his hand to the goods of the owner (*bĕʿālīm*) and his word is accepted, no restitution is made (*lō yĕšallēm;* Ex. 22 10 *sq.*). Secondly, if anything is stolen from the shepherd he must make restitution (*v.* 12)—presumably, ox for ox, sheep for sheep. It is a case of presumed negligence as in CH, § 267. Finally, if a wild beast has destroyed a beast the herdsman must bring the mangled remains as evidence, in which case no restitution is required (*v.* 13).[1] The last case was probably a frequent one (1 Sam. 17 34 *sq.*, Is. 31 4, cp. John 10 12), and it was exceptionally unfair for an owner to require his herdsmen to make good the ravages of wild beasts (Gen. 31 39). There is nothing to show that the Israelite shepherd was under an obligation to increase the owner's flocks to a specified extent, whilst, on the other hand, it is remarkable that in CH, § 266, nothing is said of the evidence which the shepherd, according to Hebrew law, is required to produce. The solemn asseveration appears in both, but whereas the Code applies it to the case where a disaster or a lion has caused the loss, ravage by animals receives separate treatment in Ex. 22 13, and the oath of Yahwè is used in general cases where neither witness nor evidence

repetition of *nišbar* it is probably inserted to cover such cases as the robbing expeditions mentioned in Job 1 14 *sq.*, 17.

[1] The Septuagint has "he shall bring *him* (the owner) unto (*ʿad*) that which was torn"; but cp. Am. 3 12, Gen. 31 39. According to a third interpretation, the shepherd was required to bring "witnesses (*ʿēd*) of the tearing"; so in later times (*Jewish Encyclopædia*, 2 458*a*).

were available.[1] Apart from the fuller treatment in Ex. 22 10-13 compared with § 266 *sq.* the underlying principles are the same, and considering that cattle-tending was so universal among the Semites the close relationship is perhaps not remarkable. Aramæan Bedouin, according to Sayce,[2] tended the flocks of the Babylonians, and their customary usages were doubtless identical with those of the rest of the Semites. In modern times, the herdsman is held responsible for what is stolen,[3] and the Mishnic law required the shepherd to protect his flock from the wolf, and acquitted him for accidental loss. Certain qualifications were made, however, in order to cover all probable contingencies. Loss by the attacks of brigands, or of dangerous animals (lion, bear, tiger, panther, or serpent), was deemed unavoidable unless the shepherd had negligently led the flock into dangerous or risky places. Natural death was of course unavoidable, but if the shepherd had injured it, he was not held free.[4] Laws of this nature must necessarily grow up in pastoral communities where flocks are tended by paid labourers,

[1] See above, p. 175, n. 4. On the analogy of §§ 244, 249, ravage by wild animals was the owner's loss, and the oath was only employed in doubtful cases ("stroke of God"); in either case the laws do not agree absolutely with the Book of the Covenant.

[2] *Op. cit.* pp. 82, 86.

[3] Doughty, *Ar. Des.* 1 345. Where a tribe send their flocks out to pasture under the care of a tribesman (who is not a hireling) all losses are shared (*ib.*).

[4] *Bābā Meṣia.* 7 7. Cp. CH, §§ 244-249, injuries to hired beasts; p. 222 *sq.* below.

and from the exigencies of the case there may be a certain amount of resemblance between them which is not in any way due to borrowing. So, when we turn to India, it is interesting to find that the Laws of Manu hold the herdsman responsible for loss by day but not by night, provided they are in the owner's house (8 230). If the cattle suffer injury, and if he had not tried to prevent it, he must make it good (*ib.* 232). If stolen by thieves, he must raise the alarm at once and inform his master. Wolves must be warded off, and if any of the flock die he must bring their ears, skin, etc., as proof (*ib.* 233-236).[1]

[1] On the laws relating to shepherds who allowed their flocks to damage the crops, see below p. 200 *sq.*

# CHAPTER VIII

## LAND AND AGRICULTURE

Common lands among the Semites—Rise of individual property—Lands on fief—Holders of crown-lands, their rights and duties—Old agricultural precepts in Babylonia—Laws for farmers and gardeners—Land on metayer—Israelite laws and usages—Irrigation—Miscellaneous Babylonian laws—Damage to crops by animals or fire.

AMONG primitive peoples property in land is practically unknown. Each tribe has a district over which length of custom has allowed it to wander freely and all its members share in the possession. "Property in water," Robertson Smith points out, "is older and more important than property in land," and the digging of a well, without which the flocks could not be pastured, brings with it a right of possession. In settled communities, likewise, land is primarily the common property of the village or township, and individual rights are only acquired by personal labour, such as the building of a house or the cultivation of land.[1] Right of custom applies to

[1] *Rel. Sem.*[a] pp. 95 *sq.*, 104 *sq.*, 144. Cp. Kohler, *Rechtsvergl. Stud.* p. 75; E. Mercier in *Journal Asiatique*, 9th ser., 4 74 *sq.* (1894); *Jewish Encyclopædia*, 1 395*b*. For modern Palestine, cp. Klein,

agricultural as well as to pastoral people, and the undisturbed possession of a piece of land gives the occupier a prior claim.

Among village communities, side by side with the possession of individual property there is frequently to be found the practice of holding common lands, which are parcelled out periodically into a specified number of portions, and divided by lot among those families or individuals of the village who are capable of farming it. In spite of all the attempts of the Turkish Government to repress it, the same custom still prevails in Palestine at the present day, and there are sufficient indications in the Old Testament to make it extremely probable that it held good among the Israelites,[1] who no doubt adopted it from the older Canaanite inhabitants of the land. Nor need we suppose that the Israelites were the only representatives of the Semites who had their village communities.[2]

*ZDPV*, 4 72. The right of the first clearing has been very generally recognised (cp. Laws of Manu, 9 44, and Letourneau, *Property: its origin and development*, *passim*).

[1] F. A. Klein, *ZDPV*, 4 75 *sqq.*; J. Neil, *Transactions of the Victoria Institute*, 24 154 *sqq.* (1890-91); *id.*, *Pictured Palestine*,[2] pp. 252 *sqq.* (London, 1893); Bergheim, *PEFQ*, 1894, pp. 191 *sqq.*; Fenton, *Early Hebrew Life* (London, 1880); Buhl, *American Journal of Theology*, 1 731 *sqq.* (1897); *id.*, *Socialen Verhältnisse der Israeliten*, pp. 56 *sqq.* (Berlin, 1899); Driver and White, *Leviticus*, pp. 98, 100; Bertholet, on Lev. 25.

[2] The Arabs were pre-eminently agriculturists, although among the nomads of historical times agriculture was not practised, and was deemed to be unworthy of a man's attention (cp. Fraenkel, *Aramäischen Fremdwörter im Arabischen*, p. 125 *sq.*; Leiden, 1886).

The growth of central bodies of authority and the institution of a monarchy are detrimental to the older land systems. Mohammedan law, for example, allows unclaimed land to be appropriated for purposes of cultivation, but only with the consent of the governors or chiefs, and if it has not been brought into a satisfactory state by the end of three years it is taken away and given to another. In course of time, as agriculture advances and the population becomes more numerous, the land tends to become the private property of individuals, or is added to the estates of the sovereign, to be handed over to the care of his officers, and the common lands are thus curtailed and are to be found almost exclusively in those districts which are removed from the larger towns or villages. In Israel it was one of the disadvantages of the monarchy that the king seized the lands which his subjects held and gave them to his nobles (1 Sam. 8 14), and the story of Naboth, which long rankled in the hearts of the people, was no doubt only one of many acts of injustice. The spread of commerce destroyed the old simple agricultural life, and the rapaciousness of those who added field to field must have led to the disappearance of many of the smaller land-owners and to the gradual confiscation of the common lands.

Land in Babylonia had long been either private property or under the control of superior authorities.

Even at the present day the true nomad Arabian, if he practises agriculture at all, leaves everything to chance (cp. Palmer, *Desert of the Exodus*, 2 296 *sq.*; 1871).

There were land surveys, and the landed estates of the inhabitants of villages were set down in registers which were kept at the palace or at one or other of the temples for inspection in case of dispute.[1] In one of Ḫammurabi's letters the king orders land to be restored to its owner and remarks that "the ownership of the land . . . is ancient, for on a tablet it is assigned to him."[2] The extent of individual holdings is set forth in great detail in the contracts, the boundaries are defined by the owners of the adjacent properties,[3] and there are imprecations against the man who removes the stone (*abnu*) or landmark (*kudur[r]u*) upon which are inscribed the boundaries and extent. The landmarks are under the patronage of the God Ninib.[4] Individual property, as we have seen, was jealously kept in the family as far as possible, and from the names of witnesses in the contracts it would appear that land

[1] Some of the Bab. terms for the different kinds of land are cited by Peiser (*Skizze d. babylon. Gesell.*, p. 21 *sq.*). Several of the later Talmudic and Targumic designations are of Babylonian origin (cp. Jensen, *Zeit. f. Assyr.* 6 175; Meissner, *Beitr.*, p. 143). For the Jewish terms in general, see Vogelstein, *Landwirtschaft in Palästina zur Zeit der Mišnah*, 1 (1894); *Jewish Encyclopædia*, 1 267a.

[2] King, *Letters*, 3 no. xi.; cp. p. 25.

[3] Contrast the Palestinian practice of giving fancy names to the plots of land, *e.g.* the fuller's or potter's field of olden times, or the field of the partridge, the mound, or the road, of to-day (Neil, Bergheim, *ll. cit.*). In late Jewish contracts, on the other hand, landed property is defined by the boundaries on the east, south, west, and north (Nathan, *Orient. Litteratur-zeitung*, 1903, col. 183; Pick, *Assyrisches und Talmudisches*, p. 28).

[4] *bīl ku-dur-ri-i-ti* (*KB* 4 73, l. 19).

could not be alienated without the sanction of the various members.

It is probable that in Babylonia, too, land had once been held in common. Boscawen finds references not only to a periodical distribution of land by a council, but even distinct traces of village communities.[1] In an old contract-tablet referred to by Meissner[2] it appears that a man who had built a house at his own expense upon another man's field was entitled to live in it, or to let it, for a specified period (? ten years), and it seems extremely probable that this is a survival of the time when the man who built a house gained a right to the land upon which it stood. Other lands which had probably once been common were the property of the king and were entrusted by him to his officials, in return for which they were expected to cultivate it and to perform personal services. These are the ganger (*rid ṣabē*) and the constable (*ba'iru*),[3] and the small series of laws devoted to their duties and privileges next claims our consideration.

If one of these officials has been sent upon a royal errand (*ḫar-ra-an šar-ri-im*) and hires a hire-

[1] *Transactions of the Victoria Institute*, 24 184 *sq.*

[2] *Op. cit.*, p. 12 (quoting Strassmaier, Warka no. 103).

[3] In the letters of Ḫammurabi the *rid ṣabē* appears to be an overseer or captain of troops, perhaps the former, who would seem to have held a position similar to Solomon's officers "over the people" (*rōdīm bā'ām*, 1 Kings 5 16 [30], 9 23; see King, *Letters*, 3 100 n. 1; Delitzsch, *Beit. z. Assyr.*, 4 85; and Johns, *Amer. Journ. Sem. Lang.*, 1903, p. 171 *sq.*, who regards the *ba'iru* as a kind of pressgang officer).

ling (*amil agurri i-gur-ma*) in his stead, he is put to death (*id-da-ak*) and his substitute takes his house (§ 26). The same penalty is inflicted upon the "governor" or "magistrate"[1] who sends substitutes on a royal errand (§ 33). If he had been captured and was ransomed by a merchant (*dam-gar*), and was unable to pay back the amount of the ransom, it must be paid from the funds of the temple of his city (*bit ili ali-šu*), and, failing this, from the palace (*ē-kal*), "his field, garden and house cannot be given for his freedom" (*ip-te-ri-šu;* CH, § 32).[2] The "governor" or "magistrate" who robs him, plunders him of any gift (*ki-iš-ti*), lets him out on hire like a slave, or unjustly brings him to judgment, is put to death (§ 34). Thus are the privileges of these officials secured. The estate cannot be alienated. No constable, ganger, or tax-collector (*na-ši bi-il-tim*)[3] may sell his estate for money (§ 36), and

[1] *PA-PA* and *NU-TUR;* the meanings are not certain (see Johns, *Amer. Journ. Sem. Lang.*, 1903, p. 171 *sq.*). In Letter lv. Ḫammurabi issues a warrant for the arrest of eight officers who had not gone to their posts (King, *op. cit.* pp. 114-6, cp. Letter liv. p. 112 *sq.*). From Letter xv. (p. 36 *sq.*) it would appear that some of these officials were protected to such an extent that they were freed from the unpleasant necessity of appearing in courts of law as defendants in lawsuits arising out of debts.

[2] So Winckler. Johns understands the law quite differently: "if a ganger or constable is diverted on an errand of the king's" (*ša i-na ḫar-ra-an šar-ri-im tu-ur-ru*), *i.e.* is named for foreign or garrison duty, a merchant might buy him out; if he had the means to pay the merchant for this good office he must do so; but his benefice must not be used to raise money for the purpose (*Amer. Journ. Sem. Lang.*, 1903, p. 172).

[3] Or "tributary," Johns, Winckler.

if any one buys it, the money is forfeited, the estate returned to its owner (*bēlu*), and the tablet recording the sale is broken (§ 37). Similarly, the royal flocks which are in the care of the ganger must not be sold, and whoever buys cattle or sheep from him forfeits his money (§ 35).

The estate cannot be written off to the holder's wife or daughter, nor can he pledge it for a debt (§ 38); but property which he has bought or otherwise obtained he can of course dispose of as he likes: it may be bequeathed to wife or daughter or given for a debt (§ 39). On the other hand, the holder is allowed to give his estate for money to another official, and the buyer has full use (*i-li-ik*) of it (§ 40).[1] The field and garden of the ganger or constable may be entrusted to another during his absence, and on his return it is restored to him (§ 27). It may be thus taken over temporarily by his son (§ 28), and if the son is too young, one-third of it may be given to his mother to bring him up (§ 29).[2] The estate must be kept in cultivation, and if the holder has allowed it to go to waste (*ud-da-ab-bi-ir*) and is absent for three years, the man who has had charge retains it, whilst if the original holder has been absent for one year only, it is

[1] The officials in question are royal merchants and others who hold benefices under the state (Winckler, *ad loc.*).

[2] This would be duly specified by a contract, as in the deed of the second year of Nergal-šarezer, where a man's wife is taken into partnership by her husband for as long a time as his brother is away on his travels (Sayce, *op. cit.*, p. 130).

restored to him on his return (§ 30 *sq.*). Evidently the right to hold the land depends upon the man's ability to reclaim it, and the law finds an analogy in the Mohammedan custom already referred to, whereby waste land which has been taken and remains uncultivated for three years is seized by the authorities and given to another.[1] Finally, if the estate has been alienated in the absence of the ganger, constable, or tributary, it is restored to him on his return (CH, § 41). The true meaning of this law is rather obscure. According to Johns (*Amer. Journ. Sem. Lang.*, 1903, p. 173 *sq.*), it is bartered (*u-bi-iḫ*) and exchanges (*ni-ip-la-tim*) have been given, and the latter become the official's property along with the estate (cp. § 37, where the buyer forfeits his money); Scheil and Winckler, on the other hand, understand the estate to have been fenced in, for which injury the holder is entitled to receive compensation.

In Israel there were doubtless highly-placed officials who held lands under the state,[2] and the

[1] Kohler, *Rechtsvergleich. Stud.*, p. 75 (citing Hidaya, p. 610 *sq.*; transl. Hamilton, second ed. by Grady, 1870). Similarly in old Mexico, where every member of the community had a right to the usufruct of the common lands in proportion to his status, the holder who neglected his allotment for two years running was admonished, and if in the third year he had not improved the soil, his lot was taken from him and handed over to another tenant (Letourneau, *Property*, p. 131).

[2] Cp. 1 Sam. 8 14. After the capture of Jerusalem David appears to have given estates in the neighbourhood to members of his family and court (2 Sam. 13 23, Absalom at Baal-Hazor; 14 30, Joab; 1 Kings 2 26, Abiathar at Anathoth).

Chronicler even ascribes to David a system of administration under which the royal fields and flocks were tended by appointed officers (1 Chron. 27 25-31), but analogies for laws similar to the above in the Code are looked for in vain. On the other hand, the disinclination to alienate landed property was exceptionally strong in Israel, and custom had given the near kinsman a clear right of pre-emption and also of buying back (Jer. 32, Lev. 25).[1] The land was a sacred possession; it was Yahwè's, and as such was to be held only by his people. In Ezekiel's sketch of the restoration, crown-lands presented by the "prince" to any of his officials revert to the crown in the year of liberty; only gifts may be held and inherited to perpetuity (Ezek. 46 16-18; cp. CH, § 38 *sq.*).

In Babylonia, perhaps the most prolific of Semitic lands, agriculture flourished from the earliest times, and every care was taken to ensure that the ground should yield the richest harvests. Some valuable particulars regarding the details of cultivation in ancient Babylonia are preserved upon an old mutilated tablet and throw interesting light upon early prevailing conditions,[2] and the kind of literature already in existence at the time of the Code of Ḫammurabi. From it we learn that the legal

[1] Cp. Benzinger, *EBi.*, "Law and Justice," § 15. Doughty (speaking of the Bedouin of Kheybar, *Ar. Des.* 2 116) remarks that when a man has to sell his inheritance for any immediate purpose, it is bought by his tribesmen and not by the negro tenants.

[2] The so-called "Sumerian farming-laws," translated with notes by G. Bertin in the *Records of the Past*, second series, 3 91-101 (1890).

tenure began in the sixth month with the drawing up of a contract. The field is enclosed, hedged, ploughed, and raked, "for every sixty measures of grain the farmer takes eight measures." For a "field of half," the labourer works under the proprietor's overseers, whereas in a "field of partnership," proprietor and tenant are on equal footing, "man as man, house as house, seed as seed." At harvest-time the master supplies "a long cart" and a threshing-ox. Another column, incomplete, gives in detail the duties of the tenant. "He fences with sticks the ground to be ploughed, he ploughs and rakes it, he waters it once and twice, he fixes hooks for the pails for drawing water." At harvest-time he takes his share as arranged in the contract. The division ranges from a third to a tenth, and mention is made of a tithe for the palace. The gardener marks the limits of the garden with boundary stones,[1] he plants date-trees and waters the young plants. It would appear that the tenure might cease at the end of the eighth month: "at the time of drying the dates, at the time of pulling up the palings, in order to quit himself he delivers to the lord of the plantation two-thirds of the dates. He takes a fixed amount and he sends in money the amount of the produce of the date-trees." Finally, the tablet specifies the other works which the tenant of a farm is bound to perform. These comprise the strengthening of doors and gates, and the building of a house for

[1] Or, palings (Bertin).

the servants,[1] whose wages he must pay "at the time of the cessation of work," and if the house is not properly constructed he is fined ten shekels.

Land was hired for a fixed amount, as specified in the contract, or the tenant (*irrišu*)[2] undertook to give the owner a certain proportion of the yield. The Code orders that the man who has taken a field to cultivate (*a-na ir-ri-šu-tim u-ša-ṣi-ma*) and has not caused it to produce corn shall be put to account for his negligence and shall pay over to the owner of the field (*be-el eḳli*) corn like its neighbour (*ki-ma i-te-šu*; § 42). It is estimated that the field should have produced as much as those in its immediate neighbourhood and the cultivator is amerced to the extent of the amount of their crops. The same ruling holds good, also, if the man has left the field to itself, but he is under a further obligation to hoe and harrow it before he returns it to the owner (§ 43). A piece of waste land (*KI-GAL*)[3] that has been taken on hire for three years, but has been neglected, must be hoed and harrowed in the fourth year, and the tenant, when he returns it to the owner of the field, must measure out (*i-ma-ad-da-ad*) corn at the rate of ten *GUR* per

[1] The stipulation that the hirer must build a house upon the field is often found in old contracts (*e.g.* Meissner, *op. cit.* no. 75 *sq.*).

[2] Post-Bibl. *ārīs*; see Pick, *Assyrisches u. Talmudisches*, p. 23. Specimens of such contracts have been published in *KB* 4 41, 127; Meissner, *op. cit.* nos. 72-77.

[3] Unreclaimed or land out of cultivation (Johns, *Amer. Journ. Sem. Lang.*, 1903, p. 96 *sq.*).

*GAN* (§ 44).[1] The first two laws thus apply to corn-land which has not produced the average amount of corn, or has been neglected, whilst the last deals with unreclaimed land which three years' labour was expected to bring into proper condition (cp. CH, § 30 above). The penalty in this case, it would appear, consists not only of a specified payment of corn, but of an additional year's service by the tenant.[2] If the cultivator (*ir-ri-šum*) has given over (to another?) the field to cultivation (*eḳlu e-ri-ša-am iḳ-ta-bi*) the owner has no right to complain since his field has been cultivated, and at the harvest (*i-na eburi*)—when all payments were made—he takes his corn according to his bonds (*ri-ik-sa-ti-šu*). The law (§ 47) apparently refers to a field that has been sublet, and a reason is given for the owner's complaint which is not clear.[3]

The law is not always severe upon the cultivator. If a man has given his field to a cultivator in return for its produce (*bilti*), and has received his share, and a thunderstorm (*ilu Adad*) has ravaged the field and destroyed the crop (*bi-ib-bu-lum*), the loss falls upon the cultivator (§ 45). If, however, the

[1] One *GUR* of corn is worth one shekel of silver, and contains 300 *ḲA*; it is properly a "camel-load" = 5 *imir* (ass-load), Peiser, *Skizze d. bab. Gesell.* p. 22, n. The *GAN* is a land-measure of uncertain extent.

[2] Orelli, *Gesetz Hammurabis*, p. 60, finds in the three laws three successive stages in the legislation.

[3] *aš-šum i-na ša-at-tim maḫ-ri-tim ma-na-ḫa-ti-šu la il-lu-u*, "because in the former year he did not set up his dwelling" (Johns), did not go to his farm (Scheil), obtain sustenance (? Winckler).

owner has not received the produce of his field, and the field is let for one-half or one-third, the cultivator and the owner divide the corn that is left in the field (§ 46). In the former case, the cultivator receives no compensation for the loss of his share of the produce, whilst in the latter, the two share proportionately according to the contract whatever remains.

The laws relating to the gardener are analogous to those for the farmer. The man who lets out a plot of land to the gardener allows him four years in which to plant and rear it, and in the fifth the owner of the garden (*be-el kiri*) and the gardener (*NU kiri*) share equally (§ 60). The plot is divided and each takes his own produce, and if the gardener has allowed a portion of it to lie waste (*ni-di-tum i-zi-ib*), he must include that portion in his own share (§ 61). If the gardener has not planted the field as a garden, and it was corn-land, he must measure out corn to the owner of the field "like its neighbour" for the years in which it has been neglected, and must put it in order before returning it (§ 62; cp. § 43 *sq.*). If it was waste or unreclaimed (*eḳlu KI-KAL*), he must set it in order and measure out 10 *GUR* of corn for each *GAN* (§ 63, cp. above, § 44).[1]

Another small group of laws which also apply to the gardener is imperfect owing to the erasure of

[1] The payment is made *ša ša-at-tim iš-ti-a-at*, "for one year" (Winckler), not for all the years that it has been neglected (as in § 62). Johns, however, has "for each year."

five columns of the inscription. These do not appear to refer to the planting of the garden, but to the cultivation of one already planted.[1] Here, the gardener is to receive one-third of the produce and give two-thirds to the owner, and if through his negligence the yield is small, he must measure it out "like its neighbour" (§ 64 *sq.*). Finally, if a man cuts down a tree (*i-ṣa-am*) without (the consent of) the owner he must pay half a mina of silver (§ 59).

The system of farming on such conditions as these is prevalent. The Babylonian Talmud assumes that when land is taken on lease the tenant must do all that is in accordance with the custom of the country (as specified in the contract); if he does not cultivate it, he must pay in proportion according to the amount the field should produce, and if the produce is destroyed by some wide-spread disaster (locusts, fire), a deduction may be made.[2] At Kheybar, according to Doughty (*Ar. Des.* 2 114 *sqq.*), the Bedouin are the land-owners and the villagers husband the palms for half the produce; they hold half-rights which they may sell; when necessary they must plant new trees for which the owners will compensate them. These holdings are quite

[1] *a-na ru-ku-bi-im*, on the analogy of the Talmudic use of the verb, is understood by Joh. Jeremias (p. 20, n. 3) to mean a grafting; Johns renders by "to farm."

[2] *B. Meṣ.*, 9; Pick, *l. c.* Cp. the specimen of a contract cited by Vogelstein (*op. cit.* p. 49, n. 15), where the tenant pays the expenses, and gives the owner half the produce, and binds himself with the following promise: "If I leave it waste and till it not, I shall pay back according to the best." See below, p. 202, n. 1.

distinct from the open lands which the villagers possess in their own right. In Palestine the amount taken by the owners varies. Some Bedouin proprietors take one-fifth only, but the fellaḥīn pay all the expenses; more commonly the proportion is one-fourth and the land-owner provides the seed.[1]

Of the agricultural laws of ancient Israel we know but little, although all the evidence goes to prove that there must have been numerous customary usages in vogue. Canaan had been under cultivation long before the Israelites entered, and agriculture plays a very prominent part in the history of the land. It is noteworthy that the promises and threats associated with the observation of the Deuteronomic code are specifically agricultural. They are as characteristic of Israel as Ḫammurabi's Epilogue (chap. i. above) is of Babylonia—not that agriculture was practised to a less extent in Babylonia, but in Israel it was the people's life, and it left its mark upon the language and sentiment to a degree that finds no parallel in the commercial powers of the Tigris and Euphrates.[2]

It is not until Deut. 19 14, 27 17 that it becomes necessary to prohibit the removal of the neighbour's landmark. The land-grabbing tendencies of the rich and powerful was one of the curses of the monarchy, and the numerous references to the

[1] Post, *PEFQ*, 1891, p. 104; Jaussen, *Revue Biblique*, 1901, p. 606.

[2] A picture of later Jewish agriculture is presented by the writer of the *Letter of Aristeas*, 107 *sqq*.

offence in the later writings stand out in striking contrast to the silence of the Book of the Covenant.[1] The landmark (*gĕbūl*) was scarcely an inscribed stone similar to the Bab. *kuduru* (p. 183 above). In modern times, when the same plot is divided and shared by several in common, division is indicated by a furrow of double width, or more generally by stones which are placed at each end of the boundary lines.[2] It is probable, therefore, that the Deuteronomic law referred to the cases where land was held in common, and not to the boundaries of estates or properties which would naturally be of a more permanent character.[3] The same offence was condemned in Assyria, and among a list of sins which a man might commit we meet with such questions as: "Has he set up a false landmark, or has he refused to set up a true landmark? Has he removed bound, border, or landmark?"[4]

Further, the modern Palestinian custom which compels a man to sow on his strips of land the same seed as the rest, in order that all may harvest at the

[1] Hos. 5 10, Prov. 22 28, 23 10*a* (where read "the landmark of the widow," cp. 15 25), Job 24 2.

[2] Neil, *Vict. Inst.* p. 159 *sq.*; Bergheim, *PEFQ*, 1894, p. 195 *sq.* The modern name, according to the former, is *takhem*, "limits," the abstract for the concrete as in the case of the Hebrew *gĕbūl*.

[3] Trees are sometimes planted at the present day to mark permanent boundaries (cp. Gen. 21 33?), and the fellaḥīn dig a hole wherein are placed egg-shells and charcoal, which, as they say, never disappear, and can always be dug up as evidence (Clermont-Ganneau, *Recueil d'Archéol. Orient.* 5 331; 1903).

[4] King, *Babylonian Religion*, p. 219; from a seventh-century tablet.

same time, suggests an explanation of the precept directed against sowing a field with two kinds of seed (Lev. 19 19, Deut. 22 9).[1] The reason proferred by the Deuteronomist is obscure, but it seems not unlikely that he is only giving effect to a survival of ancient custom by clothing it with what in his day was deemed a plausible explanation. In like manner it can scarcely be maintained that the injunction in Ex. 23 10 *sq.* (cp. Lev. 25 3 *sq.*), that each plot should lie fallow in the seventh year, was originally based upon the institution of the seventh day of rest. In later times, according to the Mishnah, a field was divided into portions, of which one half was sown in the first year and the second half in the year following, or the whole field was sown for a few years and then allowed to remain fallow for a length of time. Experience naturally taught the necessity of letting the ground rest, and it was enforced by a law which based itself upon motives of humanity.[2] Similarly, the law in Lev. 19 9, 23 22, which exhorts the cultivator to leave the corners of his field for the poor, is introduced solely out of benevolent motives. A relic of an ancient communistic life has already been suspected,[3] but it

[1] Here may be noticed the later post-biblical rule that a man might not sow on his field seed of a different kind to that specified in his contract (Vogelstein, *Landwirtschaft in Palästina*, 1 50, n. 20).

[2] Ex. 23 11. On the curious change in Lev. 25 20-22 (fallow in the ninth year), see the commentaries of Driver and White (Haupt's *Sacred Books of the Old Testament*), and Bertholet, *ad loc.*

[3] Oort, *Theologisch Tijdschrift*, 1900, p. 286 (Bertholet, on Lev. 19 9).

is more tempting to suppose that the rule took its rise in ceremonies relating to the corn-spirit and the last sheaves of corn which, as Mannhardt and Frazer have shown, are to be found almost everywhere.[1] As another example of the manner in which an agricultural custom has been preserved in Hebrew ritual, it is interesting to observe that the Law of Holiness is doubtless only following ancient practice when it forbids the fruit of newly planted trees to be eaten before the fifth year (Lev. 19 23 *sq.*). This is precisely the length of time which, as we have already seen in CH, § 60, must elapse before the gardener and owner are allowed to divide the produce. Finally, if Hebrew law forbade the destruction of fruit-trees in war (Deut. 20 19), it is more than probable that the offence of cutting down a tree in the orchard of another (CH, § 59) was one for which customary usage made some provision (cp. Ex. 22 5 *sq.*).[2]

Circumstances combined to make artificial irrigation in Babylonia a matter of the greatest necessity,

[1] The modern Palestinian harvest-ceremony with the corn-spirit, as related by Jaussen, *Revue Biblique*, 1903, p. 258, seems to be at present the only known example of its kind from the Semitic field.

[2] Cp. Fenton, *Early Hebrew Life*, p. 39, who also observes that trees in the open country would be common property. This is no doubt correct as regards all vegetation which required no manual labour or care; even Josephus remarks that whatever grows of itself is for the use of the whole community (*Ant.* iii. 12 3). The usufruct is free to all, only entire possession cannot be arbitrarily claimed. So, the Deuteronomic law which allows the passer-by to take the eggs or young ones but not the mother-bird is possibly only one typical case in point (see Fenton, *op. cit.* p. 48).

and the watering of the fields sometimes forms one of the clauses in the tenant's contract.[1] Equal attention was paid to it in Arabia,[2] Palestine, and Syria, although no traces of laws analogous to those in the Code of Ḫammurabi appear to exist,[3] and the silence of the Book of the Covenant may be taken as proof that artificial irrigation was not practised to any great extent in ancient Israel.[4]

Babylonia was intersected with canals which required constant repair; they were cleaned out at intervals, and the banks strengthened from year to year.[5] The responsibility for their maintenance rested with the men who had land along the banks, in return for which they appear to have held the rights of fishing.[6] If a man was too negligent to attend to the banks of his canal, and a breach opened itself and the fields (*ugaru*) were inundated, the Code enacted that the man must make good the corn which was destroyed, and in default of this he and his goods (*bi-ša-šu*) were sold and the proceeds shared by those who held the fields (*mār*

[1] Meissner, *op. cit.* p. 12, n. 3.

[2] See *Rel. Sem.*[2] pp. 96-104, for the distinction between land requiring artificial irrigation by laborious methods and that which is kept fresh by nature. Cp. also Barton, *Semitic Origins*, p. 124.

[3] Cp. Anderlind's description of modern methods, *ZDPV*, 9 31-38, 48; Vogelstein, *op. cit.* pp. 13-18 (1894); Doughty, *Arabia Deserta*, 2 199.

[4] Wellhausen, *Israelitische und jüdische Geschichte*,[3] p. 82, n. 2.

[5] So also in Talmudical times (Pick, *Assyrisches und Talmudisches*, p. 21 *sq.*).

[6] King, *Letters*, pp. 14 *sq.*, 121 *sq.*

*ugarē*; § 53 *sq.*).[1] The water was conveyed through the fields in trenches, and the Code provides that the man who opened his runnel (*a-dap-pa-šu*) for irrigation, and negligently allowed the bordering field to be inundated, must pay back corn "like its neighbour" (§ 55; cp. § 42, above). If, through such negligence, the crops (*ip-še-tim*) of the next field were inundated, he was ordered to pay ten *GUR* of corn per *GAN* (§ 56; cp. §§ 44, 63, above).[2]

Theft of a man's watering-wheel and bucket[3] come under consideration in the Code (§ 259 *sq.*), and a number of minor regulations relating to agricultural life are set down with great minuteness. The hire for a working-ox for one year is fixed at four *GUR* of corn (§ 242); the milch-cow (?) was one *GUR* less (§ 243). The payment for animals hired for the purpose of threshing is twenty *ḲA*[4] of corn for an ox, ten for an ass, and one for a *lalu* (young calf or goat?; §§ 268-270). The ox and ass were similarly used in Palestine;[5] in Babylonia the *lalu*

[1] Are these lands held in common?

[2] The Babylonian legislation reminds one of the Irrigation Department in the kingdom of Asoka the Buddhist emperor, and the analogous institution in Egypt.

[3] One is reminded of the provision in the Laws of Manu for the theft of a rope or watering-pot from a well (§ 319).

[4] A *GUR* of corn contained three hundred *ḲA*, and was worth one shekel of silver.

[5] *EBi.* "Agriculture," col. 82; Vogelstein, *op. cit.* p. 68 (where the hire is 6 kab for an ox, 3 for an ass); cp. *ib.* n. 66 *sq.* (where threshing-machines are worked by oxen, as in Assyria). The "working-ox" (§ 242) may also have been used to turn the water-

may have been employed only by the poorest. For oxen, wagon, and driver, one hundred and eighty *KA* of corn per day is demanded (§ 271), but for the wagon alone only forty (§ 272).

Here it will be convenient to notice the laws relating to crops damaged by the flocks. According to the Code, if a shepherd pastured (*uš-ta-ki-il*) his sheep upon the growing corn (*ša-am-mi*) without coming to an agreement with the owner of the field and without his (consent), at harvest-time the shepherd must pay twenty *GUR* of corn per *GAN* (§ 57). The law is perfectly straightforward; the crops are less, owing to the depredations of the flock, and a compensation must be made. The law that follows is less easy to understand. If, after the sheep leave the pasture (*ugari*) and the whole flock (? *ka-an-nu ga-ma-ar-tim*) has passed through the city gate, the shepherd lays them upon a field and pastures them there, the shepherd must attend to (*i-na-ṣa-ar-ma*)[1] the field, and at harvest-time he must measure out sixty *GUR* of corn per *GAN* (§ 58).[2] The heavier penalty presupposes that the crops are in a more advanced state.

The additional labour imposed upon the herdsman is not out of keeping with the spirit of the Code,[3] on which account the alternative rendering

wheel, as was and still is customary in Palestine (*Jewish Encyclopædia*, 1 268*b*).

[1] *naṣāru*, used analogously to the Heb. *šāmar*.

[2] The law was already familiar from Rm. 277, col. viii. 7-22; cp. Delitzsch, *Beit. z. Assyr.* 4 82 *sq*.

[3] Cp. § 44, where the man who has taken a field for three years

adopted by Johns ("the shepherd . . . one shall watch") does not commend itself. A further difficulty appears in the opening words, which seem to presuppose that there were fields within the city gates.[1] In point of fact, it would appear from other evidence that there were spaces inside the walls, and both Babylon and Nineveh were full of such "squares,"[2] but the open ground outside, in front of the gate, was used for pasture and was the scene of periodical markets. Perhaps the meaning is that the sheep have been allowed to trespass on their way from the pasture-ground to the gate.

The same topic comes under consideration in later Jewish law,[3] and according to the traditional interpretation provision is made even as early as the Book of the Covenant. Of the two laws in Ex. 22 5 *sq.*, the former, according to the ordinary view, deals with the man who allows his beasts to eat in another

and has neglected it must put in another year's labour and pay a specified amount of corn.

[1] So, for example, Delitzsch, *loc. cit.*

[2] Sayce, *op. cit.* p. 112.

[3] *Bābā ḳammā*, 2. A distinction is drawn between domesticated and dangerous animals, between those shut up in a stable and those loose, and the shepherd is responsible for his flock even if he has entrusted it to another; cp. *Jewish Encyclopædia*, 1 160. The Laws of Manu distinguish two cases: for cattle that feed upon enclosed crops a fine is demanded; if the crops were unfenced, the value of the crop must be restored (8 238, 240 *sq.*). Modern custom allows the farmer to injure or kill the trespassing beast and at the same time to demand compensation for the damage (Jaussen, *Revue Biblique*, 1901, p. 600).

man's field, and orders restitution to be made of the best in his own field. The law is given in a fuller form in the Septuagint and Samaritan versions: "If a man cause a field or a vineyard to be eaten and shall let loose his beast and it feed in another man's field *he shall surely make restitution from his own field according to its yield, and if he cause all the field to be eaten* he shall make restitution from the best of his field and the best of his vineyard."[1] Here, the words in italics are not found in the Massoretic text. Apart from other objections to the rendering, the interpretation of the verb *hiḇʿīr* and its derivative constitutes the difficulty. The verb is almost everywhere used of burning, and Hoffmann, followed by Baentsch and Dillman-Ryssel, accordingly brings the law into connection with *v.* 6, where devastation by fire is handled. Under these circumstances, the first law will deal with a man who burns the refuse in his field or vineyard[2] and negligently allows it to spread to his neighbour's ground, whilst the second is purely a case of *vis major*—fire has accidentally spread and burnt the adjoining crops,—and the law demands a restitution, but of an unstated character.[3] Later Jewish times treated the subject with greater

[1] In later times land was divided into three classes: best, medium, and inferior; damages by individuals or animals were made good from the first; creditors were paid from the second (*Gitt*, 5 1; cp. Schwab transl. 9 17 *sq.*).

[2] Cp. Is. 5 24, 27 11, Ezek. 15 4, 6, 19 12, Ps. 80 16; also Is. 5 5 (see RV$^{mg.}$).

[3] The usual interpretation of *v.* 5 (cp. EV) is, as the secondary addition in LXX. and Sam. proves, undeniably old.

precision,[1] and if the fire passed from point to point until it reached the adjoining fields, the man who had kindled it was responsible; whilst if the fields were separated by a wall, stream, or road, the spread of the fire was held to be due to uncontrollable circumstances and no restitution was to be made.

[1] *Jewish Encyclopædia*, I 160*b*.

# CHAPTER IX

## TRADE AND COMMERCE

Business in Babylonia contrasted with Israel—Scantiness of evidence in Israel—Methods of conducting business—General laws for the furtherance of business and trade—Theft and burglary—Analogous Hebrew laws—The receiver of stolen and lost property—Laws for property in the charge of another—The boatman—Hired animals in Israel and Babylonia—Laws of deposit—Debtor and creditor—Pledges and security—Simplicity of procedure in Israel—Antichretic pledge in Syria—Trading journeys—Laws for agent and principal.

THE numerous contract-tablets from Babylonia and Assyria and the survival of one or two old Babylonian laws had for some years past led to the conviction that business relations from the time of the first dynasty must have been regulated with the greatest precision, and not only is this entirely borne out by the Code of Ḫammurabi itself, but we are now introduced to a thoroughness of detail which presupposes that the closest attention possible was paid to the perfection of the machinery upon which the successful prosecution of trade and commerce depends. The Babylonians were past masters in all that pertains to business, and many current

usages can be traced back to them through the Greeks and Romans; and Kohler has justly remarked, in the course of one of his model studies on the legislation of Babylon, that the history of trade and money transactions cannot be written without reference to Babylonia.[1] In agreement with the scope of the present study, however, it is not required for us to do more than note the laws in the Code of Ḫammurabi which relate to business dealings, and the numerous details revealed in the contract-tablets from the earliest times onwards do not call for consideration except in so far as they illustrate the laws in question. In this department, moreover, if the attempt were made to trace the influence of Babylonia upon Israel, it would be to the post-exilic, nay, rather, the post-biblical literature to which we should have to turn. Trade and commerce as we understand it, and as it was understood in Babylonia, was entirely foreign to the early Israelites—to the primitive Semites. Commercial cleverness is partly a matter of environment; certain communities have acquired an aptitude for acuteness in business—to others it is abhorrent. Love of money and the commercial spirit do not always go hand-in-hand, and the varying degrees of business talent found among present day Bedouin suggests that things were not otherwise before the Christian era.

The Israelites confess a latent objection to the commercial spirit when they use the gentilic

[1] *Beitr. z. Assyr.* 4 430.

"Canaanite" (Phœnician)[1] as a specific term for all traders. The designation is correct, since the Phœnicians were pre-eminently the traders of the Mediterranean, and through their trading-journeys were no doubt acquainted with Babylonian methods. There were traders, of course, even in ancient Israel, and great trade-routes crossed the country along the Jordan valley or the maritime plain, and smaller cross routes branched out and joined the larger towns,[2] but we can scarcely infer that the traders left their mark upon the country to any greater extent than, perhaps, the Gipsies of Europe, and this inference is supported by a critical examination of the evidence.

The Book of the Covenant, although acquainted with money and deposits, makes no provision for trade, whereas in Deuteronomy there are regulations for debts and interest, and the internal history indicates that the lengthy reigns of Jeroboam II. and Uzziah saw a marked change in the economic conditions of the country. Thus arose the necessity for denouncing the sins of trade, avariciousness, oppression, and, in particular, the frequent condemnation of unfair weights (Deut. 25 13-16; cp. Lev. 19 36, Ezek. 45 10-12, etc.).[3] But the scantiness of

[1] The earlier names are also tribal, *e.g.* Ishmaelite (Gen. 37 25 *sqq.* J), Midianites (Gen. 37 28, 36 E).

[2] Cp. G. A. Smith, *EBi.* "Trade and Commerce," §§ 32 *sqq.*

[3] Cp. in the list of sins from an Assyrian tablet of the seventh century—"Has he used false scales? . . . has he accepted a wrong account, or has he refused a rightful sum?" (King, *Babylonian*

evidence upon the Hebrew side still continues to be remarkable, and it is an extremely significant fact that the Hebrew terminology of trade in the Old Testament contains comparatively few words of Babylonian or Assyrian origin, and these, in turn, are to be found chiefly in the exilic and the post-exilic writings,—that is to say, subsequent to the period when Israel had been brought into the closest possible touch with Assyrian life and conditions.[1]

In Babylonia and Assyria all business was done by deed or bond before witnesses,[2] not only between strangers or kinsfolk, but even between members of the same family—Babylonia was verily a Paradise for the professional scribe. According to the Code, "if a man has bought (*iš-ta-am*) silver or gold, man-servant (*ardu*) or maid-servant, ox or sheep or ass or anything else, from the son of a man or the man-servant of a man, or has received it on deposit (*a-na ma-ṣa-ru-tim im-ḫu-ur*) without witness or contract (*ri-ik-sa-tim*), he is a thief (*šar-ra-aḳ*) and shall be put to death (*id-da-ak*)" (§ 7). It is interesting to notice that the names of nearly all the objects mentioned (*kaspu, ḫuraṣu, alpu, immeru, imēru*, etc.) are also familiar in Hebrew or Phœnician, but the technical terms are quite distinct.[3]

*Religion*, p. 219). From Amos 8 5 it may be perhaps inferred that weights and measures were legally fixed by the eighth century.

[1] G. A. Smith, *EBi.* "Trade and Commerce," § 82.

[2] Each party often has a relative or two among his witnesses (*e.g.* in *KB* 4 41, each has a brother).

[3] On the Heb. terms for buying and depositing, cp. G. A. Smith, *EBi.* col. 5198 (*g*), and art. "Deposit" (col. 1074).

The law is a just one, its evident aim being to ensure that business was transacted with a certain amount of publicity when one of the parties was a minor or under the tutelage of a master. Thus it was less easy for the servant or slave to make dishonest use of his master's goods, and a sharp-dealing trader was prevented from taking advantage of the minor's youth and inexperience. Accordingly the law is drawn up in the interests both of the father and of the owner of servants.

The business transactions of the Israelites were performed in the simplest of methods. In P's long account of the purchase of the Cave of Machpelah (Gen. 23), the presence of witnesses is practically the only important legal feature.[1] The stipulated price, four hundred shekels, the price which the seller "had spoken in the ears" of the people, required no contract. The plot is specified—the field, the cave, and all the trees,—the wording is not improbably in accordance with customary legal usage in Israel, but as such is not Babylonian, nor is it drawn up in accordance with the Babylonian stereotyped formulæ.[2] From Jer. 32 6 *sqq.*, however, it appears that towards the close of the seventh century a more business-like practice was in use, at all events in the larger towns. The transaction was put in writing, witnesses were called and the money

[1] So, in Ruth 4 10 *sq.*, the solemn appeal is made to the testimony of the elders who act as witnesses.

[2] Pinches, *The Old Testament*, pp. 236-8. See p. 38 above, and cp. Carpenter and Harford-Battersby, *The Hexateuch*, 1 64.

weighed out in their presence, and they signed their names. In this case the witnesses were court-officials. The purchase-deed (*sēpher ham-miḳnāh*) was sealed and preserved in a receptacle and, according to the present text, a duplicate was drawn up which was called the "open."[1] Notwithstanding this, such primitive usages were retained as the taking off of the shoe—symbolical of the transference of rights (Ruth 4 7 *sq.*), and the striking of hands as an indication of agreement (Prov. 6 1, 22 26).[2]

In the preceding chapter we have already had occasion to notice certain laws dealing with the responsibilities of labourers in so far as they pertain to the protection of agricultural interests. These now require to be supplemented, and it will be convenient in this chapter to classify the various usages by means of which the Semites endeavoured to further trade and commerce and to ensure due respect for the property rights of individuals. The greater the precision with which law or custom handles the protection of property the more advanced must be the conditions of life in general and trade and commerce in particular. The laws which require to be noticed range over a great variety of subjects and may be considered in the

[1] The text in *vv.* 11, 14 is corrupt; in the former verse "the commandment and the stipulations" (RV "according to the law and custom") is probably a gloss; see further the commentaries of Giesebrecht and Bertholet, *ad loc.* In later Jewish times it was only occasionally that a copy of a deed was put on record (*Jewish Encyclopædia*, 1 395*a*: Roman influence is suggested).

[2] Cp. G. A. Smith, *EBi.* "Trade," col. 5196*e*).

following order: theft, hired goods, deposits, loans and debts, agents and traders. The comparative minuteness with which the Babylonian code deals with these topics will be particularly prominent in the course of the following pages, and it will be impossible to ignore the conviction that the trading successes of the Babylonians and Assyrians—and to these names we may perhaps add that of the Phœnicians—was very largely due to the wise counsels of the Babylonian monarch Ḫammurabi. The care taken in his Code to place upon a firm footing everything that tended to give security both to individual property and to business relations between a man and his neighbour do not fail to move our admiration, and tend to exemplify in a more striking manner than ever the essential difference between the people of this ancient seat of civilisation and the other Semites dwelling alone, secure and unsuspicious, remote from strangers and foreigners (cp. Judges 18 7, Job 15 19). Not only do we find that Ḫammurabi has fixed the standard of pay for agricultural labourers and workmen (p. 172 *sq.* above), and has settled the rate of exchange (CH, § 51), he even interferes in the price of wine and enacts two laws, the motives of which are no longer perfectly intelligible. The wine-seller (a female, p. 150 above) who sold drink, not by corn, but by the "great weight,"[1] and made its price

[1] *i-na abni ra-bi-tum*, perhaps two-thirds of a shekel, as opposed to the "little weight" (*abnu ṣiḫriti*), which was one-third (Johns, *Amer. Journ. Sem. Lang.* 1903, p. 173).

less than the price of corn, was to be put to account and drowned (§ 108). On the other hand, if she gave sixty *ḲA* of *U-SA KA-NI* drink "for thirst" (? *di-ip-tim*) at harvest-time, she was to receive fifty *ḲA* of corn (§ 111). Presumably at this thirsty season drink might be sold at a cheaper rate.

The laws relating to theft of various kinds are perhaps the most complete of their kind in the whole of the Code. Theft of the first order involving entry deals with the goods of the temple (*i-li*) or palace (*ē-kal*) and condemns to death both the thief and the receiver of stolen goods (§ 6). For stealing an ox, sheep, ass, pig,[1] or ship from the temple or palace a thirtyfold restitution must be made, but only tenfold if the thief is a poor man[2]; and if he has nought to pay he is put to death (§ 8). (In between these laws is sandwiched the requirement that business transactions with a minor or slave must be done in the presence of witnesses and with contract.)

Sacrilege, according to old Semitic belief and custom, would be most severely punished; the property of the deity is *taboo* to common people, and the god himself is expected to intervene to protect his own. Achan's sin practically consisted in stealing property that had been dedicated to Yahwè, and the death penalty for such an offence finds an analogy in Gen.

[1] The animals are tribute or revenue for the temple. Cp. King, *Letters of Hammurabi*, nos. xxxii. *sq.*; cp. p. 144.

[2] A tenfold restitution is also required of the dishonest shepherd (§ 265).

31 32 (E), where Jacob, in answer to Laban's accusation that his goods have been stolen, declares that with whomsoever Laban shall find them "he shall not live." Primarily a man protected his own property by placing it under a taboo or in a holy place —*i.e.* under the protection of a deity,—and the custom is still widely prevalent.[1] Communities that are susceptible to development soon outgrow such trustful practices and severer measures are taken against the thief either by the sufferer himself or by the authorities.

Two remarkable laws in the Code allow the thief to be put to death summarily by the individual who has been robbed. If a house is on fire and a man comes to extinguish it and "lifts up his eyes" (*i-in-šu iš-ši-ma*) towards the owner's property and takes it, he is to be cast into the fire (§ 25). Again, if a man has made a breach (*ip-lu-uš*) in a house, "one shall kill him before this breach (*pi-li-ši-im*) and bury him" (in it? § 21).[2] Similarly, the man who caused another to brand a slave with an indelible mark is killed and buried in his own house (§ 227) —both instances apparently treated as an aggravated kind of theft (p. 160 above). The summary treatment of the house-breaker is familiar, but the object

[1] Cp. *Rel. Sem.*[2] p. 162 *sq.* (esp. n. 3), and *Jewish Quarterly Review*, 1902, p. 425. Dareste observes that the death penalty for sacrilege was also customary in Egypt and India (Diod. 2 28; Manu, 9 270).

[2] Cp. the Syro-Roman law-book (§ 81), where the Syriac has preserved an echo of the Babylonian wording: "Those who make breaches (*pālšai pūlšāthā*) are condemned to death."

of burying him in the breach is not clear. The Assyrian kings on their death had the right to be burned and buried in their own palaces, and it was a privilege which was only granted to ordinary people by royal permission.[1] The theory that the dead man's spirit would protect the house from future burglary is not without analogy, but would apply only to § 21, and one is forced to conclude that burial in any other than the recognised place carried with it some dreadful humiliation.[2] The Book of the Covenant declares that the house-owner incurs no blood-guiltiness if he kills a thief who is found breaking in, provided it is before sunrise (Ex. 22 2), and the provision finds analogies in other legislations.[3] It was permissible, also, in Jeremiah's day (2 34). In dealing with the theft of cattle another distinction is made which is worth noticing. The thief who is found stealing with the stolen cattle alive in his possession must restore double, whereas if he has killed or disposed of his booty he must restore five times the number of oxen and four times the number of sheep.[4] If he has nothing

[1] Sayce, *op. cit.* p. 65.

[2] Dareste (*Journal des Savants*, 1902, p. 521 n. 3) points out that the interment of the thief on the spot is frequently met with in the laws of the mediæval age, and cites Grimm, *Rechtsalterthümer*, p. 686.

[3] Solon, Plato, and the Twelve Tables; cp. also the Syro-Roman law-book (Bruns and Sachau, § 77). Modern custom requires an idemnity even for the thief killed at night-time (Jaussen, *Revue Biblique*, 1901, p. 600). It is possible that Ex. 22 2, 3*a* belong to a distinct series of laws on various forms of blood-feud (Baentsch).

[4] Ex. 22 1-4. The ox is of course the more valuable animal; cp CH, §§ 268-270, where the hire of an ox is twice that of an ass.

wherewith to pay, he is sold for his theft (cp. Gen. 44 17), and, according to Josephus (*Ant.* iv. 8 2), becomes the property of the robbed man (as in the Twelve Tables). But the thief regained his freedom after six years (cp. pp. 164, 170 above), although this would hardly happen if, under the law introduced by Herod, he had been sold to a foreigner (Jos. *Ant.* xvi. 1 1).

Hebrew law does not order the thief to be killed,[1] and the extreme severity of the Code may perhaps find an explanation in the lawless state of Babylonia at the time when Ḫammurabi ascended the throne.[2] Death is the penalty for robbing a court official (§ 34), for receiving stolen goods (§ 6 above, cp. §§ 9-11), for kidnapping (§ 14), and for the man who has carried on highway robbery (§ 22). If the last-mentioned[3] has not been caught the victim declares his loss "before God," and the city (*alu*) and governor (*ra-bi-a-nu-um*) in whose district the robbery took place must make it good (§ 23), and if it was a life (*na-bi-iš-tum*), they must pay one mina of silver to his people (*ni-ši-šu*; § 24). A Hebrew analogy for the undiscovered murder will come up for consideration later.[4] In one case only does the Code order the

[1] Gen. 44 9 is not a law but an emphatic protestation of innocence; cp. Gunkel, *ad loc.*

[2] Or it may perhaps be more naturally explained from his strong desire to put an end to every offence that might lead to a breach of the peace; cp. Lippert in *Die Nation*, 28th March 1903, p. 404*a*.

[3] He is distinguished from the ordinary thief by the term *ḫa-ab-ba-tum*.

[4] At the present day the sheikhs may be held responsible

hands of the thief to be cut off (§ 253), a punishment which was frequently inflicted in the East down to quite modern times and is still not unknown.[1] Finally, we come down to two cases of petty larceny: the theft of watering utensils or a harrow,[2] the penalty for which is five and three shekels of silver respectively (§ 259 *sq.*).

It will presently be noticed that the theft of jewels by a carrier is punished by a fivefold restitution (§ 112; see also § 12), whilst for misusing a deposit apparently twofold is restored (§§ 124-126).[3] Turning again to the Book of the Covenant, we are reminded of the five, four, and twofold restitution of Hebrew law (Ex. 22 1, 4), and of the fourfold penalty in Nathan's parable (2 Sam. 12 6; cp. Lk. 19 8). It is true that the Septuagint here reads sevenfold, and this is followed by all critics on the strength of Prov. 6 31. David, it is urged, is more likely to have thought of the proverbial "sevenfold" than of the law, and the reading of the text is consequently ascribed to a corrector.[4] On the other hand, it is perhaps reasonable to argue that the

for thefts committed by their tribesmen (Doughty, *Ar. Des.* 1 176).

[1] Burckhardt, *Ar. Prov.* no. 550; Doughty, *Arabia Deserta*, 2 318 *sq.*, and Baldensperger, *PEFQ*, 1897, p. 127 *sq.* (Old offenders were put to death as late as the middle of the last century.)

[2] The former, *GIŠ-APIN* and *GIŠ-APIN TUR-KIN*, perhaps correspond to the modern watering-bucket and water-wheel (shaduf).

[3] The twelvefold penalty of the unrighteous judge has already been discussed (CH, § 5, p. 66 above).

[4] Thenius Lohr Driver, H. P. Smith, Budde.

heavier penalty for theft belongs to a later time.[1] At all events it is to be noticed that the "sevenfold" does not happen to occur in the Babylonian Code, nor has it survived in later Jewish law, where the penalty is twofold if the thief has pleaded not guilty, and four or fivefold if he has stolen an animal and disposed of it. On these grounds, therefore, the fourfold penalty is probably to be preferred in Nathan's parable; it was legal,[2] and was fixed by custom, and has survived to the present day in the so-called *murabba'*.[3]

In CH, § 6 we saw that the receiver of stolen property was, like the thief, condemned to death, and it now remains to glance at a small series of laws which deal more closely with him. If a man lost something of his and it was found in the hands of another, the accused could defend himself by saying "a seller sold it to me, before witnesses I bought it"; and the owner of the lost object could say, "I can bring witnesses who know my lost

[1] Wildeboer suggests that it has arisen from the "twofold" of Ex. 22 4 with the addition of the "fivefold" of *v.* 1; but it is more probable that it is used as a round number (cp. Gen. 4 24; so also Frankenberg, Toy).

[2] Naturally, the passage, whatever be its date, is not evidence of the existence of *written* laws.

[3] Jaussen (*Revue Biblique*, 1901, p. 600), observes that among the modern Bedouin the stolen animal must be restored with three more of the kind. As mares are more valuable, and less easily obtainable, the stolen animal in this case must be restored together with a pecuniary compensation. The fourfold restitution is familiar in Roman law, and in the Syro-Roman law-book it is the penalty for men or women who receive stolen goods from slaves (Bruns and Sachau, *op. cit.* § 79).

property" (*mu-di ḫu-ul-ki-ya-mi*). The accused brings both the man from whom he bought the lost article and the witnesses to the purchase, and the former owner brings his witnesses, and the judge examines their evidence.[1] The witnesses of the purchase on the one side, and of the stolen property on the other, declare all they know "before God," and the judge gives his decision. If the seller has been the thief he is put to death, the former owner receives his property, and the accused recovers from the seller's house the money he had paid (§ 9). Should the buyer, the accused person, be unable to produce either the giver or the witnesses, whilst the owner on his side has produced his witnesses, the buyer is the thief and he is put to death, and the owner takes back his property (§ 10). On the other hand, if the owner cannot produce the men who can testify to his property, for his malevolence and for his attempted calumniation he is put to death (§ 11).[2] This is followed by a rather obscure law whereby if the seller has gone to his fate, the buyer takes from his house fivefold "as the penalty of that case" (*ru-gu-um-me-e di-nim šu-a-ti*; § 12). The natural presumption is that the buyer restores the property to its rightful owner, but it is difficult to see why he is entitled to recover so much, unless it be that the

[1] *Amātu*, written evidence; cp. Meissner's note, *Beitr. altbab. Privatrecht*, p. 121.

[2] Cp. the Laws of Manu, 9 31 *sq.*, where the owner must carefully describe his lost property, and if he be suspected of making a false accusation, he is liable to be fined a sum of equal value.

seller's death had placed upon him the onus of proving his innocence. Finally, if the buyer has not been able to produce his witnesses the judge may adjourn the case not longer than six months,[1] and if the buyer is still unsuccessful, his word is disbelieved and he must bear the punishment (§ 13).

This group of laws, by reason of its completeness and fulness of detail, throws considerable light upon ancient Babylonian procedure. The opening words of the first law (§ 9) lead to the inference that a house to house search was allowed (cp. § 16), and a contract of the nineteenth year of Darius actually illustrates such a practice. The temple of Šamaš was robbed of some wool, and Bil-iddanu, the guardian, in whose care it had been placed, obtained permission to search every house. The supposed missing property was found in the house of a certain man, but as he was able to declare his innocence by proving that he had bought it in the presence of witnesses he was released.[2]

According to the old Hebrew law relating to lost property found in the hands of another (Ex. 22 9), in every case where a man says "this is it," the accuser and the accused come "before God," and the one whom God condemns (after an oath or ordeal) pays double to his neighbour. The accused, if guilty, makes the usual twofold restitution, the accuser, for his false charge, pays twice the value of

[1] According to the Laws of Manu (8 58, cp. 107) the defendant is allowed three fortnights.

[2] Kohler and Peiser, *Babyl. Rechtsl.* 4 87.

the property as compensation.[1] Any one who found lost property was exhorted to return it, or, if he did not know its owner, to keep it by him until it was claimed. The owner might be expected to publish his loss, and the finder was urged not to keep the matter hid (Deut. 22 1-3; cp. Ex. 23 4). It was a common custom for a man who had been robbed to solemnly adjure any one who had knowledge of the offence, and the offender in particular, to come forward,[2] and the Levitical law (Lev. 5 1), in touch with the morality of Proverbs 29 24, requires the man who has heard the voice of adjuration to make known what he has seen and heard. The finder, according to Josephus (*Ant.* iv. 8 29), may keep what he has found if the owner cannot be discovered, but must testify before God that he has not purloined it. The Levitical code (6 1-7) requires the man who has dealt falsely in the matter of a lost thing (*ăbēdāh*), and has sworn a lie, to restore it in full with the addition of a fifth part thereof, and to make a guilt offering.[3]

The laws in the Code relating to property in the hands of another, whether hireling, hirer, or borrower, are characterised by the care taken to ensure its safety, and supplementing what has been said above in chap. vii. (pp. 175 *sqq.*) of agricultural

[1] The law is a general parenthetical case which does not appear to come under the head of deposits. See below, p. 226, n. 3.

[2] Cp. Judges 17 2; Zech. 5 3; Wellhausen, *Arab. Heid.*[2] p. 192.

[3] See further Num. 5 5-8, and cp. the Mohammedan laws (Kohler, *Rechtsvergleich. Stud.* p. 74).

labourers, we may commence with the responsibilities of the boatman. The boat-owner lets out on hire three kinds of boats, for which he charges three *ŠE* of silver, two and a half *ŠE* and one-sixth of a shekel a day respectively (§§ 275-277). The last is called a ship (*elippu*) of sixty *GUR*; the second, *ma-ḫi-ir-tum*, a fast sailer (Scheil, Johns), or rowing vessel (Winckler), is evidently a small craft since its hire is the smallest,[1] and the kind of boat intended by the first law is unknown owing to a lacuna. The boatman (*malaḫu*) who navigates[2] a ship of sixty *GUR* is to be paid two shekels of silver for his fee (*a-na ki-iš-ti-šu*; § 234). If he has not made it strong, and it is damaged within the year, the boatman must exchange the vessel for another and give the purchaser a strong one in its place (§ 235).[3]

If a boatman hires a vessel and through his negligence it is damaged or lost,[4] he must give the

[1] Possibly the circular *kufa* made of rushes is intended; the larger boat may correspond to the modern *kellek* (cp. Lehmann, *Babyloniens Kulturmission*, p. 63 *sq.*).

[2] *iḫ-ḫi*; Scheil "calks" (calfater); Winckler renders the word by "build."

[3] The renderings differ. Winckler understands that the builder must break up (*i-na-ḳar-ma*) the damaged vessel and build a new one at his own expense. According to Scheil, the vessel is exchanged, the builder repairs it at his own cost, and returns the repaired ship to the owner; finally, Johns takes it to mean (*a*) exchange (*b*) or repair, and (*c*) a strong ship must be given to the owner. In a contract of the twenty-sixth year of Darius we find the boat-builder responsible for the management (?) of the ship which he has sold (Sayce, *op. cit.* p. 185).

[4] *ut-te-bi u lu uḫ-ta-al-li-ik*, "has grounded . . . or has caused it to be lost" (Johns).

owner another vessel (§ 236). If a boatman has been hired to convey a cargo of corn, wool, oil, dates, etc., and the vessel is lost through his negligence, he must make good the vessel and all that was in it (§ 237). If he has damaged it or run it ashore, and has succeeded in refloating it, he must pay half its price (§ 238). Presumably he was ordered to make good the damage to a sum not exceeding half its value, and, as his hire is fixed by the Code at six *GUR* of corn a year (§ 239), the owner could probably make him a slave in default. One other law relating to boats comes under consideration. The ship that runs down another at anchor[1] and sinks her is held responsible for the loss, and the owner of the latter declares upon oath (lit. "before God") what has been lost, and the owner of the former must make complete reparation (§ 240).

The extent to which the rivers and canals in Babylonia were used for trading purposes, and the frequent allusions to cargo-boats in Ḫammurabi's letters and in later contracts,[2] sufficiently explain the insertion of the above laws in the Code of Ḫammurabi. Outside Babylonia, the only other Semitic race who would be likely to frame laws of

[1] So Johns; but it is possible that *elippu ša ma-ḫi-ir-[tim]* and *elippu ša mu-[uk]-ki-el-bi-tim* represent two distinct kinds of vessels.

[2] King, *Letters*, pp. 61-67, 84, 121 *sqq.*, 156; from p. 61 it may perhaps be inferred that the captain made an inventory of his cargo before starting on his journey. Other interesting details, chiefly from later times, are given by Sayce, *op. cit.* pp. 183-186.

this nature were the Phœnicians,[1] and of their laws we are entirely ignorant. Even in the Talmudical legislation marine insurance is almost unknown, and the only notice is to the effect that ship-owners may agree that if a man's vessel is lost they will give him another, provided the loss did not arise through any fault of his, or that he had not deviated from his proper course.[2]

If a man hired (*i-gur-ma*) an ox or sheep and it died through ill-usage or blows, ox for ox must be returned to the owner (§ 245), and the same rule applies also if the hirer severely injured it, either by crushing its foot, or by cutting its nape (§ 246). For destroying an eye the hirer paid half its price (§ 247); for breaking its horn, cutting its tail, or injuring its muzzle, one-quarter must be paid (§ 248). If a lion killed it in the open field (*ṣi-ri-im*) the loss fell on the owner (§ 244), and if "God has smitten it" (*i-lum im-ḫa-zu-ma*) and it died, the hirer swore before God and was acquitted (§ 249).[3]

In Hebrew law the subject of injured animals is dealt with under four heads. (*a*) Injury to one animal by another is compensated in a rough and ready manner by dividing the carcase of the injured animal and by selling the live one and sharing the

[1] Even the Assyrians of the time of Sennacherib had recourse to the Phœnicians (Sayce, p. 183; Canney, *EBi.* "Ship," § 4); for the Israelites, see G. A. Smith, *EBi.* "Trade and Commerce," § 45.

[2] *Jewish Encyclopædia*, 4 194*a*, from a commentary on *Bābā Ḳammā*, f. 116*b*.

[3] Cp. § 266, p. 175 above.

proceeds (Ex. 21 35). It is the custom that holds good even at the present day,[1] although the post-biblical legislation clearly recognised the injustice that might arise in those cases where the injuring animal was of little value (*e.g.* a goat) compared with the one injured. If the ox was known to gore (*naggāḥ*)—the vicious ox is the typical animal throughout—and the owner had not kept it under restraint, he must pay ox for ox, and the dead beast becomes his (*v.* 36). Similarly, (*b*) if a man left a pit uncovered and an ox or ass fell into it and was killed, the owner of the pit must make restitution (*yĕšallēm*, *vv.* 33-34*a*), or, as the law proceeds to state with greater explicitness, he must make pecuniary compensation to the owner of the dead beast which now becomes his (*v.* 34*b*). The amount would of course be based upon the value of the live animal. Curiously enough, neither of these laws finds a place in the Code of Ḥammurabi; it is possible that they were too firmly established by customary usage to require to be mentioned specially. (*c*) The Hebrew customs relating to animals in the care of the shepherd or hireling have already been noticed in chap. vii. (pp. 176 *sq.*), and, as we have seen, the legal principle *qui facit per alium facit per se* is not in accordance with Semitic views. (*d*) When borrowed animals are hurt (*nišbar*) or die in the absence of the owner, compensation must be made; the owner's presence is a sufficient guarantee that his beasts suffer no intentional or negligent injury (Ex. 22 14,

[1] Doughty, *Ar. Des.* 1 351.

15*a*). Later Jewish law understood by the words "if the owner be with it," that the beast was borrowed with his consent, and deals at greater length with the contingencies that might arise. If the animal, whether hired or borrowed, died in the course of its accustomed work, there was no responsibility unless the animal was overdriven. But compensation had to be made if through the negligence of the hirer or borrower the beast became thin or ill-conditioned.[1]

It now remains to notice the provision relating to the *ṣākīr* appended to (*d*): "if it (he) be a hired thing (hireling) it is reckoned in its (his) hire" (*v.* 15*b*). Whatever rendering of *ṣākīr* is adopted, the hire is obviously an inadequate compensation for a dead ox, and the true meaning of the enactment is disputed. According to later Jewish law, the borrower usually has the entire responsibility, and since the hireling, too, was only acquitted when his master's possession suffered injury from irresistible causes, it would appear to be the general rule that the beast which died from negligence or carelessness would have to be replaced. The most probable conclusion, therefore, is that the above words refer solely to the injured beast (as in CH, §§ 246-248), the compensation for which would naturally be smaller and more easily recoverable.

[1] *Jewish Encyclopædia*, 1 161*b*, 2 456*b*. Starting from the words "if the owner was with it," the Jewish law of later ages held that if an unmarried woman borrowed something, and afterwards married without telling her husband, he could not be responsible (Maimonides; see *Jewish Encyclopædia*, 2 457*a*).

The next group of Babylonian laws to be noticed deals with deposits. When a man puts silver, gold, or anything else on deposit (*ma-ṣa-ru-tim*) this must be done before witnesses and secured by a contract (§ 122), and if the depositor was a minor or servant, the failure to perform the transaction in the required legal manner stamped the depositee as a thief and brought with it the death penalty (§ 7). If any transaction has been made without these requirements and dispute arises, there is no legal redress (*ru-gu-um-ma-am u-ul i-šu*; § 123). The Talmudic rule is also against taking deposits from women, slaves, and minors, the presumption being that they are not the real owners.[1] In any dispute the depositee is brought to account and must return the deposit (double? § 124);[2] apparently this deals with the case where the depositary disclaims the deposit.

If a man stores corn in the granary (*ga-ri-tim*) of another—and the price is fixed at five *ḲA* for each *GUR* of corn per annum (§ 121)[3]—and some accident takes place,[4] or the owner removes some of the corn, or there is a dispute as to the amount of the corn,

[1] *Tosefta*, 11; Gemara on *Bābā Ḳammā*, 9 7 (cp. generally *B. Meṣ.* 3).

[2] *uš-ta-ša-na-ma i-na-ad-di-in* here and in § 125 *sq.*, perhaps rather "pay double and return"; the penalty is double the amount of the deposit (Joh. Jeremias, *Moses u. Hamm.* p. 7, and n. 1).

[3] *I.e.* one-sixtieth (300 *ḲA* to the *GUR*).

[4] The ravages of mice not excluded (cp. Burckhardt, *Ar. Prov.*[2] no. 177). Post-biblical law required allowance to be made for loss of stored grain through mice (Vogelstein, *Landwirtschaft in Palästina*, 1 73 [1894]).

the depositor, the owner of the corn (*be-el še'i*), declares the amount of his corn "before God," and the owner of the house (*be-el bīti*) must restore (double?) the missing corn (§ 120). If a man put anything on deposit, and through burglary (*bi-il-ši-im*) or sedition (*na-ba-al-ka-at-tim*) some of his property, together with that of the owner of the house (*be-el bīti*), is lost, the latter must return it (? double) to the depositor and recover the goods from the thief (§ 125). The man who alleges that part of his deposit has been lost, or exaggerates the amount, is put on oath "before God," and he (the depositee ?) must replace (? double) the loss (§ 126). The meaning is obscure, and it is not absolutely certain that it belongs to the law of deposits.[1] It might seem that it was entirely to the advantage of any dishonest depositor, but since the latter is put upon his oath the possibility of false swearing is remote.[2] The law, like § 120, is practically covered by § 122 *sq.*, and it is conceivable that both §§ 120 and 126 are survivals of earlier customs.

Old Hebrew law in such a case as § 125 required the thief, if found, to pay double, otherwise the owner of the house (*ba'al hab-bayith*) must go "unto God" (*el hā-ĕlōhīm*) and swear that he has not touched his neighbour's goods (Ex. 22 7 *sq.*).[3]

[1] It comes at the end of the group and is immediately followed by laws dealing with slander and adultery.

[2] Cp. p. 63 above, and n. 1, on the inviolability of the oath.

[3] Ex. 22 9 [8], on the other hand, appears to relate to lost or stolen property; see above, p. 218. If, nevertheless, it actually belongs to the law of deposit, it may be compared with CH, § 124;

By the Levitical code, the depositee who deals falsely in the matter of a deposit must restore in full, together with one-fifth of the amount, and offer a guilt-offering (Lev. 6 1-7). In Talmudic times, the depositee who declares that the deposit is lost may be required to take an oath, and if he assents (by using the formula "Amen"), and it is found that he has put it to his own use, he simply pays it back in full; but if he alleges that it has been stolen by another, and it is proved that he himself has stolen it, he pays back double.[1] That, according to the Code of Ḫammurabi, the depositee should be called upon to make good the deposit when the loss has not occurred through any negligence of his (§ 125) is a harsh rule; the Laws of Manu (8 189), it will be remembered, acquit the bailee, provided he has not taken any part of it to himself, and even the Syro-Roman law-book (*op. cit.* pp. 40, 150) frees him in cases of fire or brigandage. Some Hebrew laws which would cover cases of deposit have been dealt with above (pp. 177 *sqq.*), but their comparative simplicity will not pass unnoticed. At the present day, among the Bedouin, the customary usages are even simpler; deposits are actually made without witnesses; they are preserved by the receiver as a sacred trust, and may be laid up in order to be restored to the heirs.[2]

in spite of the similar penalty in both, the procedure, it will be noticed, is different.

[1] *Bābā Ḳamma*, 9 7.

[2] Cp. Doughty, *Ar. Des.* 1 176, 280, 2 301, and the analogy in the Levitical law, Num. 5 8.

Money matters in Babylonia were regulated with the greatest precision. The money-lenders were frequently priests or, more especially, priestesses who used the temple-revenue.[1] Coin itself was scarce, and both principal and interest were often paid in kind. The rate of interest varied; sometimes it was as high as twenty per cent per annum, and in one case—from the New Babylonian period—money was lent without interest, the only stipulation being that it should be repaid when the borrowers were in better circumstances.[2]

The laws in the Code relating to debt are marked by a conspicuous humanity towards the debtor. As regards the responsibility of the wife for the debts of her husband and *vice versâ*, two statutes are framed which have the merit of being extremely just. If a woman (*sinništu*) is living in a man's house, and her husband has bound himself that no creditor (*be-el ḫu-bu-ul-lim*)[3] of his may seize her, and has drawn up a deed (to this effect), she cannot be held responsible, and is safe, provided the debt was contracted before the marriage (§ 151).[4]

[1] In the Code the money-lender is always called the merchant (*damgaru*, *i.q.* Aram. *taggār*).

[2] See generally Sayce, *op. cit.* chap. vii., and the numerous contracts, especially in *KB* 4.

[3] Lit. owner (holder) of a pledge or debt; as opposed to *mārē ḫa-ab-lum*, debtors (King, *Letters*, no. x. p. 27; cp. *ib.* p. 24, note).

[4] C. F. Lehmann (*Babyloniens Kulturmission*, Leipzig, 1903, p. 54 *sq.*) suspects that the law is a modification of older usage whereby the wife might be held responsible for *all* the husband's debts; cp. CH, § 117. For a law in later Jewish times, see above, p. 224, n. 1.

Similarly, the husband cannot be taken by his wife's creditor if she had contracted a debt before he took her (*ib.*). On the other hand, they share the responsibility if they have run into debt since "the woman came to (*i-ru-bu*) the man's house," and both of them must answer (*apālu*, § 152).

If a man contracted a debt (*e-ḫi-il-tum iṣ-ba-zu-mu*) and sold his wife, son, or daughter, or gave them over to work it off (*a-na ki-iš-ša-a-tim it-ta-an-di-in*), for three years they work in the house of their buyer or exploiter (*ka-ši-ši-šu-nu*) and in the fourth year he (the latter?) shall restore them to their former condition[1] (§ 117). The male or female slave handed over for a similar purpose passed entirely out of his hands (§ 118), but if it was a female slave who had been a concubine he was obliged to redeem her (*i-pa-dar*) at the price he had received (§ 119).[2]

The creditor was not allowed to abuse his powers. The man who took an ox on distraint (*a-na ni-bu-tim it-te-bi*)[3] was condemned to pay one-third of a mina of silver (§ 241), and he who unlawfully distrained the corn of another was liable to the same penalty for each offence (§ 114). Even if a man owed corn or money, and the creditor, without (the consent of) its owner, removed corn, he was to be put to judg-

[1] *durāru*, cp. p. 159, n. 1, freedom from service; cp. Heb. *dĕrōr*, used of the liberty of the Sabbatical year for captives or men enslaved through debt, and for the return of property to its original owner (Lev. 25 10, Is. 61 1, Jer. 34 8, 15, 17, Ezek. 46 17).

[2] Cp. above, p. 161.

[3] *nibutim*, one taken away by force (*nabū*, to seize).

to restore all that he had
given (*i.e.* the amount
§ 113). If the creditor
distrainee died in his
*ši-ma-ti-šu im-tu-uš*),
but if he died by
upon the dis-
of a free-man the
or if a slave, one-
as compensation;
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contract was
due from

the merchant must take them, doubtless at the valuation which the witnesses had made.[1] From another missing law,[2] it appears that a debtor could not give his merchant a garden of dates for his debt, but must pay the money and its interest from the produce according to the wording of his contract. The surplus of the dates naturally belongs to the owner, and the law is presumably intended to prevent the alienation of landed estate. A small series of laws in the Code deal more closely with securities for debts. According to § 49 a debtor might hand over a field to be planted with corn or sesame and require the merchant to cultivate it and take to himself the produce. The field is thus security for the debt, and at harvest-time the debtor repays the merchant in corn or sesame for the money and its interest, and pays an additional sum for the expenses of the cultivator (*ma-na-ḫa-at e-ri-ši-im*). If the cultivator neglects the field and fails to grow corn or sesame, the debtor's contract is not annulled (§ 52)—that is to say, neither the creditor nor the debtor suffer in any way through his failure to perform his duty. If the field was already cultivated, only the amount of the debt and its interest was to be returned to the merchant, naturally there was no need to make any additional payment for the expenses incurred by the creditor in cultivating it (§ 50). If the debtor is unable to repay in money, the sesame (or corn) is valued according to the tariff

[1] Scheil, p. 52; Winckler, p. 19 (*c*); Johns, p. 59 (z).
[2] Scheil, p. 49; Winckler, p. 18 (*a*); Johns, p. 58 (x).

ment, and was compelled to restore all that he had taken, and whatsoever he had given (*i.e.* the amount of the debt) he forfeited (§ 113). If the creditor had levied a distraint, and the distrainee died in his house by a natural death (*i-na ši-ma-ti-ša im-tu-ut*), no claim could be made (§ 115); but if he died by rough usage, the owner had a claim upon the distrainer, and if it was the son of a free-man the distrainer's son was put to death, or if a slave, one-third of a mina of silver was paid as compensation; in either case the distrainer also forfeited the debt (§ 116).

The man who had a debt (*ḫu-bu-ul-lum*) upon him, and lost the produce of his field by a storm (*ilu Adad*) or through drought, was freed from paying his creditor for the current year, his contract was altered,[1] and no interest (*ṣi-ib-tum*) was due from him (§ 48).

A law which probably once found a place in the Code (in the lacuna between §§ 65 and 100), but is now only known from later fragments, allows the man who owes corn or silver but has not the wherewithal to pay, to produce his goods before witnesses and to give them to the merchant for the debt, and

[1] *dup-pa-šu u-ra-ad-da-ab*, properly, his tablet is wiped out. Strictly speaking, the tablet that was cancelled was broken in pieces (§ 37), and Winckler suggests that the phrase in the above law is symbolical of the cause which made it impossible for the debtor to fulfil his contract. In the Syro-Roman law-book no allowance is made for variation in the price of corn, etc., owing to an unfruitful year, when the debt is in kind, unless provision had been made for it in the contract (Bruns and Sachau, *op. cit.* p. 73, § 82).

the merchant must take them, doubtless at the valuation which the witnesses had made.[1] From another missing law,[2] it appears that a debtor could not give his merchant a garden of dates for his debt, but must pay the money and its interest from the produce according to the wording of his contract. The surplus of the dates naturally belongs to the owner, and the law is presumably intended to prevent the alienation of landed estate. A small series of laws in the Code deal more closely with securities for debts. According to § 49 a debtor might hand over a field to be planted with corn or sesame and require the merchant to cultivate it and take to himself the produce. The field is thus security for the debt, and at harvest-time the debtor repays the merchant in corn or sesame for the money and its interest, and pays an additional sum for the expenses of the cultivator (*ma-na-ḫa-at e-ri-ši-im*). If the cultivator neglects the field and fails to grow corn or sesame, the debtor's contract is not annulled (§ 52)—that is to say, neither the creditor nor the debtor suffer in any way through his failure to perform his duty. If the field was already cultivated, only the amount of the debt and its interest was to be returned to the merchant, naturally there was no need to make any additional payment for the expenses incurred by the creditor in cultivating it (§ 50). If the debtor is unable to repay in money, the sesame (or corn) is valued according to the tariff

[1] Scheil, p. 52; Winckler, p. 19 (*c*); Johns, p. 59 (*z*).

[2] Scheil, p. 49; Winckler, p. 18 (*a*); Johns, p. 58 (x).

of the king (*a-na pi ṣi-im-da-at šar-ri-im*) and given to the merchant (§ 51).

The debts, it will be observed, are mostly for money lent; the repayments are in kind. Money does not appear to be in universal use, a state of conditions which reminds us of the society reflected in the Book of the Covenant. The debts are usually repaid at harvest-time[1] and the creditor not unfrequently holds prior right to the first-fruits. The creditor cannot legally take a man's garden or field for a debt, but he may hold it as security, and as long as the debt is unpaid he remains in possession of it.[2] Forcible seizure was not tolerated, and a letter of Ḫammurabi shows the king intervening in a case where a money-lender had taken the land and crops of his debtor Lalum. The latter's right to possession is proved by a tablet in the palace which ascribes to him two *GAN* of land,[3] and the king orders an investigation to be made, and if the money-lender took it on pledge (*iḫ-bu-u*[*l*]), Lalum's pledge is to be restored and the money-lender punished.[4]

Money matters in early Israel were on a simpler scale, and the laws, few as they are, regard the

[1] So also in later Babylonia when money was more generally used, a survival of earlier times. Payment at harvest-time is still required (Doughty, *Ar. Des.* 2 113).

[2] CH, §§ 49 *sqq.*; cp. Meissner, *op. cit.* p. 9. 183.

[3] For the tabulation of land in registers, cp. above, p.

[4] King, *Letters*, no. ix. p. 24 *sq.* Lalum is an official (*KADUR*), and it is conceivable that his case would come under the laws relating to the gangers (cp. CH, § 38, and above, p. 184 *sqq.*). In no. x. there is another case of the illegal detention of property by a money-lender.

debtor as the victim of misfortune and one who was not to be treated oppressively. In spite of this humane ideal the sale of defaulters was customary even in Elisha's time (2 Kings 4 1), and fugitives were doubtless numerous at all periods (cp. 1 Sam. 22 2). Under the Book of the Covenant the debtor would be released in the seventh year (contrast CH, § 117 above), and the Deuteronomic code goes further, and remits the debt at the same time (Deut. 15).[1] The statute was naturally impracticable in real life (cp. Jer. 34 8 *sqq.*), and was replaced in the post-exilic legislation by the institution of the "Jubilee" (Lev. 25 35 *sqq*).[2] As is also the case among the Bedouin of the present day,[3] no usury was to be taken by an Israelite from his countryman (Ex. 22 25-27); the gratitude of the needy debtor, explains Josephus (*Ant.* iv. 8 25 *sq.*), should be a sufficient reward.[4]

[1] The law is more ideal than practical, and the modern view that the debt was merely suspended for one year (cp. CH, § 48) has certainly inherent probability in its favour; cp. the discussion of the question in Driver, *Deut.* pp. 178 *sqq*. At all events we read of a complete remission of debts in the time of Nehemiah (chap. 5; on *v.* 11 see Bertholet, *ad loc.*, and Buhl, *op. cit.* p. 102).

[2] Cf. Benzinger, *EBi.* "Law and Justice," § 16, and "Jubilee." In Egypt bodily distraint was forbidden under the code of Bocchoris (Diod. 1 79).

[3] Doughty, *Ar. Des.* 1 318.

[4] Of the two words for interest, *tarbîth* is the natural increase whilst *nêšek* (lit. bitten off) might suggest an unfair additional imposition (cp. Syr. *tarbîthâ* and *tûkâ*). Buhl (*Socialen Verhältnisse d. Israeliten*, p. 98, n. 2) suggests that the latter is the discount upon the money lent, "bitten out" of the principal; this is supported by the etymology of the Syr. term *ḳḗṣāṣā*.

The creditor who ensured the repayment of a debt by demanding a pledge[1] must not abuse his power. The laws attached to the Book of the Covenant required the pledge, if a garment, to be returned at nightfall (Ex. 22 26 *sq.*; cp. Prov. 20 16, 27 13). The Deuteronomic code not only requires the garment to be given back to the needy debtor at night, but also forbids the mill for grinding the daily corn to be taken as a pledge (Deut. 24 6, 12 *sq.* 17). In all probability these are typical, and the code understands therein all that serves for the preparation of food or for the protection of the body.[2] Common custom had doubtless agreed what things it was proper for the creditor to take, but usage had not the authority of law, and whilst in Israel the complaint was that the iniquitous "drive away the orphan's ass," and "take the widow's ox for a pledge" (Job 24 3), the Code of Ḫammurabi tersely and pointedly orders that "if a man has distrained an ox he shall pay one-third of a mina of silver" (§ 241). Deut. 24 10 *sq.* enacts further that the creditor must not enter the debtor's house to take his pledge; presumably, therefore, he was also obliged to accept whatever was offered.[3] Land was

[1] *'ērābōn*, Gen. 38 17-20, the Canaanite term; *'ābōṭ* (Deut. 24 12 *sq.*) may be of Aramaic origin (Wellhausen, *Kleinen Propheten*, p. 168 *sq.*), in which case it may be ultimately derived from Ass. *ṣibittu*. *ḥābal* perhaps means primarily to seize a personal object by force (cp. Buhl, *l.c.* and *Amer. Journ. of Theol.* 1 728 *sqq.*), and later, to pledge (? through Assyrian influence).

[2] Cp. Mishnah, *Bābā Meṣ.* 9; Bruns and Sachau, pp. 34 (§ 112), 281 *sq.* [3] Cp., perhaps, the Babylonian law cited above, p. 230 *sq.*

also given as security, and the creditor probably had the usufruct until the debt was paid, and with rapacious creditors the unfortunate defaulters speedily lost possession of their estates (Job 20 19, Neh. 5; cp. Gen. 47). Securityship was common enough in late times, to judge by the warnings in the Wisdom Literature (Prov. 6 1-5, 11 15, 17 18, etc.), but it is noteworthy that it does not appear to have been based upon a written contract but was entered upon by the striking of the hands.[1] Finally, imprisonment for debt was not a native institution but probably of Roman origin (Matt. 5 25 *sq.*)[2]

The more prominent part taken by Israelites in trade and commerce at a later day finds an illustration in a recently edited Aramaic papyrus from South Egypt, containing a legal document probably of the Persian age.[3] It relates to a debt, and from the character of the names it is inferred that the creditor is a Jewish banker or money-lender. The interest is at the rate of two *ḥ-l-r* per *š-z* per month, and if not paid punctually, it was to be added to the principal and both were to bear interest. A *n-b-z* (receipt?) was to be written out for all money and interest received, and if the debt was not paid off by a certain date, the debtor was to be held liable to double the amount. Whether *š-z* is the Babylonian

[1] Cp. above, p. 209.

[2] In Arabia also it was due to foreign origin.—G. Jacob, *Leben vorislam. Beduinen*, p. 165 (Berlin, 1895).

[3] A. E. Cowley, *Proceedings Soc. Bibl. Arch.* 1903, pp. 202-208; G. A. Cooke, *North Semitic Inscriptions*, pp. 404-407 (Oxford, 1903).

*soss*, and *ḥ-l-r* the Babylonian *ḫallūru*,[1] is uncertain, and the correct meaning of *n-b-z* is quite obscure; at all events, it is worth noticing that the terms for "principal" and "interest" are Canaanite.[2]

Money matters are naturally treated with greater fulness in the legislation of the Mishna and the Talmud, and, still later, in the Syro-Roman law-book. The last-mentioned has preserved a statute of Babylonian origin, though with Roman analogies, which is interesting enough to be quoted in full.[3] "If a man give another a piece of land as a pledge, and it is agreed that the lender shall take the produce in return for the interest (Syr. *rebbīthā*) of his money, it is legitimate; if a man give an ass or mare as a pledge, the lender may agree with the borrower that the animal may be worked for the interest, but the young ones that are born belong to the owner of the pledge; if a man give a flock of sheep or goats for a pledge, and it is agreed that the produce of the flock shall be for interest, it is legitimate; the wool is for interest, the young ones for the hire and maintenance of the hireling and the sheep-dogs. The increase of the flock makes up for those which die, and the number thereof remains for the owner; so, if a man gives his companion a maid-servant for a pledge and there is a νομή that she shall work for him, this shall be in place of the interest of the money which her master borrowed.

[1] *ḫallūru* (*kaspi*), some small amount: so Muss-Arnolt.

[2] Viz. *r-'-ś*, and *m-r-b-th*.

[3] See Bruns and Sachau, *op. cit.* pp. 29 (§ 99), 274.

But if there shall be children to her, they are to be her master's who borrowed (the loan). For a human being is not like the earth, for the grace of God causes fruits to spring forth from the earth for the sake of mankind generally." The principle of the antichretic pledge was too familiar in Babylonia, especially in the New Empire,[1] to render it necessary to assume that the law was introduced from Rome.

It is not until a comparatively late period that the Israelites appear to have emulated the Phœnicians by undertaking journeys for business purposes (Prov. 7 19 *sq.*, Tob. 9 2, Matt. 13 45), a striking contrast to Babylonia,[2] where the laws of the relations between merchants and their agents presuppose the long existence of trading by caravans or "travellers." The agent[3] takes with him money, for which he must be security; he must agree not to act on behalf

[1] Cp. Kohler and Peiser, *Bab. Rechtsleben*, 1 15 (1890), and Kohler, *Beit. z. Assyr.* 4 427. (In Cyrus, no. 252, two slaves form the pledge; their labour pays for the interest, and their persons are security for the debt.)

[2] The Canaanite term is *sōḥēr* (Heb. and Punic), a trader or merchant (ἔμπορος), as contrasted with the *mōkēr*, seller (πώλης); cp. G. A. Smith, *EBi.* col. 5194 (*b.* i.); Clermont-Ganneau, *Recueil d'Archéologie Orient.* 5 316 (1903). A more specific term is *sursūr* (pronunc. uncertain), upon a Phœnician inscription from Citium, of the fourth century B.C., wherein we find a "chief of the brokers," whose office was hereditary; see G. A. Cooke, *North Semitic Inscriptions*, p. 70 *sq.*

[3] *ŠAGAN-LAL*, explained elsewhere by *naš ŠU ša abni*, "he who carries the bag (*kīsu*) of stones" (cp. Heb. use of *kīs* and *dbānīm*). The ideogram is to be read *šamallū*, *šawallū*, and appears to be the Talm. and Mand. *šĕwalyā*, "pupil," etc. (*Beitr. z. Assyr.* 4 83).

of any other merchant, and all profits are to be shared according to the bonds.[1] The laws in the Code are incomplete owing to the erasure, and the commencement of the first is missing. The agent or trader is answerable to the merchant (*dam-gar*) for the money he takes with him on his journeys and the interest thereof (§ 100), and if in the course of his travelling he has found no luck, he must pay back the amount borrowed (§ 101). If the merchant gave him money as a favour (? *a-na ta-ad-mi-iḳ-tim*), and the agent suffers loss (*bi-ti-ik-tum*) in his journey, he must return the sum (*ga-ga-ad*) to the merchant (§ 102). The last-mentioned law presupposes actual loss in the transaction, and the agent is therefore bound to return the bonus which he had received, together with the capital.[2] The agent who is robbed on the road (*ḫar-ra-nam*) by an enemy can swear (his innocency) by the name of God (*ni-iš i-lim i-za-kar-ma*), and goes free (§ 103). On the other hand, when the merchant gives the agent corn, wool, oil, or any other thing to sell, the agent must draw up an invoice and hand it over to the merchant, and take from the latter a receipt (*ka-ni-ik kaspi*; § 104 *sq*).[3] If the agent receives money from the merchant, and the latter disputes (the amount?), the merchant puts the agent to account before God and

[1] Kohler and Peiser, *Bab. Rechtsleben*, 3 47.

[2] That this is the true meaning of the law is not certain.

[3] It is not clear what happens when the agent neglects to take a receipt (§ 105): *a-na ni-ik-ka-az-zi-im u-ul iš-ša-ak-ka-in*,—according to Johns, "he shall not put [it] in his accounts."

witnesses, and the agent pays the money threefold (§ 106). The merchant who wrongs an agent, and disputes with him the amount he has received, is dealt with in a similar manner and is condemned to pay sixfold (§ 107). The double penalty is in accordance with the graduated system of punishment which prevails throughout the Code. It is not easy to see how disputes could arise, when, according to § 104 *sq.*, the agent must give the merchant a receipt, unless perhaps the last-mentioned laws are new.[1] Finally, if the merchant is away on a journey, and sends silver, gold, precious stones, or "treasure of his hand"[2] by transport and the carrier keeps them, he is put to account and is ordered to return fivefold to the owner (§ 112).

According to the Talmudical law, all benefits resulting from the execution of agency are shared between the principal and the agent, and the latter is responsible for damages and loss, except in the case of *vis major*.[3] In the Syro-Roman law-book, on the other hand, it is laid down that if the agent and the principal agree to share the profits equally, the agent's responsibility, in case of loss, extends only to half the amount received.[4]

[1] The verbal evidence "before God" in § 106 *sq.*, as opposed to § 104 *sq.*, suggests that there is no written evidence.

[2] *bi-iš ga-ti-šu*, *i.e.* a personal ornament.

[3] L. M. Simmons, "Talmudical Law of Agency," *Jewish Quarterly Review*, 8 614-631 (1896); for an abstract of the Mohammedan principles, see Kohler, *Rechtsvergleich. Stud.* pp. 81 *sqq.*

[4] Bruns and Sachau, *op. cit.* p. 73 (§ 82).

# CHAPTER X

## PROTECTION OF THE PERSON

The king—Kidnapping—Witchcraft and sorcery—Responsibilities of the builder—Of the doctor and veterinary—Traces in Syrian law—Principles of the *jus talionis*—Modifications—Assaults upon men—Assaults upon women—Manslaughter and murder—The unknown murderer—Evolution of the *talio*—Stage reached by the Code of Ḫammurabi—Individual responsibility.

A NUMBER of laws relating to damages of various kinds have come up for notice in the course of the preceding pages, and it now remains to undertake a general survey of the various methods by which the safety of the person was secured. We shall find that the Code of Ḫammurabi is particularly rich in this respect, and that some extremely minute precautions were taken to fix the responsibility for accident or loss of life upon the guilty party. The king's safety is secured in the well-being of his subjects, but there is one statute which may probably be regarded as aimed against high treason. The taverns, as we have seen, were kept by women, and evidently were not regarded as places to which respectable people would resort (above, p. 150), and

the Code orders that if rebels (*ṣa-ar-ru-tim*) have collected in her house, the wine-seller must seize and drive them off to the palace-guard, under fear of the penalty of death (§ 109). Apart from this, the king does not come under consideration, except in so far as his interests may be said to be protected by the laws relating to the royal messengers (pp. 184 *sqq.*).

Theft of persons, whether for enslavement or any other purpose, was a capital offence in Babylonia as also in Israel.[1] The Code (CH, § 14) applies the law to the son of a freeman (*mār a-wi-lim*), whilst the Book of the Covenant is wider in its scope, and uses the general term "man" (*īš*, Ex. 21 16). The Deuteronomic code restricts the offence to Israelites only (Deut. 24 7), a noteworthy illustration of the changed conditions of its time. The earlier collection in Exodus practically applies only to the Hebrews, and the law therefore requires no explanatory specification. By the end of the seventh century, however, Israel's horizon had been considerably extended, and dealings with foreign powers and the growth of new conditions had made slavery a recognised institution. The later code, realising this, is forced to confine the prohibition to members of the chosen race.

The man who tied a magical spell (*u-ub-bi-ir-ma*) and put a ban (*nē-ir-tum*) upon another and could not justify himself (*la uk-ti-in-šu*) is put to death (§ 1). If a man put a charm (*ki-iš-bi*) upon another

[1] Cp. also the Syro-Roman law-book, *op. cit.* p. 244 (§ 78).

and could not justify himself the case is left for the river-god (*ilu nāru*) to decide. The man upon whom the spell is cast—*not* the wizard—plunges into the holy river, and if it overcomes him, the weaver of spells takes over the victim's house, but if the ordeal shows him to be innocent and preserves him (*iš-ta-al-ma-am*), the wizard is put to death and his house is taken by the victim (§ 2).[1] With these laws the Code of Ḫammurabi commences, and their prominent position is perhaps an indication of the importance attached to them. To understand their motive one has only to realise the prevalence of magical practices in Babylonia. Pain, illness, and even death itself were held to be due to the malignant energy of spells worked by demons or human beings. The latter, more commonly women, inflicted all kinds of ills by means of magical formulæ, by loathsome potions, or by the use of sympathetic magic. The last-mentioned frequently took the form of magical knot-tying, and it is possible that this is intended in the first law (§ 1). The second (§ 2) evidently implies a more terrible form of enchantment, but its precise nature can only be speculated.[2] The evils which befall the unhappy victim may have been sent as punishments for sins—whether of omission or commission,—and the lengthy list of ceremonial and ethical transgressions preserved in a seventh-century tablet is a striking illustration of the advanced conceptions ruling in Assyria,[3] and

[1] Cp. above, p. 64.

[2] Possibly a magical drug.

[3] King, *Babylonian Religion*, pp. 218 *sqq.*; see below, p. 277 *sq.*

suggests that the wizard even of Ḫammurabi's time would find little difficulty in justifying his spells.

Laws directed against sorcery are general, and are not absent from the early Hebrew collections. Among the exhortations accompanying the Book of the Covenant is one aimed at the extirpation of witches (*mĕkaššēphāh;* Ex. 22 18), and the wording ("thou shalt not let live") may be taken to imply that the witch might be killed out of hand without resort to judicial procedure.[1] Deut. 18 10 *sq.* presents a full list of forbidden practices coming under this head, and along with the sorcerer (*mĕkaššēph*) includes the charmer, or weaver of magic spells (*ḥōbēr ḥéber*). The absence of all mention of a penalty severs the Deuteronomic code from both Ex. 22 18 and the Law of Holiness, where stoning is inflicted upon those who indulge in magical practices (Lev. 20 27).

That both Israel and Babylonia should have endeavoured to protect individuals from sorcery occasions no surprise, and the only question is to what extent the punishments were actually put into practice. That Saul expelled and "cut off" all sorcerers from the land of Israel (1 Sam. 28 3, 9, 21) is a statement due to a writer who was at least contemporary with, if not later than, the Book of the Covenant. In Babylonia, too, death by burning

[1] Cp. Holzinger, *ad loc.* Josephus (*Ant.* iv. 8 34) finds in the verse a prohibition against keeping drugs, fatal or harmful, and assumes that the man who is caught is to be put to death and suffer the pain he would have brought upon his victim.

was regarded as the only appropriate penalty for witchcraft, but Zimmern observes that it cannot yet be clearly made out whether it was ever put into effect.[1] It seems certain, however, that the victim might retaliate by burning the effigy of the witch before the image of the deity whose help he implored; but this is only sympathetic magic. The laws were probably more ideal than practicable, and in spite of condemnations magical practices were never uprooted in Israel but continued to flourish down to Talmudical times.

A small group of laws relates to the responsibilities of the builder (*banû*). Houses were let on lease yearly or for a period of years up to eight. They were to be kept in repair by the tenant, who was responsible, also, for damage caused by fire or any other accident.[2] As was often the case in paying salaries, a deposit was paid down, and the rest became due at the expiration of the time agreed upon. The Code of Ḫammurabi probably contained a number of laws in the five erased columns applying to tenants, but only one of them, from the time of Ašurbānipal, has been preserved complete.[3] Here, if the occupier (*a-wi-lum aš-bu-ta-*[*am*]) has paid the entire rent (*kasap kiṣri-*[*šu*]) for the year, and the owner of the house orders him to leave before the days are fulfilled, the money which the tenant paid him (he must restore). The tablet being imperfect,

[1] Zimmern, *EBi.* "Magic," § 2*b*.

[2] Sayce, *op. cit.* pp. 114 *sqq.*; Meissner, *op. cit.* p. 11 *sq.*

[3] Scheil, p. 51; Winckler, p. 18; Johns, p. 58 (Y).

it is uncertain whether the landlord is required to return the whole of the amount or only a portion corresponding to the length of time which had still to elapse.

For making and completing[1] a house the builder receives two shekels of silver for each *SAR* (§ 228).[2] If he had not made it strong, and it fell and killed the owner of the house, he was put to death (§ 229). If the owner's son died, the builder's son became the victim (§ 230); if a slave, he must give slave for slave (§ 231); and if the household goods were destroyed, he must make good the loss (§ 232). In the last-mentioned case the builder was obliged to build up the ruined house; no doubt this was always understood in the preceding cases. If he had not erected it (*uš-te-is-bi-ma*)[3] firmly and a wall fell down, he must strengthen it at his own expense (§ 233). The laws thus cover all damages and inconveniences likely to arise from the negligence of the jerry-builder. Parallels to these laws from the rest of the Semitic field are wanting. The Deuteronomic code enjoins the man who built a new house to protect the roof with a parapet (*ma'ăḳeh*; Deut. 22 8), a provision which is on the same general lines as the law in the Book of the Covenant which makes the owner of an unprotected pit responsible for loss

[1] *šaklil*; cp. Bibl. Aram. Ezr. 5 3, 11.

[2] According to Sayce (*op. cit.* p. 266), "180 *SE* were probably equivalent to 1 *GIN* [? *GAN*], 60 *GIN* to one *SAR* or 'garden,' 1800 *SAR* to 1 feddān or acre," but there was a smaller acre one-tenth of the size.

[3] "Jointed" (Johns).

caused by animals falling therein (Ex. 21 33 *sq.*). A similar safeguard was required in post-biblical times, and it is interesting to notice that the general regulations applying to tenants are clearly framed upon Babylonian models.[1]

The dues of the physician and veterinary also come under consideration in the Code. The statement of Herodotus (1 197), that the Babylonians brought their sick into the market-place in order to enlist the help and advice of any passer-by who might happen to have the necessary knowledge to cure the complaint, probably does not refer to skilled physicians.[2] The cuneiform texts show that the medical profession was firmly established under the protection of certain deities, and that the doctors ranked high socially and formed a corporation.[3] The medical literature of the Babylonians is not insignificant, and for the history of the science in classical countries it is of the greatest interest. In one contract—and apparently in one only—is there mention of the doctor's fee (three shekels),[4] and from the Code it appears that it was arranged upon a sliding scale

[1] H. Pick, *Assyrisches und Talmudisches*, p. 27 *sq.* (Berlin, 1903). The Syro-Roman laws relating to houses (*op. cit.* p. 37, § 120) do not cover any of the above-mentioned details.

[2] Cp. C. F. Lehmann, *Babyloniens Kulturmission*, p. 86 *sq.*

[3] Dumon, *Journal Asiatique*, 9th ser. 9 318-326 (1897). Gula or Nin-karrak was the goddess of nostrums; Ea, the patroness of doctors, was apparently figured with a serpent's head (cp. Num. 21 9); and Allatu—unkindly enough—was the goddess of the land from which there is no return.

[4] Dumon, *op. cit.* p. 326 (Strassmaier, no. 382, temp. Cyrus).

according to the status of the patient. The doctor (*a-zu*) who treats a man for a grievous wound (*zi-im-ma-am kab-tam*) with a bronze knife and heals him (*ub-ta-al-li-iṭ*), or cuts the film[1] of a man with a bronze knife and heals it, receives ten shekels of silver (CH, § 215), but only five if the patient is a poor man (*mar* MAŠ-EN-KAK; § 216), and two if it is a man's slave (*arad a-wi-lim*; § 217). If in operating upon the wound the patient dies or his eye is lost, the doctor's hands are cut off (§ 218): the member that caused the damage receives the punishment.[2] This penalty, however, applies only to the (free-) man.[3] If it is a servant (slave) who dies under the operation, the doctor must give the owner slave for slave (§ 219), whilst for the loss of the slave's eye pecuniary compensation (half his price) must be made (§ 220). The doctor who makes whole (*uš-ta-li-im*) a man's broken limb or heals a diseased bowel (*ḫa-nam mar-ṣa-am*) receives five shekels (§ 221), or three in the case of a poor man's son, and two for a servant (§ 222 *sq.*). The cow doctor (*a-zu alpi*) or sheep[4] doctor who treats a cow or sheep for a grievous wound and cures it receives one-sixth of a shekel as his pay (*ID-šu*), but if it

[1] ? "Cataract," *na-gab-ti*; perhaps "abscess" (Johns).

[2] Cp. pp. 134, 249.

[3] So, in Egypt, the doctor who was at fault was punished with death (Diod. 1 25, 82).

[4] So Johns, reading *immeru*. Scheil and Winckler agree in rendering "ass" (*imeru*). The most natural combination is ox and sheep; cp. CH, §§ 262-265. The ass, however, is used for threshing (§ 269); cp. also § 7 *sq.*

dies he must pay one-fourth of its price to the owner (§ 224 *sq.*).

Although these laws are without their parallel in the Hebrew legislation, there is evidence which leads to the assumption that they had not died out in Syria by the time of the Syro-Roman law-book. According to this work, if a man has been taken in hand by a physician (Syr. *āsyā*) in the *περιόδευσις*—the reference is perhaps to a peripatetic surgeon—and he gave him his pay,[1] the patient cannot recover the sum, whether he be healed or not.[2] From the standpoint of Roman law the principle is self-evident, and Bruns remarks that the ruling *datio ob causam* is grounded on the analogy of the treatment of advocates, no special mention of doctors being found in the old Roman codes. He finds it surprising, therefore, that the law should pass from doctors to advocates (cp. note below), and not *vice versâ*, and makes the happy suggestion that the Syrian collection once contained other laws relating to physicians. It seems highly probable that the law under discussion was distinctly an innovation introduced through Roman influence in order to put down a practice which admits of explanation in the light of the Babylonian code. Doubtless the severity of the Code of Ḫammurabi had been modified in

[1] The veterinary in the Code—like the doctor in Syria—receives his "pay" (Syr. *agrā*), whilst the house and shipbuilder receive their "honorarium" (*ḳištu*).

[2] Bruns and Sachau, *op. cit.* pp. 38 (§ 122), 289 *sq.* The Syriac extends the principle of this law to prostitutes and *σχολαστικοί*.

course of time, and it may be conjectured that the patient was formerly allowed to claim the return of the doctor's fee if he had good cause to be dissatisfied with his treatment.

The principles underlying the laws relating to the builder and the physician are thoroughly characteristic of the Code. Just as the hand that errs or steals (§§ 195, 218, 226, 253), or the tongue that reviles (§ 192), is cut off,[1] so the person guilty of an assault upon another is punished precisely in that part of the body where he injured his neighbour. The old crude system of the *talio* prevails almost everywhere. In cases of damage to property it is ship for ship (§ 235), goods for goods (§ 232), ox for ox (§§ 245, 263), sheep for sheep (§ 263); and, similarly, as regards persons, it is man for man (§ 229), woman for woman (§ 210), son for son (§§ 116, 230), slave for slave (§§ 219, 231), limb for limb (§ 197), tooth for tooth (§ 200), eye for eye (§ 196), and whatever punishment a man tried to bring upon another it is to be inflicted upon him (§ 3 *sq.*). The *talio* holds good in old Hebrew law, in the Koran, and is as characteristic of early Semitic legislation as of other ancient legal codes.[2]

[1] So, in the Laws of Manu, he who raises his hand or a stick shall have his hand cut off; he who in anger kicks with his foot shall have his foot cut off ( 8 280). For examples of the practice among the Israelites as applied to punishments, cp. Num. 5 19-22 and Gray's note (*Internat. Crit. Comm.* p. 53 *sq.*).

[2] Ex. 21 23-25; Deut. 19 21; Lev. 24 17-21; cp. Job 2 4; Matt. 5 38; Mish. *Sotah* 1 7 *sqq.*, etc.; Bruns and Sachau, *op. cit.* p. 70, § 75; Koran, 2 173 *sqq.* ("free for free, slave for slave, woman for woman").

But certain modifications are to be observed. The Code, for example, enacts that the *talio* is to be enforced if one has caused the loss of a man's eye (§ 196), or tooth (§ 200), or has broken the limb (*ner-pad-du*) of another (§ 197). If the sufferer is of lower standing a pecuniary compensation suffices. Thus, the loss of the poor man's eye or the fracture of his limb may be covered by a payment of half of a mina of silver (§ 198), whilst his tooth is valued at one-third of a mina (§ 201). Again, any injury to a son or a slave is a detriment to his father or owner, and in case of death the son of the guilty man is put to death or the latter must render to the owner slave for slave. If he has suffered an injury and lost an eye or limb, one-half of his price must be paid to the owner (§ 199), whilst for the slave who died in the house of his distrainer from neglect or cruelty, the compensation was fixed at one-third (§ 116).

One obscure kind of bodily assault not only is not punished by the *talio*, but is treated in three distinct ways according to the status of the parties. The man who struck the strength (*li-e-it*) of his superior is struck in public (*i-na pu-uḫ-ri-im*) with sixty strokes of the ox-hide (§ 202). If a freeman (*mār a-wi-lim*) assaulted one of his own standing in this manner he is ordered to pay one mina of silver, or, if both are poor men (*MAŠ-EN-KAK*), the penalty is ten shekels (§ 203 *sq.*). Finally, if it is a freeman's servant (slave) who struck a freeman, he is condemned to lose his ear (§ 205). The precise

meaning of *li-e-it* is uncertain. It is variously rendered "crown of the head" (Scheil), "body" (Winckler), or "strength" (Johns), and the last-mentioned tentatively suggests that the reference is to the genitalia.[1] The perplexing variation in the penalty gives no clue to the nature of the offence, but if Johns's conjecture is well-founded, the law would find a parallel in Deut. 25 11 *sq.*, a typical statute, especially noteworthy for the fact that it is the only case where mutilation is prescribed. Scourging in Hebrew law was introduced after the time of the Book of the Covenant, and first appears in the Deuteronomic code, apparently as the penalty for several kinds of offences (25 1-3). That it is to be regarded as an innovation in Israel is practically certain.[2]

A small group of laws in the Code relating to personal injuries by cattle is especially interesting for the analogies in the Book of the Covenant. If a wild bull (*alap zu-ga-am*) gored a man in its charge (*i-na a-la-ki-šu*) and killed him, no claim could be made (§ 250); but if the ox was known to gore (*na-ak-ka-pu-u*), and its vice (*ba-ab-ta-šu*) had been made known to its owner, and he had not cut or blunted its horns (*kar-ni-šu la u-šar-ri-im*),[3] or kept it under restraint (*la u-sa-an-ni-iḳ-ma*), compensation must

[1] Johns, p. 83. [2] See above, p. 45 and n. 1

[3] In later times the horns were protected by a basket; cp. Talm. Bab. *Berakh.* f. 33*a* (Schwab, 1 538, where a black bull is considered particularly dangerous, especially in Nisan [April], "for then it has the devil on the horns").

be made. For a freeman the owner must pay half a mina (§ 251), and for a slave one-third (§ 252). Hebrew law required the ox to be stoned,[1] and forbade its flesh to be eaten; and under ordinary circumstances the owner was free from guilt. If the ox was wont to gore (*naggāḥ*), and its propensity had been testified to the owner, and he had failed to keep it under restraint (*šāmar*), the owner was put to death (Ex. 21 28 *sqq.*). It is provided, however, that if a ransom (*kōpher*) was laid upon him he must pay what was demanded. For a male or female slave a payment of thirty shekels was to be made to their master (*vv.* 30-32). The slave's life is thus valued rather more highly than in the Babylonian code.

Another group of laws with distinct analogies in the oldest Hebrew law-book deals with assaults upon women resulting in miscarriage. If the sufferer is a freewoman the compensation is fixed at ten shekels (§ 209), five shekels if a poor woman (*marat* MAŠ-EN-KAK; § 211), but only two if a slave (*amat*; § 213). If the woman herself dies from the injury the penalty is made proportionately more severe. If a free-woman, the man's daughter is put to death (§ 210); if a poor woman, half a mina of silver must be paid (§ 212), and if a slave, one-third of a mina (§ 214).

The scale of penalties for miscarriage agrees

[1] Cp. Frazer, *Pausanias*, 2 370 *sqq.*, and for mediæval examples, Baring-Gould, *Curiosities of Olden Times*, pp. 57 *sqq.* (Edinburgh, 1895). At the present day the parents of the victim may lay claim to the animal (Jaussen, *Revue Biblique*, 1901, p. 600).

curiously with the doctor's fees in §§ 215, 217, and the monetary valuation for loss of life is identical with § 251 *sq.* (above). In the Book of the Covenant the relative law is confined to a single verse which is embedded in the general laws dealing with assault. It orders that miscarriage caused by assault is to be compensated according to the demands of the woman's husband (*ba'al*, Ex. 21 22). The amount of the penalty is not specified,—it is purely a matter to be adjusted between the offender and the husband, and the reference in the present text to the decision of the judges is due to a corrupt reading.[1] The agreement between the two legislations is only superficial. Both handle the same topic, both apply their own principles. In Babylonia, the assault becomes an occasion for a judicial enquiry, in Israel it is a detriment to the husband's property. The Code treats the case with comparative minuteness, and applies it to three classes of society, whilst the Book of the Covenant does not speak clearly with regard to the punishment to be inflicted if the woman should die from the assault.[2] The present arrangement of the laws of assault is probably not original. The specification of the *talio* in Ex. 21 23-25 preferably belongs to some general law of assault, and should probably

[1] Budde's emendation in *v.* 22*b* ("and he shall pay for the fœtus": *nĕphālīm*) answers exactly to the Bab. *a-na ša li-ib-bi-ša i-ša-ḳal* ("for what was in her body he shall pay"), and is in accordance with the discussion in *Bābā Ḳāmmā*, 56; cp. also Jaussen's account of modern custom, *Revue Biblique*, 1901, p. 598.

[2] Josephus applies the *talio*, "life for life" (iv. 8 33).

follow after *vv.* 18, 19, where assaults between man and man come under consideration.

Here, if as a result of a blow with the fist or a stone—the instruments are typical—a man has been forced to take to his bed (*nāphal le-miškāb*), and is lamed, the assailant is acquitted, but he must compensate him for his loss of time (*šébeth*, cessation), and must certainly cause him to be healed. An injury resulting in death is punished by the death of the assailant, but the law distinguishes between presumptuous murder and death arising from a chance affray (*vv.* 12-14). It is not a capital offence for the master to injure his servant mortally; some punishment is inflicted, but its nature is not specified, and if death does not immediately ensue, the master is free (*v.* 20 *sq.*). Nor was the *talio* enforced for a minor injury. The master who struck out his servant's tooth or eye was only required to grant him his freedom (*v.* 26 *sq.*), and although it is not stated, it is to be presumed that this was also the custom for permanent injuries of other kinds.

In the Code of Ḫammurabi, the man who struck another in a quarrel (*i-na ri-is-ba-tim im-ta-ḫa-aṣ-ma*) and caused a wound (*zi-im-ma-am*) can swear—"I did not strike him wittingly,"[1] but must answer for the physician (*a-zu i-ip-pa-al*; § 206).[2] If the man dies of his blows, the offender must swear (as before) and make a compensation, half a mina for a freeman,

[1] See above, p. 61 n. 1

[2] Similarly, in the Laws of Manu, the assailant must pay the expenses of the cure (8 287).

and if the victim was a poor man, one-third of a mina (§ 207 *sq.*). In other respects the principles of Babylonian law are in agreement with the Hebrew. The *talio* is enforced, but a pecuniary payment is sufficient when the sufferer is on a lower footing.

Later usage was directed towards the modification of the *talio*. Josephus (*Ant.* iv. 8 35) states that although maiming is avenged by the *talio*, the sufferer may receive a compensation, and is allowed by law to estimate the amount; and so in post-biblical times all petty assaults are generally dealt with by fines varying according to the dignity of the injured person[1] — a class distinction that is reminiscent of the Babylonian code. Modern custom varies; the loss of a hand may be valued at half and an eye at one-fourth the price of a man, or the case may be left to the sheikh's decision.[2] In default of payment the guilty man and his nearest kin may be exiled until they have the means to pay.[3]

The Code laid upon the city and its governor the responsibility for brigandage carried on within its limits (§ 23, p. 214 above), and "if it was a life" (*na-bi-iš-tum*), the city and its governor were required to pay one mina of silver to the people of the murdered man (§ 24). The law has Semitic analogies, and, as Dareste has pointed out, recurs

[1] *Bābā Ḳāmmā*, 8 6; *Jewish Encyclopædia*, 2 225*b*. (As a means of appraisement damage could be estimated at the difference between a man's market value as a slave before and after the assault.)

[2] Jaussen, *Revue Biblique*, 1901, p. 598.

[3] Doughty, *Ar. Des.* 1 317 *sq.*

not infrequently in ancient codes.[1] In Arabia, the responsibility for homicide, where the murderer was unknown, was cast in the first instance upon the nearest community, but under Islam, blood-money in these circumstances was paid by the State.[2] The Israelite ritual for the expiation of murder by an unknown hand, although preserved only in the Deuteronomic code (21 1-9), is evidently a reflection of ancient usage. Primarily, it rested entirely in the hands of the elders of the community, who are required to profess their innocence and make atonement for the blood that has been impiously shed by placing the burden of the guilt upon an animal.[3] The account covers only one aspect of blood revenge,[4] and it is noteworthy that nothing is said of the part taken in the ceremony by the murdered man's kin, for which reason it is to be inferred that it relates only to the case where both the murdered man and the murderer are unknown.

The introductory remarks made in chap. iii. on

[1] *Journal des Savants*, 1902, p. 521, n. 4; cp. Fenton, *Early Hebrew Life*, p. 45 *sq.* The Egyptian custom recorded by Herod. 2 90, whereby the nearest city was obliged to embalm and bury dead bodies found in the district, can scarcely be cited as a close analogy; cp. A. Wiedemann, *Herodots zweites Buch*, *ad loc.* (Leipzig, 1890).

[2] Robertson Smith, *Kinship*,[2] p. 64, n. 2; cp. Wellhausen, *Arab. Heid.*[2] p. 188 *sq.*; Dareste cities also Khālil, art. 1835-1837.

[3] The judges (*šōphĕṭīm*) are mentioned in *v.* 2, only to disappear again, and the Levitical priests are named only in *v.* 5, which does not seem to belong to the original ritual (Carpenter and Harford-Battersby, *Hexateuch*, Bertholet, Steuernagel, *ad loc.*).

[4] Possibly belonging to a group of laws dealing with the subject; cp. Ex. 22, 2, 3*a*, etc.

the prevalence of blood-revenge among primitive Semitic communities may now be supplemented by a glance at the successive modifications and qualifications of the original system under the growth of society. As long as the *jus talionis* prevailed with its logical severity no advance could be made. Justice repeats the offence, and every affair into which it is introduced becomes endless. A step forward is taken when the affair is restricted to the families of the aggrieved and the aggressor, and the weakening of the tribal solidarity which rendered this possible cleared the way for further advances. At the same time, when the affair is thus reduced to a dispute between individuals, it is entirely a matter of private arrangement, and the aggrieved have the right to make their own terms. A distinction is made between murder and manslaughter, and the status of the slain is taken into consideration. Compensation may be demanded or accepted, and the amount, which at first is arbitrarily fixed by the injured party (cp. Ex. 21 22, 30), is subsequently controlled by customary usage (cp. 21 32). Gradually there grow up fixed scales of fines and compensation which, by common consent, hold good among specified tribal groups. The adjustment of these tariffs one with another follows later when the various groups are united under one head, or when one group has become sufficiently powerful to impose its scale upon all those with which it is brought into contact. The last stage is reached when revenge is taken out of the hands of the individual by society,

and the penalty for the crime is a punishment determined by the constituted authorities and carried out by duly appointed officials.[1]

Old Hebrew law as early as the age of the Book of the Covenant restricted the right of the slain man's kin to exact revenge. Unintentional homicide is distinguished from deliberate murder, and there are other indications that the laws of murder had passed beyond the primitive stage of blood-feud, The slave's person is not valued as highly as that of the freeman; for the thief who meets his death at night no blood-atonement is necessary, and a distinction is drawn between instant death after a blow and the case where the victim lingers for a day or two. The later legislation works out the laws with greater precision. The rights of asylum are more clearly defined, and rules are laid down by which intentional homicide may be justifiably presumed (Num. 35). Along with this, it is to be observed that the exaction of the penalty rests with the injured party, and after the enquiry the murderer is handed over to the blood-avenger to be put to death (Deut. 19 11 *sq.*). The state does not step in to protect the interests of the aggrieved; personal honour and the unwritten laws of the tribe requires the accuser to take the initiative and compels him to carry out the penalty (cp. Deut. 17 7).

Mohammedan legislation, in like manner, distinguished between murder, fatal assault, and un-

[1] Cp. Benzinger, *EBi.* "Law and Justice," § 11.

intentional homicide, and whilst endorsing the *talio*, recommends the aggrieved party to accept a fine.[1] In Syria the Syro-Roman law-book forbids the blood-avenger to kill the man-slayer and requires the accuser to hand the guilty over to the authorities.[2] Naturally, different groups of communities reached different stages. The lawless Trachonites of the time of Herod the Great carried out the old law of retaliation to the full (Josephus, *Ant.* xvi. 9 1). Among the modern Bedouin usage varies. The extreme penalty for murder may be exacted, and the relatives of the murdered person may be compelled to carry it out,[3] or the death-sentence may even be performed by the relatives of the murderer.[4] Among those tribes where the were-gild is accepted, either the amount of the ransom is left to the decision of the ḳādi, or two or more tribes will come to an understanding among themselves touching the rate of assessment.[5] Thus the road is paved for the formulation of a definite legal code.

The legal principles of the Code of Ḥammurabi viewed in the light of the foregoing are particularly striking. The primitive law of the *talio* has undergone certain modifications. It is rigidly enforced,

[1] *Koran*, 2 177, 4 94 *sq.*; cp. Procksch, *op. cit.* p. 86 (and chap. iv. generally).

[2] Bruns and Sachau, *op. cit.* p. 70, § 74.

[3] Cp. Doughty, *Ar. Des.* 2 368.

[4] *PEFQ*, 1897, p. 131 *sq.*

[5] Doughty, 1 145 *sq.*, 491; cp. 402, 476, 491; Jaussen, *Revue Biblique*, 1901, p. 599.

and the exceptions are made chiefly in those cases where the victim is on a lower standing than the assailant. But revenge is not admitted; everything is under the supervision of the legal authorities, and the rare occasions when the individual may take the law into his own hands refer not to murder but to theft (§§ 21, 25). The Code does not handle murder, but the detailed punishments for various kinds of assault suggest that if no mention is made of it, it is only because the law was too firmly established to require a specific statute. "The people which killed my servants," writes Burraburiaš to Napḫururia of Egypt, "kill them and avenge their blood" (*da-mi-šu-nu ti-i-ir.*)[1] This was doubtless the law at the time when the Code was promulgated, and Ḫammurabi's chief concern was to make exceptions in favour of unintentional homicide (§§ 206-208). Further, it is probable that when the victim was of inferior rank a fine was sufficient, whilst in the case of a slave naturally the owner required some pecuniary compensation.

In conclusion, although this tends to show that the Babylonians had reached the stage of penal law, and although we find that punishments were inflicted by the State, and private individuals only on the rarest occasions were allowed to avenge themselves, it is very necessary to observe that certain of the grosser features of the barbarous *jus talionis* were retained in all their crudeness. When it is remembered, for example, that the builder's son is

[1] Amarna Letters, no. 11, obv. l. 4 *sq.* (*KB* 5 27).

made a victim for the tenant's son (§ 230), or the assailant's daughter dies to make atonement for the woman who has died of an assault (§ 210), it is clear that the people among whom these practices prevailed were still a long way behind pure conceptions of justice. And it is interesting to find that the Code in this respect is quite in agreement with the tenacious primitive Semitic theory of blood-revenge, in accordance with which a man's guilt was shared by the whole family, could be inherited even by the unborn, and was only wiped out after revenge had been taken upon some one member or other of the guilty man's kin. Although this was the prevailing tendency of early Israelite thought, it is a characteristic feature of the Book of the Covenant that it is only the actual manslayer who is put to death (Ex. 21 12), and throughout the following centuries the idea of personal responsibility was the prophetic ideal outstripping the practice of everyday life.[1] The Deuteronomic code expressly says that the son is not to die for the father or the father for the son (Deut. 24 16; cp. 2 Kings 14 6, Jer. 31 30), and the climax is reached by Ezekiel (chap. 18), who refuses to recognise either transmitted guilt or transmitted

[1] Contrast Deut. 7 10 with the Decalogue, where the extension of the responsibility of guilt to the third and fourth generation is in accordance with the Bedouin *ḫumsa*; the ancestor with four generations forms a solidarity (cp. Procksch, *op. cit.* p. 24; Patton, *loc. cit.* p. 705 *sq.*; D. A. Walker, *Journ. Bibl. Lit.* 1902, p. 190. See also below, p. 274).

righteousness. The early restriction of the *talio* and the gradual recognition of individual responsibility give an ethical superiority to Israelite law which counterbalances whatever deficiencies it may possess in other respects.

# CHAPTER XI

## CONCLUSION

General considerations—Phraseology not conclusive—CH contrasted with Book of Covenant and Deuteronomy — Divergent treatment of identical topics—The humanity of the codes—Strangers and foreigners—Laws relating to cult, religion, and ethics—Influence of CH in post-exilic period—Comparative Semitic legislation.

It is true that the two main systems of legislation which have been discussed in the course of the preceding chapters have many noteworthy points in common, but it is impossible not to have observed how striking are the differences between them. At the head of each there towers a mighty figure to whom the promulgation of these laws is ascribed; behind each there looms the Deity, the ultimate source of the laws which Ḫammurabi in the one case, and Moses in the other, imparted to their people. Criticism, however, has not left unchallenged the tradition of the Mosaic authorship of the Hebrew legislation, and closer study shows, too, that the Code of Ḫammurabi was no ready-made series of novelties, the production of a single

mind and time, but the climax of centuries of customary usage, which, in the form it has come down to us, is the result of modification, compression, or addition, in accordance with the conditions that prevailed at the time of its promulgation.[1] So, whilst written legislation in Babylonia takes its rise in the reign of the greatest monarch of the first Babylonian dynasty, in Israel written laws can scarcely be carried back beyond the ninth century at the earliest, and in their existing form represent the latest stage of the Pentateuchal legislation in the Old Testament, a thousand years later than the great figure to whom tradition ascribed their initiation.

Neither of these two systems can be called pandects. Some important topics are either entirely ignored or are handled with an incompleteness that must have rendered them ineffective for everyday purposes. In some cases we have to assume that customary usage was too firmly established to require the law to be mentioned in one or other of the codes, in other cases the difference between the state of society in Babylonia and Israel, or the change

[1] Examples are to be found in the modification of the older family laws (p. 135) and in the retention of the *talio* without blood-revenge (p. 259 *sq.*). Further, in the laws relating to cattle in the care of another, it is ordered that if a lion ravages or a "stroke of God" occurs, the man must swear his innocency, and the loss falls upon the owner. But whereas in the case of the hired animal these possibilities are treated separately (§§ 244, 249), in the laws relating to the herdsman they have been combined, probably by an editorial process (§ 266).

of conditions in the various periods of Israelite history, affords an explanation. Both systems are marked by the prominence given to the needs of agriculture and the protection of the person, and the Babylonian code not only deals more thoroughly than the Book of the Covenant with topics falling under these heads but lays itself out to advance industrial conditions, either indirectly, by paying every heed to prevent any breach of the peace, or directly, by means of statutes which tended to afford greater security to business relations of all kinds. In this respect the attention which is paid to prices, wages, and rents, and to laws for such classes as doctors, boatmen, innkeepers, courtesans, is especially noteworthy.

There is a certain similarity in the legal formulation in both systems, but it is questionable whether it is of a kind to which any great weight may be attached. The Old Babylonian formula is "when (*šumma*) a man," etc., which in the New Babylonian period appears in the form of a statement.[1] In the Book of the Covenant the groups of laws are similarly introduced by "when" (*kī*), but the subdivisions are indicated not by the repetition of the introductory term as in CH, but by "if" (*im*). In both, however, the verb is in the third person (contrast Ex. 21 2).[2] But, generally speaking, there

[1] Observe the parallel laws cited above, p. 87, n. 1.

[2] The following comparison of CH, § 8 with Ex. 22 1-4 may serve as an illustration:—"If a man (*šum-ma a-wi-lum*), either an ox or (*lu*) a sheep or an ass or a pig or a ship has stolen, whether of the

is considerable variation in Hebrew usage.[1] The simple statement appears notably in Ex. 21 12-17, 22 19 [18] *sqq.*, of which the former probably, and the latter almost certainly, did not fall within the scope of the original Book of the Covenant.[2] The substitution of the impersonal law by a command or prohibition in the second person, though not unknown (21 2; in a secondary clause, 21 23), is more frequent in the miscellaneous statutes appended to it (22 18-23 9),[3] and is more particularly characteristic of the Decalogue, the Deuteronomic code, and the Priestly legislation. The expression of the law in a form of a statement also becomes more common in the late codes, and although the introductory *kī* is retained, particularly in the civil law, it is less frequently followed by the secondary *im*. Fuller

temple (*šum-ma ša i-lim*), whether of the palace, he shall give (*i-na-ad-di-in*) thirtyfold; if he is a poor man (*šum-ma ša* MAŠ-EN-KAK) tenfold he shall return (*i-ri-a-ab*); if the thief has nought to give, he shall be killed." Ex. 22 1 *sqq.*: "When steals a man (*kī yignōb īš*) ox or sheep, and he kills it or sells it, five oxen shall he restore (*yĕšallēm*) for an ox, and four sheep for a sheep; if (*im*) in the breaking in the thief is found and is smitten and dies, there is no blood-guiltiness . . . if he has nought, he shall be sold for his theft; if there is found in the hand the stolen thing . . . twofold shall he restore."

[1] It may be observed that the fact that 22 6 [5] begins with *kī* and not *im* tells somewhat against the view that the verse deals with another case of the law of arson which *ex hyp.* commences in *v.* 5 [4] (p. 202 above).

[2] Cp. Carpenter and Harford-Battersby, *The Hexateuch*, 1 256 n.

[3] Also in other Elohistic codes, *e.g.* Ex. 20 23-26, 23 10-19, but more commonly in the singular.

treatment of the subject is scarcely necessary here.[1] The Syro-Roman law-book is marked by the frequent use of the hypothetical *en* (if),[2] but the ordinary statement and the expression of the law as the answer to a question are common.[3]

More remarkable is the agreement in phraseology between CH, § 117 and Ex. 21 2, to which attention has already been directed (p. 164). It is interesting to find the same formula in use in Egypt, and the question may be left open whether both Egypt and Israel borrowed it from Babylonia or whether it is mere coincidence that the oracle from Buto as quoted by Herodotus (2 133) should have expressed itself in these familiar words—"six years only shalt thou live upon the earth and in the seventh thou shalt end thy days."[4] The phraseological evidence would have considerable weight if it could be proved that Babylonian legal terms, also, had been taken over into Hebrew. This, however, is not the case, and, as we shall presently see, it is not until the exilic age and later that the traces of this description

[1] The synopsis in *The Hexateuch*, 1 256-269, will be of most value to the ordinary reader.

[2] The same form occurs also in the laws of the Twelve Tables and in the Gortynian code from Crete.

[3] *E.g.* "men who make breaches are liable to the death penalty"; "the law is asked, how long must a woman remain a widow?" or "the law does not allow a woman to enter a process," etc.

[4] It is to be regretted that our information regarding Egyptian law is too scanty to admit of our determining whether it was influenced in other respects by the Babylonian code.

are unambiguous.[1] Leaving the phraseological and philological evidence, we may now consider briefly the extent of the resemblances between the Code of Ḫammurabi and the oldest Hebrew collection of laws.

The Book of the Covenant contains a number of groups of laws relating to slaves (male and female), injuries (personal and to slaves), cattle (damage by and to), theft, damaged crops, etc., and in several instances each group is easily divisible into a series of five ordinances. Viewing the Book of the Covenant (BC) along with the Code of Ḫammurabi (CH), we observe that whereas in CH (§ 117) the enslaved wife and children are free in the fourth year, in BC (Ex. 21 2) it is not until the seventh year that the *male Hebrew* slave regains his freedom; but, on the other hand, in CH (§ 118) the ordinary slave cannot be reclaimed. The owner has no claim upon the slave's free wife and children in CH (§ 176) and BC (21 3), but the latter applies only to the man who had been married before he became a slave. In BC (21 7-11) no slave concubine could be sold to strangers, but in CH (§§ 119, 147), *provided she has borne children*, she could not be sold as a punishment, and if sold for a debt she must be redeemed. To smite one's parents was punished in CH (§ 195) by mutilation, in BC (21 15) by death.

[1] The Hebrew terms for legal procedure may be gathered from a variety of passages (Ex. 24 14, 2 Sam. 15 2, Is. 50 8, etc.), notably from the Book of Job (9 19, 23 4, 31 11, 28, 33 10, 34 5), and need not be discussed here.

To kidnap the son of a freeman brought death in CH (§ 14), but BC (21 16) exacts death for the man-stealer whether the victim be recovered or not. In CH (§ 206), for injury in a quarrel the culprit must swear it was done unintentionally, and pay the doctor; in BC (21 18 *sq.*), payment for loss of time and healing is ordained. But if the man dies, CH (§ 207) requires the oath of purgation and a fixed compensation, whereas BC presumably exercises the right of asylum (21 12-14). Where the injury is specified, both CH and BC use the *talio*, but the former allows a compensation if the victim is of humble origin, and in the case of a slave BC (21 26 *sq.*) gives him his freedom as compensation, whereas CH requires an indemnity for the owner (§ 199). Again, if the victim is a woman, and miscarriage ensues, in BC (21 22) the husband fixes the fine, whereas CH has a tariff and takes into account the possible death of the woman herself (CH, §§ 209-214).

As regards damage by or to animals, neither CH nor BC provides a remedy for the vicious ox; but if its owner had been warned, CH inflicts fines (§§ 250 *sqq.*, 30 shekels for a freeman, 20 shekels for a slave), whilst BC orders death-penalty, or a ransom, the amount of which is only specified in the case of a slave (30 shekels; *vv.* 28-32).

In both codes, the night-thief may be killed on the spot, but the death-penalty in CH is inflicted further for the brigand, for theft from temple or palace, or at a fire, and the district is responsible

for the depredations caused by highwaymen (CH, § 23 *sq.*). The extent of the restitution in CH ranges from thirtyfold to twofold, in BC five for an ox, four for a sheep, and double if the stolen thing is found in his possession (22 1-4). In CH, § 8 the sacrilegious thief who could not make restitution is put to death; the cattle-lifter in Ex. 22 3 is sold.[1] CH, § 57 *sq.* distinguishes two cases of damage to crops by animals, but whether the topic is handled in BC (Ex. 22 5) is uncertain; one (or perhaps two) cases of damage by fire are given in BC (22 5, [?]6), but nothing is mentioned respecting damages to crops by flood (CH, §§ 53-56). General cases of lost or stolen property are treated at length in CH (§§ 9-13), but with extreme brevity in the corresponding law in BC (22 9). If a thief steals a deposit, in CH the depositee must make restitution and recover from the thief (§ 125), in BC he clears himself by an oath (22 7 *sq.*). If property in charge of another is destroyed by a lion, there is no responsibility, if by "stroke of God," oath of innocence (CH, §§ 244, 249; cp. 267); but in BC, if torn by lion, evidence must be brought (22 13), and if a case of *vis major*, the man swears an oath (22 10 *sq.*). If lost through negligence (§ 267) or theft (Ex. 22 12), restitution is required in both CH and BC.

The differences between the two systems as illustrated by this brief recapitulation are equally striking when the later Hebrew legislation is considered. For example, CH, in dealing with seduc-

[1] Cp. CH, § 54, the negligent irrigator, above, p. 198.

tion, does not handle the case of the unbetrothed virgin, whilst its treatment of the one who is betrothed (CH, § 130) differs notably from the Hebrew laws (cp. above, pp. 100 *sqq.*). For adultery and incest CH inflicts a great variety of penalties, viz. burning (mother, § 157), drowning (neighbour's wife, § 129, daughter-in-law, § 155), expulsion (daughter, § 154), and disinheritance (son with step- or foster-mother, § 158). In the Old Testament, the punishments are death (step-mother, daughter-in-law, Lev. 20 11 *sqq.*), burning (bigamy, marriage of woman and her mother, Lev. 20 14), "cutting off" (sister, Lev. 20 17), and even childlessness (wife of uncle or brother, Lev. 20 20 *sq.*).[1]

The Old Testament laws of slander relate to the case of the newly married husband and wife, which is not specifically treated in CH, and is silent on the subject of slander of a wife by a third party (CH, § 127). Provision is made, as in CH, § 23 *sq.*, for the murdered man whose assailant is undiscovered, but the procedure is different. The Old Testament

[1] As regards the penalties in general, stoning, the old customary mode of execution, seems to have disappeared from Babylonia, whilst drowning, which comes up in §§ 108, 129, 133, 143, 155, came into vogue in later Judaism. Burning appears thrice in the Code (§§ 25, 110, 157), but it was very rare in Israel (p. 106 *sq.*). On impalement (CH, § 153) and hanging, see *EBi.* "Hanging" and for the introduction of scourging into Israelite and Mohammedan procedure, see pp. 45, 251 above. Mutilation—apart from the *talio* (Ex. 21 24, CH, § 196, etc.)—is found only once as a legal penalty (Deut. 25 11 *sq.*), but was common in both Babylonia (CH, §§ 192, 195, 205, 218, 226, 253, 282) and Egypt (Spiegelberg, *Studien u. Materialien zum Rechtswesen d. Pharaonenreiches*, pp. 66 *sq.*—nose or ears).

forbids the judge to receive a bribe, whereas CH, § 5 has gone further and inflicted a penalty. It required the house-owner to protect his roof or the farmer his pit, but it has no laws upon the responsibilities of the builder. That laws relating to trade and commerce should fail to find a place in the Hebrew legislation is not surprising when it is considered how widely conditions in Israel differed from those in Babylonia; but it is when the same topics are handled by both systems that a careful comparison can be made, and how frequently the treatment in the Old Testament diverges from that in the Babylonian code must now be thoroughly apparent.

The prohibition to shun the doings of Canaan and Egypt (Lev. 18 3)—we miss a reference to Babylonia—implies that the Israelities must have been brought into contact with something more than the religions of the surrounding nations, and it would be reasonable to suggest that some of the Israelite laws, if not borrowed, at least owed their initiation to outside influence. Unfortunately, it is not easy to lay one's finger upon certain examples.[1] The assumption that the *parallels* which have been indicated above are directly due to the fact that at

[1] It can scarcely be maintained that the law forbidding marriage with a sister is aimed against Egyptian custom (Sayce, *Early History of the Hebrews*, p. 209 *sq.*), since such unions were common in Israel and did not receive condemnation before the Deuteronomic age. See above, p. 97, and note that Nöldeke, too, suggests that the use of "sister" in the Song of Songs to mean "wife" is a survival of this marriage (*ZDMG*, 40 150).

the time when the Book of the Covenant or the Deuteronomic code was drawn up, Ḫammurabi's Code was well-known in Israel, would require an explanation of the comparatively small use which has been made of it. Naturally, laws relating to trade and commerce, to gangers and constables and others, would not be applicable to Israelite conditions, but it is difficult to understand why the lot of the enslaved debtor was made harder, why the rights of the concubine's children were not established,[1] and why the law required the shepherd to produce the mangled remains of his cattle whilst in Babylonia the loss fell upon the owner (§ 266).

In the law of the vicious ox it will be remembered that if its owner had been warned and the animal had not been kept under restraint but had broken out and gored a man, the penalty is death or blood-money, and it proceeds to state most explicitly, that "whether it be a son or a daughter, according to this judgment shall it be done unto him" (Ex. 21 31).[2] The distinction which is here made between the members of the family and the slaves (*v.* 32) may be later than the general law, and this finds some support in the peculiar phraseology.[3] When it is remembered that in certain cases in the Code

[1] The more humane treatment of the maidservant in E, contrasted with J, is scarcely due to CH. Cp. above, p. 117 *sq.*, 166 *sq.*

[2] With the last few words may be contrasted the Babylonian method of stating a similar case (CH, §§ 176 *a* and *b*).

[3] *The Hexateuch*, vol. 2, *ad loc.*

of Ḫammurabi the son or daughter suffer death for their father's negligence (§§ 116, 210, 230), it might appear plausible at first sight to suppose that the insertion in the Hebrew law is deliberately aimed against Babylonian custom. Further consideration, however, will show that this is impossible. That particular phase of the law of retaliation, whereby son for son or daughter for daughter was required, was as familiar in Israel as it had once been in Babylonia. In the latter country, as we have already found, this *talio* was not always strictly enforced, whilst in Israel the repeated protests and denunciations of the prophets, as late as the time of Ezekiel, are evidence of the tenacity with which this primitive Semitic usage clung to popular custom. It is certainly a matter of great interest that both legislations should have handled the same topic, and the addition to the Hebrew law must be regarded as a sign of the growing development of humanity in Israel, but that the Israelite law is under no obligation to the Code of Ḫammurabi is undeniable, since the latter only takes into account the death of the freeman or slave, and merely inflicts a fine (CH, §§ 250-252). The Book of the Covenant, here, at all events, is far behind the stage reached by the Babylonian code.

It is extremely interesting, again, to observe that the Deuteronomic law in favour of the fugitive slave (Deut. 23 15 *sq.*) is in marked contrast with the severe enactments in CH, §§ 15-20. But it can scarcely be maintained that it is aimed against the

Code. Had the lawgiver been acquainted with the Code he might have been expected to betray some knowledge of other statutes which, marked as they are by their fairness and justness, would surely have commended themselves. The statutes for the protection of the unfortunate debtor (§§ 48, 114, 116 *sq.*, 119, 241) remind us of Israelite injunctions and prohibitions, but whilst the latter appeal to the debtor's generosity and are not always practicable, the humane laws in CH receive the stamp of authority and are intended to be carried out by the courts. Injustice towards the widow and fatherless was forbidden and cursed (Deut. 24 17, 27 19), but one may search in vain for specific laws analogous to CH, §§ 172, 177. On the other hand, laws relating to the protection of slaves and animals from cruelty or injury (CH, §§ 245-248, etc.) are more probably framed with the intent to ensure their protection as property, whereas in the Hebrew legislation the analogous injunctions spring rather from feelings of pure kindness. The furtherance of trade and commerce together with the protection of property and the maintenance of peace have tempered the Babylonian laws with justice, although the penalties for their infraction are frequently severe and brutal.

Not the least important feature of the Code of Ḫammurabi is its retention of legal principles which are quite in accordance with primitive Semitic thought.[1] The Semitic stamp is plainly

[1] Similarly in his edition of the *Letters of Hammurabi*, King

visible, although the difference between conditions of life in Babylonia and in Israel is clearly reflected in their respective legislations. Equally characteristic is the different setting of the Code (the Prologue and Epilogue) compared with the framework of the Book of the Covenant or of the Deuteronomic law-book. The primitive tribal organisation, which has quite disappeared in Babylonia, had already commenced to decay in Israel. The home-born Israelite and the sojourner (*gēr*) under the protection of the tribe enjoyed equal rights, and the emphasis which is laid upon their equality betrays a decline of old nomad customs — in the primitive tribal society this would be too well assumed to require any special mention.[1] The care taken by Israelite law to protect strangers finds no parallel in Babylonia. Here, there was not one law for the home-born and one for the stranger—not because the Code omitted to safeguard their interests, but because society had reached that stage where all classes come under the law and enjoy its protection.[2] Class-distinctions, however, have arisen, and in addition to the free and unfree, a special class—the "poor man"—has come into existence, and for

(p. xlix.) had observed that the Babylonians of the first dynasty "still retained usages and customs which had come down to them from a time when they were essentially a pastoral and nomadic people and had no settled habitation."

[1] Cp. W. M. Patton, *Amer. Journ. of Theol.* 1901, p. 726.

[2] For the evidence that foreigners enjoyed equal rights with native Babylonians, see Sayce, *op. cit.* pp. 191 *sqq.*

him the penalties are lighter and the compensations less.

In comparing the Babylonian code with the Pentateuchal legislation the observation is sometimes made that the former, by reason of the absence of religion and religious motives, stands upon a lower level than the latter. It is true that the magical practices handled in § 1 *sq.*, and the laws relating to votaries and the like, only touch the externals of Babylonian religion, and the omission of laws of cult and ritual is noticeable when we consider the amount of space devoted to them in the legal literature of the Old Testament; strictly speaking, however, the comparison is not a fair one, and the relation between them is analogous to that between the Syro-Roman law-book and the Koran. The Code of Ḫammurabi deals entirely with civil law, and in this respect is to be compared most fitly with the original Book of the Covenant, which is purely secular and does not contemplate subjects relating to religion. Besides, Ḫammurabi himself, as his Letters prove, paid the greatest heed to the due observance of religious rites and the proper maintenance of the worship of his gods,[1] and the omission of religion in his Code must be regarded as intentional.

Babylonia had its ceremonial laws and ethical codes, and the Assyrian seventh-century tablet, to which reference has already been made, affords an idea of the conceptions of sin prevailing at that

[1] King, *Letters*, no. iii., and pp. xxxi-xxxiv.

age, if not earlier. Here we find, enumerated with ceremonial faults, such offences as causing bad blood between parents and children, relatives and friends, refusing to loosen captives, sinning against gods and goddesses, violence towards elders, hatred of elder brother, contempt towards parents or sister, unfair dealing in business, lying, use of false weights and scales, injustice in inheritance, removal or unfair dealing in the matter of boundaries and limits, and finally the question: "Has he entered his neighbour's house, approached his neighbour's wife, shed his neighbour's blood, stolen his neighbour's garment?"[1]

The mere existence of such lofty conceptions of sin in Assyria at a period contemporaneous with the Deuteronomic reformation, and at a time when the Babylonian code was studied in a somewhat different form as "the Judgments of Righteousness which Ḫammurabi the Great King set up,"[2] is naturally of extreme interest. But the general similarity of Assyrian ethics to Deuteronomy, in particular, the resemblance between the above-quoted words and the Hebrew Decalogue should not lead to hasty and far-reaching conclusions.[3] Egyptian literature is not without its parallels, and

[1] King, *Babylonian Religion*, pp. 218-220; Jastrow, *Babylonian-Assyrian Religion*, p. 291; Zimmern, *EBi.* "Magic," § 2*b*.

[2] Above, p. 41.

[3] Delitzsch, *Babel and Bible*, p. 53; Joh. Jeremias, *Moses u. Hamm.*, p. 35 *sq*. The latter cites also from K 3364: "Towards thy God thou shalt be of a pure heart, that is the ornament of deity . . . against friend and neighbour speak nothing vile."

Völter has emphasised the fact that several of the commandments in the Decalogue find noteworthy parallels in Egyptian texts, particularly in chap. 125 of the Book of the Dead, where the deceased denies that he has been guilty of such offences as cursing, murder, adultery, theft, false witness, and covetousness. The Mohammedan parallels in the Koran (Sur. 6, 17) are no doubt due to the influence of the Old Testament, but to suppose that the latter's ethical conceptions in their turn are borrowed, whether from Babylonia and Assyria, or even from Egypt, is an assumption which is entirely unreasonable and without support.

At what period the Babylonian code *first* became known in Israel must be regarded as uncertain. Had Babylonia's influence over Canaan been at all powerful before the entrance of the Israelites, or even during the reigns of David and Solomon, we should have expected to find the clearest traces of the Code in the earliest literature. Such, however, is not the case, and it must be acknowledged that this result is of some importance for the general questions considered in chap. ii. The parallels which have been noticed comprise the treatment of the same topic and an agreement in the employment of the same principles. But the topics are treated upon different lines,[1] and the principles, *e.g.* the *talio* and the ordeal, are of too general a nature to admit of the supposition that they took their rise in Babylonia. A certain

[1] So, especially, in the laws of the vicious ox, p. 273 *sq.* above.

similarity of structure in the formulæ was also observed, but the evidence was not conclusive.

When we came down to the Deuteronomic code it was still impossible to discover unambiguous examples of borrowing. Owing to the much greater scope of this collection of laws, further parallels with CH were to be found, and the setting of this Code — the introductory historical matter and the concluding blessings and cursings[1] — may possibly imply that CH was not unknown to Israelite scribes by the commencement of the sixth century.

The exilic age cannot have failed to make the Jews thoroughly acquainted with the working of the Babylonian code, and it is from this period onwards that the indications tend to grow ever more unmistakable. In the first place, the tradition that their father Abraham came from Ur of the Chaldees[2] now becomes prominent.[3] Even Ḫammurabi himself must find a place in early Hebrew history, and he accordingly appears as a contemporary of Abraham, although merely to enhance the glory of the latter.[4] The age of the narrative (Gen. 14) is unfortunately far from certain. It is a unique chapter, whose fictitious character is very generally recognised, but whether the name is derived from eighth-century material (Kittel, König) or is due to a

[1] P. 15 above. [2] See above, pp. 18, 41.

[3] Gen. 11 31 (P); cp. Neh. 9 7, Judith 5 6, Jubilees 11 8, Jos. *Ant.* i. 7 1, Acts 7 4. There are reasons for believing that in Gen. 11 28 (J), 15 7 (E), the name has been inserted by later hands.

[4] The name Amraphel with initial *aleph* agrees with the alternative spelling Ammurabi (King, *Letters*, p. lxv. *sq.* n. 4).

post-exilic writer (so the majority of critics)[1] is an open question. It is of greater importance to notice that it is not until the Exile that we find Assyrian words in the terminology of trade, and it is in the literature of this period that features relating to cult and ritual begin to betray a significant resemblance to Babylonian usage. Descending still further, the minute precision of Talmudical legislation shows signs of an acquaintance with Babylonian law, and the Babylonian origin of the legal phraseology becomes most clearly marked.[2]

In conclusion, the Code of Ḫammurabi is of no little importance for the discussion of the general extent of Babylonian influence over Canaan. The evidence, it will have been noticed, does *not* suggest that Israelite legislation was to any considerable extent indebted to Babylonia, and the parallels and analogies which have been observed are to be ascribed most naturally to the common Semitic origin of the two systems. But the view of Joh. Jeremias,[3] that the resemblance between them is due to the fact that both come from Arabia, is not entirely correct. The relationship can scarcely be attributed to direct borrowing from Arabia—with greater probability it may be affirmed that Arabia, which has best preserved Semitic characteristics,

[1] *E.g.* Kuenen, Stade, Wellhausen, Meyer, Kautzsch, Addis, Cheyne, and G. F. Moore.

[2] N. M. Nathan, *Orientalistische Litteraturzeitung*, April 1903, col. 182; Hermann Pick, *Assyrisches und Talmudisches*, pp. 21-33 (Berlin, 1903).

[3] Above, p. 30.

continued to retain the primitive principles of law and justice which the Semites of Babylonia and Canaan developed in different directions. It is to the Arabia of the nomads—not to the little known seats of culture and civilisation[1]—that we must turn for Semitic legislation in its earliest form, and our scanty evidence must be supplemented and illustrated by the customs of the equally primitive fellaḥīn and bedouin of modern Palestine.[2]

Primitive Semitic legislation, seen at its best at the present day, advances through the earliest Hebrew laws of the Book of the Covenant and the Code of Ḫammurabi (now four thousand years old) to the post-biblical legislation of the Jews, the Syro-Roman law-book of the fifth century of this era, and the later codes of Mohammedan schools. The growth of Semitic law—as indeed of all law—is the growth of culture and civilisation:

"Oppida cœperunt munire et ponere leges."

[1] See pp. 30 *sqq.* above.

[2] Cp. p. 39 *sq.* above.

# ADDENDA

SINCE the preceding pages were sent to press the literature of the Code of Ḫammurabi has rapidly increased. It has been translated into Italian by Dr. Francesco Mari, and new English translations are promised by Prof. R. F. Harper (Chicago), and Mr. Boscawen. Dissertations, lectures, and articles continue to appear with regularity, and there is no reason to believe that the interest which the Code has aroused will diminish. In his *Gesetze Hammurabis* (Zurich, 1903) Georg Cohn draws attention to analogies to the Babylonian code in the old German laws, and doubtless similar analogies from other quarters could be multiplied by students of comparative custom. The present study, however, apart from a few illustrations from the Indian Laws of Manu, restricts itself to the Semitic field, and even in this department the available material has not been drawn upon so completely as could have been desired. In particular, as regards the customs of the more primitive representatives, there is room for considerable development, and some idea of the possibilities is to be obtained from the traces of early law among the Abyssinian Bogos to which

Hubert Grimme has directed attention (*Das Gesetz Chammurabis und Moses*, Cologne, 1903).

As regards the main problem, the relationship between the Code and the laws of Moses, it is not sufficient to say that "a relationship is undeniable."[1] Whether the parallels and analogies are due to the direct influence of Babylonia or to the common Semitic origin of Babylonians and Israelites is disputed. The latter of these views is the one urged by the present writer,[2] and he has found no sound arguments as yet in favour of the former. Only the theory that Palestine had long been under Babylonian influence would render the former reasonable, and if this be assumed it is difficult to understand why Israelite law shows no signs of Babylonian terminology. But the assumption is one that is not to be made too readily. Signs are not wanting of a certain impatience among Assyriologists at the extent to which the theory of Babylonian influence has been pushed, and at the manner in which support has sometimes been claimed for it. It is not unnecessary, therefore, to utter a warning against the tendency to over-estimate the importance of Assyriology for biblical study. Its value is undeniable, but the results must be viewed in their true perspective. The "wand of cuneiform research" has not caused all the difficulties of the Old Testament to vanish; it has brought fresh

[1] *The Guardian*, 22nd April, p. 559.

[2] Cp. also Fried. Küchler in *Die christliche Welt*, no. 23, 5th June; and Grimme, *op. cit.*

problems. Further, it has brought an accumulation of material, with the result that Assyriology—like the Arabic lexicon—can be used to support almost any view. How prolific are its resources, how inexhaustible its treasures, is excellently displayed in Winckler and Zimmern's *Keilinschriften und das Alte Testament*, which—though few will recognise in it a new edition of Schrader's famous work—is indispensable for the study of the cuneiform inscriptions and the Bible. That there is room for renewed research, for careful testing of older views, will scarcely be denied, and perhaps it is in the shape of monographs dealing with special inquiries that the study can best be advanced. Thus, as regards the absence of Babylonian legal terminology in old Hebrew, to which reference has already been made (see also below, note to p. 207), the philological argument is stronger than usual, and such a study as that by Prof. R. D. Wilson, on a comparison of the leading ideas of Babylonia and Israel based upon their vocabularies, is a type of the monographs now most opportune.[1]

Page 65, n. 1. Wellhausen's statement (*Arab. Heid.*[2] p. 189) appears to relate to Christian and not to Mohammedan custom (see G. Jacob, *Altarab. Beduinenleben*,[2] p. 212).

Pages 72, l. 2; 93, ll. 4-7. In the New Babylonian period, however, the wife was no longer qualified to act as witness (Daiches,[2] p. 19; on the position of woman, see also *id.*, p. 85 *sq.*).

Page 91, n. 1. In CH, § 161, the lover is called *be-el aš-ša-tim*,

[1] *Princeton Theological Review*, April 1903, pp. 239-255.

[2] "Altbabylonische Rechtsurkunden aus der Zeit der Ḫammurabi-dynastie," in *Leipziger Semitistische Studien*, vol. i. heft 2 (1903).

with *be-el* as in § 129 (cp. p. 77). Johns renders "the claimant of the wife," but the literal translation, "owner of the wife" (as in § 129) is to be preferred. This use of *aššat* suggests that in § 130 (p. 101) the law may refer to the violation not of a man's wife, but of his betrothed.

Page 101. See notes on pp. 91, 114.

Page 112, n. 2. The rendering "shackles" (servitude) for *ab-bu-ut-tum* seems improbable in view of § 226 *sq.*; *ab-bu-ti ardi la še-e-im u-gal-li-ib* (Daiches, *op. cit.*, p. 98, n. 3).

Page 114, l. 4 from end. "They shall shave off her hair." So Pinches, but the original is *ú-ga-la-ab-ši* (Daiches, p. 95), and the preferable translation is, "They shall put a mark upon her"; see above, pp. 102 (foot), 159. Daiches (p. 96 *sq.*) points out that the maid's fidelity to her master and husband is not stipulated in the contract, and observes that this throws some light upon the episode of Reuben and Bilhah, etc. (see the references above, p. 97, n. 4). The deeds of Reuben, Abner, Absalom, and Adonijah were not crimes, but acts of presumption and offences against good morals. David's concubines were not put to death, but simply placed in confinement; they received maintenance (cp. p. 118 above), but were not free to marry again, at least during his lifetime. Cp. also § 158 (p. 101 *d*), where intercourse with the father's wife (not the man's own mother) is lightly visited (contrast *c*).

Page 143, n. 1, l. 2. Cp. also p. 168 (head).

Page 157. § 279 is illustrated by a contract of the time of Abēšu, relating to the purchase of a female slave, wherein the responsibility of the seller for any subsequent dispute is said to be "in accordance with the king's law" (*kima ṣi-im-da-at šarrim*); see Daiches, pp. 91 *sq.*, 94, n. 2, who refers also to § 51 (p. 231 *sq.* above). For the phrase, it may be noticed that Ḫammurabi, in one of his letters (King, p. 39), orders Sin-idinnam to give judgment "according to the law" (*ki-ma ṣi-im-da-tim*).

Page 174, n. 3. On *apālu*, "to make compensation for," see Daiches, p. 41.

Page 196 *sq.* My attention has been drawn to the fact that my suggestion, that the law in Lev. 19 9, 23 22 took its rise in ceremonies relating to the corn-spirit, has already been made by Fr. Schwally, *Semitische Kriegsaltertümer*, 186 *sqq.* (Leipzig, 1901).

Pages 207, foot, 265 *sqq.*, 281. Grimme (p. 44), too, emphasises the fact that had Israelite law borrowed from CH we should have

expected to find Babylonian legal terms in use; only *dayyān* (see above, p. 55), "judge," and *dīn*, "judgment, suit," occur to prove that both Babylonian and Hebrew are offshoots of the one original Semitic tongue. So the use of *baʿal* and its equivalent *be-el* in the two legal systems (p. 77 above) is no proof of borrowing, and it is worth noticing that the slave's master is not called *baʿal* in Hebrew, but a different term (*ʾădōnīm*) is used (pp. 165, 171).

Page 243, n. 1. The Septuagint, too, thinks of magical potions; cp. the meaning of the root *k-š-ph* as suggested by Robertson Smith (see *EBi.* "Magic," § 3 [2]).

Page 247 and n. 4. In § 224 *sq.* the veterinary is described as a cow or ass doctor. "Sheep doctor," Mr. Johns informs me, is due to a slip of the pen.

Page 253. The essential difference between the two codes, as Grimme points out (p. 39), appears in the fact that CH deals with an intentional assault upon the woman, whereas in the Hebrew law she is the victim of an accident. See below.

Page 268 *sq.* The differences are worked out at greater length by Grimme (pp. 36-43) who sums up: "Numerous cases which the Book of the Covenant handles are wanting in the Code of Ḫammurabi; frequently both deal with the same case but with different results. Where the same case is treated in the same manner by both, the common source is the customary Old Semitic law reaching back to long before the time of Ḫammurabi. Direct influence of the Code upon Mosaic penal law must be held to be out of the question." In like manner, H. P. Smith (*Old Testament History*, p. 174), speaking of the Book of the Covenant, observes: "its simplicity when compared with the code of Ḫammurabi confirms its independence. The points of resemblance, some of which are striking, are features common to oriental society."

Page 280, n. 4. The final consonant of Amraphel has not yet been satisfactorily explained. Hüsing ingeniously joins it to the following word and renders, "And it came to pass in the days of A-m-r-ph, as Arioch king of Ellasar was over Shinar [Babylonia], that Chedorlaomer," etc. (A. Jeremias, *Im Kampfe um Bibel*,[4] 13; Winckler, *Abraham als Babylonier*, 23, n. 1). But the reading is an awkward one, and it must be admitted that the failure to explain the Hebrew form constitutes one objection to its identification with the name Ḫammurabi (see also Johns, in the *Expositor* October, pp. 282-293).

# INDEX TO THE CODE OF ḪAMMURABI

For an abstract of its contents see above pp. 8-10. The more important references (containing a translation, paraphrase, or abstract of the law in question) are printed in heavier type. Small inferior figures refer to the footnotes upon the page cited.[1]



[1] For other Babylonian and Assyrian laws (some of which probably belonged to the Code), see pp. 3, 83$_2$, 85, 87, 103$_2$, 121, 123, 129, 144, 155, 161, 175$_4$, 188$_2$, 200$_2$, 231, 244.

[2] See the Addenda, p. 286 (to p. 157).

[3] See p. 9, and n. 1 above.

[1] See the Addenda, p. 285.

[1] See the Addenda, p. 287.
[2] See the Addenda, p. 286.

# INDEX OF BIBLICAL PASSAGES

The references are to the English Version throughout. The small inferior numbers refer to the notes on the page cited.

# GENERAL INDEX

The small inferior figures relate to the notes upon the page cited. The following abbreviations have been used: Ar. = Arabic, Aram. = Aramaic, Bab. = Babylonian or Assyrian, Heb. = Hebrew, Syr. = Syriac. For a general *résumé* see above pp. 8 *sqq.*, and the references in the Index to the Code of Ḫammurabi (pp. 289-291).

THE END

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