

The Age of Hammurabi

JAMES H. BREASTED

It was only in the 1840s that Near Eastern archaeology began, following by a generation or so the birth of Egyptology. The French scholar Paul Emile Botta began to excavate the ruins of Nineveh in 1841. The English archaeologist Austen Henry Layard began his excavations at Nimrud in 1845. And the German Robert Koldewey began work at Babylon only in 1898. The cuneiform writing system and the several ancient languages that used it began to be reliably deciphered in the late 1850s. Each new discovery was greeted enthusiastically by a growing community of scholars in the new science of archaeology as well as by biblical scholars, ancient historians, the press, and the public. Among the finds of early Near Eastern archaeology were many contracts and other obviously legal documents, even fragments of what were clearly law codes. Then in the winter of 1901–1902, the French archaeologist Jacques de Morgan, excavating at Susa in Iran, unearthed a black basalt stela nearly eight feet tall containing the Code of Hammurabi, carved in more than thirty-six hundred lines of cuneiform script around the column below a relief carving of the king receiving the laws from Shamash, the sun god and god of justice. It had been carried off by some later conqueror of Hammurabi's Babylon, probably the Elamite king Shutruk-Nahhunte, about 1200 B.C. and reerected in the Elamite capital of Susa. The Elamite king had apparently not been bothered by the solemn curses on the stela against those who would efface "my name inscribed [thereon] and has written his own name." Hammurabi's name was indeed effaced, but the name of the effacer was never substituted: there is only a blank space.

The stela was taken to the Louvre in Paris, where it remains. It was exhaustively studied by Assyriologists, translated, edited, and publicized. One of the publicists was the American Egyptologist James H. Breasted. Breasted was a popularizer not only of Egyptian but of Near Eastern scholarship as well. He was interested in constructing a convincing picture of all preclassic antiquity. His *The Conquest of Civilization*, from which the following selection is taken, reflects his enthusiasm for the Ancient Near East, and the selection is a statement of the scholarly consensus about Hammurabi, his age, and his code in the mid-1920s.

As the "Kings of Sumer and Akkad" slowly weakened, a new tribe of Semites began descending the Euphrates, just as the men of Akkad had done under Sargon. These newcomers were the Semitic Amorites of Syria by the Mediterranean. About a generation after 2200 B.C. this new tribe of western Semites seized the little town of Babylon, which was at that time still an obscure village on the Euphrates. The Amorite kings of Babylon at once began to fight their way toward the leadership of Sumer and Akkad.

After a century of such warfare there came to the throne as the sixth in the Amorite line of kings at Babylon one Hammurabi, 2067–2025 B.C.¹¹ In the now feeble old Sumerian cities of the South, Hammurabi found the warlike Elamites, who had come in from Elam in the eastern mountains. They fought him for over thirty years before he succeeded in driving them out and capturing the Sumerian towns. Victorious at last, Hammurabi then made his city of Babylon for the first time supreme throughout the land. It was therefore not until the 21st century B.C. that Babylon finally gained such a position of power and influence that we may call the land "Babylonia."

Hammurabi survived his triumph twelve years, and in those years of peace, as he had done in war, he proved himself the ablest of his line. He was the second great Semitic ruler, as Sargon had been the first. Only a few generations earlier his ancestors, like those of Sargon, had been drifting about the desert, without any organization. He still betrayed in his shaven upper lip, a desert custom, the evidence of his desert ancestry. But he now put forth his powerful hand upon the teeming life of the Babylonian towns, and with a touch he brought in order and system such as Babylonia had never seen before. Two chief sources of information have survived over four thousand years to reveal to us the deeds and the character of this great king: these are a group of his letters, and the splendid monument bearing his laws.

Hammurabi's letters afford us for the first time in history a glimpse into the busy life of a powerful oriental ruler in Asia. They disclose him to us sitting in the executive office of his palace at Babylon with his secretary at his side. In short, clear sentences the king begins dictating his brief letters, conveying his commands to the local governors of the old Sumerian cities which he now rules. The secretary draws a reed stylus from a leathern holder at his girdle, and quickly

¹¹These dates are now considered much too early. But there are still difficulties with Near Eastern chronology, and three sets of dates are possible. A high chronology produces the dates 1848–1806, a middle chronology gives 1792–1750, and a low chronology gives 1728–1686. They are based on comparisons with contemporary events among other neighboring peoples, such as the Assyrians, and upon astronomical data. Most scholars prefer the middle chronology.—Ed.

covers the small clay tablet with its lines of wedge groups. The writer then sprinkles over the soft wet tablet a handful of dry powdered clay. This is to prevent the clay envelope, which he now deftly wraps about the letter, from adhering to the written surface. On this soft clay envelope he writes the address and sends the letter out to be put into the furnace and baked.

Messengers constantly hand him similarly closed letters. This secretary of Hammurabi is a trusted confidential clerk. He therefore breaks to pieces the hard clay envelopes in the king's presence and reads aloud to him letters from his officials all over the kingdom. The king quickly dictates his replies. The flood has obstructed the Euphrates between Ur and Larsa, and of course a long string of boats have been tied up and are waiting. The king's reply orders the governor of Larsa to clear the channel at the earliest moment and make it navigable again.

The king is much interested in his vast flocks of sheep, as if the nomad instinct had not altogether vanished from the blood of his line. He orders the officials to appear in Babylon to celebrate the spring sheep-shearing as if it were a great feast. . . . Delinquent tax gatherers are firmly reminded of their obligations and called upon to settle without delay. Prompt punishment of an official guilty of bribery is authorized, and we can see the king's face darken as he dictates the order for the arrest of three officials of the palace gate who have fallen under his displeasure. More than once the governor of Larsa is sharply reminded of the king's orders and bidden to see that they are carried out at once.

Many a petitioner who has not been able to secure justice before the board of judges in his home city is led in before the king, confident of just treatment; and he is not disappointed. The chief of the temple bakers finds that royal orders to look after a religious feast at Ur will call him away from the capital city just at the time when he has an important lawsuit coming on. He easily obtains an order from the king postponing the lawsuit. The king's interest in the religious feast is here as much concerned as his sense of justice, for many of the letters which he dictates have to do with temple property and temple administration, in which he constantly shows his interest.

With his eye upon every corner of the land, alert, vigorous, and full of decision, the great king finally saw how necessary it was to bring into uniformity all the various and sometimes conflicting laws and business customs of the land. He therefore collected all the older written laws and usages of business and social life, and arranged them systematically. He improved them or added new laws where his own judgment deemed wise, and he then combined them into a great code or body of laws. It was written, not in Sumerian, as

some of the old laws were, but in the Semitic speech of the Akkadians and Amorites. He then had it engraved upon a splendid shaft of stone. At the top was a sculptured scene in which the king was shown receiving the law from the Sun-god. The new code was then set up in the temple of the great god Marduk in Babylon. This shaft has survived to our day, the oldest preserved code of ancient law. Fragments of other copies on clay tablets, the copies used by the local courts, have also been found.

Hammurabi's code insists on justice to the widow, the orphan, and the poor; but it also allows many of the old and naive ideas of justice to stand. Especially prominent is the principle that the punishment for an injury should require the infliction of the same injury on the culprit—the principle of “an eye for an eye, a tooth for a tooth.” Injustice often resulted. For example, when a house fell and killed the son of the householder, the guilty builder must also suffer the loss of *his* son, and the innocent son was therefore condemned to die. Marriage was already a relation requiring legal agreements between the man and his wife, and these are carefully regulated in Hammurabi's code. Indeed the position of women in this early Babylonian world, as in Egypt, was a high one. Women engaged in business on their own account, and even became professional scribes. . . .

Thus regulated, the busy Babylonian communities prospered as never before.

A Modern Hammurabi

SABATINO MOSCATI

The processes of scholarship continue, in Near Eastern studies as in every other discipline. New materials come to light, older documents are reinterpreted, former conclusions are revised. The following selection, taken from Sabatino Moscati's *The Face of the Ancient Orient, A Panorama of Near Eastern Civilizations in Pre-Classical Times*, represents the view of Hammurabi and his code in this generation as the selection from Breasted represents the view of a past generation. Assyriologist and one-time director of the Center of Semitic Studies, the University of Rome, Moscati provides the best modern introduction to the ancient Near East, reflecting his substantial scholarship, up-to-date research, and judicious conclusions.

The student should take note of a few important points of difference with Breasted. For example, other earlier law codes have now been discovered, such as the Lipit-Ishtar Code, predating Hammurabi by more than a century and a half, or the Laws of Eshnunna, predating him by some two and a half centuries. These findings tend to diminish the originality of Hammurabi's code if not its importance and to link the Babylonians more closely to the earlier Sumerians in legal matters as in so many other areas of culture. The ordeal by water, for instance, is a Sumerian survival. But there are Babylonian innovations. Hammurabi's code reflects a more complex society and such practices as the marriage contract and legalized polygamy, unknown to the Sumerians. And on the darker side, the principle of retaliation or punishment in kind is a new Semitic principle of the penal law, not an "old and naive idea," as Breasted thought.

As we now know, this code is not the only, nor the oldest one in Mesopotamia, and we can no longer count on its originality; but it still remains the most complete and organic synthesis of law that we possess, and therefore it most fully documents its epoch and environment.

In its literary form, the Code follows the scheme of Sumerian times: prologue, laws, epilogue. The laws still have that analytic, piecemeal quality characteristic of the Sumerians; we find enunciated not general principles, but individual cases with their appropriate solutions. But considerable differences are to be noted in the content of the laws. Those relating to persons reveal a society divided into three classes, which approximate to the conceptions embodied in the modern terms: patricians, plebeians, and slaves.¹² Patricians and slaves correspond to the two classes already found among the Sumerians, but the concept of plebeians is new, in that the distinctive feature of their state is no longer dependence upon the palace, as in the case of the "partly free" Sumerians, but a different legal status:

If a patrician put out another's eye, his eye shall be put out. If he break another's bone, his bone shall be broken. If he put out the eye or break the bone of a plebeian, he shall pay a mina of silver.

The law relating to the family treats the father as its head. Marriage is preceded by a betrothal gift from the bridegroom to the

¹²These are the same terms that are rendered in the text of the code by the terms *seigniors*, *commoners*, and *slaves*. There are also minor differences in the rendering of the quoted passages below.—Ed.

bride, the so-called "acquisition price," something of which there is no evidence in Sumerian law. A further innovation, or, at least, something that cannot be traced back to Sumerian times, is the written contract:

If a patrician has taken a wife, but has not made a contract with her, that woman is not his wife.

Polygamy is permitted, whereas Sumerian marriage was monogamic. Divorce is granted for an adequate reason. For example:

If a patrician has been taken prisoner and there is not sufficient in his house to live on, his wife may enter the house of another; that woman shall incur no blame at all.

The law of inheritance is based on legitimate succession. The inheritance is divided between the male heirs, and daughters have no rights except when there are no sons; but they do have the right to share in usufruct, and to a dowry. Wills are not made, but their place is often taken by contracts of adoption.

Property rights are highly developed and organized, as one would expect in an evolved sedentary society. There are deeds of sale and purchase, hire and lease, commercial partnerships, loans on interest, and so on.

The penal law is dominated, so far as patricians are concerned, by the law of retaliation. We have already noted the application of this law: an eye for an eye, a tooth for a tooth; and we have observed that the most recent discoveries lead us to regard this law as of Semitic introduction; at any rate, it is unknown to the more ancient Sumerian legal provisions, which explicitly stipulate the payment of damages. An interesting feature of the Hammurabi Code is the punishment inflicted on medical practitioners for any ill consequences arising from their operations:

If a surgeon has operated on a patrician with a bronze knife, and has killed him . . . his hands shall be cut off.

The penalty prescribed for negligence in an architect is more in line with our own legal conception:

If a builder has constructed a house for anyone and has not made his work solid, so that a wall has fallen down, that builder shall repair the wall at his own cost.

Judicial proceedings take place before judges, to whom the litigants apply when they cannot reach a private solution of their dispute. Thus the law is subjective, not objective: if there is no private plaintiff there is no trial. During the hearing, both documentary and oral

evidence are admissible. In the absence of evidence, recourse is made to trial by ordeal, the river test, already known to the Sumerians: the accused plunges into the water; if he survives, he is acquitted; if he succumbs, he is adjudged guilty:

If a patrician accuses another of sorcery, but has no proofs, the accused man shall go to the river and plunge into it. If the river bears him away, the accuser shall take possession of his house. If the river shows him to be innocent and he comes forth safe, the accuser shall be slain, and the other shall take his house.

The Hammurabi Code is only a stage in the juridical tradition of Mesopotamia, but it is a particularly significant one. In the Babylonia of the great kings, under the aegis of a prosperous and powerful state, literature, art, and economic and social organization flourish as never before; and, as never before, the Sumerian heritage and the Semitic contribution achieve a harmonious synthesis. For this reason, the times of Hammurabi constitute the acme of Babylonian and Assyrian civilization; and the great king, warrior and diplomat, builder of temples and digger of canals, personifies this civilization better than any other.

Review and Study Questions

1. What sort of society do you see reflected in the Code of Hammurabi?
2. What does the code reveal about interpersonal relations among the Amorites?
3. What is the status of women in this society?
4. Does the code tell us anything about the character and personality of Hammurabi himself? Discuss.

Suggestions for Further Reading

There are two definitive English translations of the Code of Hammurabi and other Near Eastern codes, the one excerpted for this chapter from *Ancient Near Eastern Texts Relating to the Old Testament*, tr. Theophile J. Meek, ed. James B. Pritchard, 3rd ed. with supplement (Princeton: Princeton University Press, 1969), and *The Babylonian Laws*, ed. with translation and commentary by G. R. Driver and John C. Miles, 2 vols. (Oxford: Clarendon Press, 1952), the first volume the legal commentary, the second the texts. An interesting collection

of ancient Near Eastern letters is *Letters from Mesopotamia: Official, Business, and Private Letters on Clay Tablets from Two Millennia*, tr. with an introduction by A. Leo Oppenheim (Chicago and London: University of Chicago Press, 1967). The continuity of Sumerian influence is illustrated in Samuel Noor Kramer, *History Begins at Sumer* (New York: Doubleday, 1959).

Most of the serious works on the ancient Near East are written by or reflect the emphasis of either archaeologists or linguistic scholars, called Assyriologists. Among the former are recommended two comprehensive surveys: Jack Finegan, *Archaeological History of the Ancient Near East* (Boulder, Colorado, and Folkstone, England: Westview Press and Dawson, 1979), and Seton Lloyd, *The Archaeology of Mesopotamia, From the Old Stone Age to the Persian Conquest* (London: Thames and Hudson, 1978). Also recommended are M. E. L. Mallowan, *Early Mesopotamia and Iran* (New York: McGraw-Hill, 1965), in which the distinguished field archaeologist deals largely with the earlier, especially Sumerian subculture of Mesopotamia, and a brilliant and readable synoptic work by Jacquetta Hawkes, *The First Great Civilizations, Life in Mesopotamia, the Indus Valley, and Egypt* (New York: Knopf, 1973). Probably the best general work on Mesopotamia is by the great Assyriologist A. Leo Oppenheim, *Ancient Mesopotamia, Portrait of a Dead Civilization*, rev. ed. completed by Erica Reiner (Chicago and London: University of Chicago Press, 1977). Also recommended is H. W. F. Saggs, *The Greatness That Was Babylon: A Survey of the Ancient Civilization of the Tigris-Euphrates Valley* (New York and Washington: Praeger, 1969). Saggs' *Civilization before Greece and Rome* (New Haven: Yale University Press, 1989) is a masterful work of synthesis and updating.

Thorkild Jacobsen, *The Treasures of Darkness: A History of Mesopotamian Religion* (New Haven: Yale University Press, 1976) is a thorough and sensitive treatment of its subject by a renowned ancient Near Eastern scholar. Robert McCormick Adams, *Heartland of Cities, Surveys of Ancient Settlement and Land Use on the Central Floodplain of the Euphrates* (Chicago and London: University of Chicago Press, 1981) is a learned treatment of the pattern of irrigation that underlies the land use of Hammurabi's Amorite Empire and other earlier and later states of Mesopotamia. In Joan Oates, *Babylon* (London: Thames and Hudson, 1979) the author emphasizes the culture of Hammurabi's city and empire.

Finally, there are two more general interpretive works: James Wellard, *Babylon* (New York: Saturday Review Press, 1972), also published in England under the title *By the Waters of Babylon* (London: Hutchinson, 1972), a readable and exciting survey by an able popularizer; and Henri Frankfort et al., *The Intellectual Adventure of Ancient*

22 *Makers of World History*

Man, An Essay on Speculative Thought in the Ancient Near East (Chicago and London: University of Chicago Press, 1946), a profound and stimulating work of interpretation. See also the chapter by C. J. Gadd, Chapter V, "Hammurabi and the End of his Dynasty" in *The Cambridge Ancient History*, 3rd ed., Vol II, Part I (Cambridge: Cambridge University Press, 1973).