

CHAPTER V

THE LAWS OF AMRAPHEL AND THE MOSAIC CODE

AT the end of the year 1901 an important discovery was made among the ruins of Susa—'Shushan the palace,' as it is called in the Book of Daniel. There M. de Morgan's excavations brought to light the three fragments of an enormous block of polished black marble, thickly covered with cuneiform characters. The characters were engraved with the highest artistic skill, and at the top of the monument was a low relief representing the Babylonian king Khammu-rabi or Amraphel receiving the laws of his kingdom from the Sun-god before whom he stands. When the characters had been copied and read, it was found that they embodied a complete code of laws—the earliest code yet discovered, earlier than that of Moses by eight hundred years, and the foundation of the laws promulgated and obeyed throughout Western Asia.

The compilation of the code marked the

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overthrow of the Elamite domination, the recovery of Babylonian independence, and the establishment once more of a Babylonian empire. Amraphel was in more senses than one the father of his people; he cleared his country not only of its foreign enemies but also of the bandits which foreign invasion had brought in its train, he saw that justice was done to the least as well as to the greatest, and he took care that all his subjects should know the laws under which they were called upon to live.

The individual laws had been in existence before. They embody for the most part the decisions of the judges in the special cases brought before them, Babylonian law being, like English law, 'judge-made' and based upon precedent. Hence it is that the code follows no scientific order, and is arranged upon no single principle. Laws stand side by side in it which belong to the infancy and to the old age of a state, and we can trace in the code the same curious mixture of a patriarchal and an advanced state of society that we find in the Book of Genesis.

This may, perhaps, be partly due to the mixture of population in Babylonia. Amraphel

himself belonged, like Abraham, to the Canaanite or South Arabian branch of the Semitic family, which was in many respects socially behind the Semites of Babylonia, with their inheritance of ancient Sumerian civilization. Ideas and principles, therefore, which characterized two different stages of social culture existed side by side in the mind of the legislator, and the people for whom he legislated similarly stood on two different levels of culture and thought.

In Babylonia, as in Israel, the desert and the city adjoined each other. Thus trial by ordeal was admitted, incompatible though it was with the elaborate system of fines and the demand for judicial evidence which otherwise distinguished the Babylonian code, and the doctrine of 'an eye for an eye' and 'a tooth for a tooth' finds a place by the side of laws which imply that the primitive doctrine of retaliation had made way for the conception of impartial and passionless justice.

That Babylonian law should have been already codified in the age of Abraham deprives the 'critical' theory, which makes the Mosaic Law posterior to the Prophets, of one

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of its two main supports. The theory was based on two denials—that writing was used for literary purposes in the time of Moses, and that a legal code was possible before the period of the Jewish kings. The discovery of the Tel el-Amarna tablets disproved the first assumption; the discovery of the code of Khammu-rabi has disproved the second. Centuries before Moses the law had already been codified, and the Semitic populations had long been familiar with the conception of a code.

The code of Khammu-rabi was in force in Canaan as well as in Babylonia. His empire extended to the shores of the Mediterranean, and in one of the inscriptions relating to him the only title he bears is that of 'king of the land of the Amorites.' When the Israelites invaded Palestine, accordingly, we may conclude that, like the Babylonian language and script, the Babylonian code of Khammu-rabi was still current there. Its provisions, in fact, must have been enforced and obeyed wherever the political power and influence of Babylonia were felt.

The codification of the law, therefore, was no new thing in the days of Moses. On the

contrary, it was a very old fact in the history of Western Asia, a fact, too, with which Abraham and Jacob must alike have been acquainted. Not only could the Hebrew leader have compiled a code of laws; we now see that it would have been incredible had he not done so.

Certain German Assyriologists have been at great pains to discover similarities between the codes of Khammu-rabi and Moses, and to infer from this a connexion between them. And there are cases in which the similarity is striking. The free man, for example, who had been enslaved for debt was to be manumitted after three years according to the code of Khammu-rabi, after seven years according to that of Moses. Kidnapping again, was punished in both codes by death, and there are some curious resemblances in the laws relating to death from the goring of an ox. If the owner of the ox could be proved to have been negligent or otherwise responsible for the accident, the Babylonian law enacted that he should be fined half a maneh of silver, or one-third of a maneh if the dead man were a slave; in Israel the penalty of death was exacted in the first case and a fine of half a maneh in the second.

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Where, however, the owner was not in fault, he went unpunished in both codes, though the Mosaic code required that the ox should be put to death.

The difference between the two codes in this last particular is characteristic of a difference which runs through the whole of them, and makes the contrast between them far greater and more striking than any agreement that can be pointed out. The code of Khammu-rabi presupposes a settled state, a kingdom, in short, in which law is supreme and the individual is forbidden to take it into his own hands. The code of Moses, on the other hand, is addressed to a more backward community, which has not yet become a state, but is still in the condition of a tribal confederacy. The principle of blood-revenge is still dominant in it; the individual is still allowed to avenge himself, and even cities of refuge are provided in which the homicide may find protection from the 'pursuers of blood.' The law can defend him from private vengeance only as it were by a subterfuge.

It is this principle of blood-revenge—of blood for blood—that necessitates the death of the ox which has caused the death of a

man. 'Whoso sheddeth man's blood, by man shall his blood be shed,' is the keynote of the Mosaic legislation; in the legislation of Babylonia the keynote is rather the security of property and the omnipotence of the law. In only two instances is the individual allowed to forestall the action of the law, either when a brigand is caught red-handed or when a man is found robbing the house of a neighbour which has been set on fire. The contrast between the two legislative systems cannot be too forcibly emphasized: the one is intended for a state, the other for tribes which are still in the unsettled condition of the wandering Arab of to-day.

But there is yet another difference between the codes of Babylonia and Israel. The Babylonian code is marked by greater severity, more especially where offences against property are concerned. Doubtless this was partly due to the necessity of suppressing the brigandage which foreign and civil war had left behind it; but the main reason is to be sought in a difference of social organization. Babylonia was a great trading community; its wealth was derived from commerce and agriculture, and

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offences against property therefore struck at the foundations of the prosperity of the state. The Israelitish tribes, on the contrary, were neither traders nor agriculturists, and while every individual life was of importance to the community the individual's private property was of comparatively little account. The comparative humanity of the Mosaic code in respect of theft and robbery has the same origin as the prominence given in it to the right of private revenge.

A third point of contrast between the two codes is to be found in the laws of inheritance. The Babylonian father was able to make a will and leave a 'favourite son'—'the son of his eye,' as the phrase goes—'an estate, garden, or house' over and above the share in the property to which he was entitled upon his father's death. Of this there is no sign or trace in the Mosaic code. Testamentary devolution presupposes not only an advanced stage of civilization, but also advanced ideas in regard to the tenure of property. In a tribal confederacy the will was necessarily unknown.

The little that is said in the Mosaic code about the woman's rights of inheritance has

a similar explanation. The code of Khammura-bi contains minute directions about the wife's share in the estate left by her husband. The dowry she brought with her at marriage reverts to her, the property settled upon her by her husband is secured to her, and along with her children she has a claim to the usufruct of the rest of the estate. In case there was no marriage settlement she obtains a share of the estate equal to that of each of the children. If the widow marries again she loses the property settled upon her by her first husband, and if her children are still under age she and the second husband are required to support and educate them.

For all this we look in vain in the Mosaic code. Even the dowry brought by the wife is unknown to it. The fact is rendered the more significant by a notice in the Books of Joshua and Judges, which shows that though the gift of the dowry was not prescribed by the Mosaic law it was known in Canaan down to the moment of the Israelitish invasion. When Caleb 'the son of Kenaz,' we read, gave his daughter Achsah in marriage to Othniel upon the capture of Kirjath-sepher 'she moved him

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to ask of her father a field.' The Israelitish woman under the Mosaic code did not enjoy the same measure of independence as the Babylonian woman; she was more in the position of the Arab woman of to-day.

The contrast between the two codes is really a contrast in the social organization and advancement in civilization of the two peoples for whom they were compiled. As compared with the cultured inhabitants of the Babylonian empire, the Israelitish tribes for whom Moses legislated were in a backward state. The supremacy of the law was not yet acknowledged; the individual still claimed the privilege of taking it into his own hands; the status of the woman was still that of the mere 'helpmeet' of the man, and laws about property were still but little required.

When we pass from the more general principles which underlie the two codes and their particular provisions the same contrast and difference are apparent. Both, for instance, prohibit the creditor from depriving the insolvent debtor of his all. The creditor who took the debtor's ox in payment of a debt was fined the third of a maneh, or £3, by the

Babylonian law; the law of Moses forbade him to take his 'neighbour's raiment to pledge' after nightfall, 'for that is his raiment only' (Exod. xxii. 26, 27). Moses was addressing a body of nomad tribesmen for whom the cloak in which they slept at night was of primary importance, whereas the law of Khammu-rabi was intended for a settled population, a large part of whom were agriculturists dependent on their ploughing oxen for their means of support.

There is a similar contrast observable in other provisions of the two codes, a contrast which has its roots in the difference between a great and powerful kingdom far advanced in culture and civilization, and desert tribes who have as yet no land that they can call their own. Certain of the laws of the Babylonian code, for example, relate to the surgeon and veterinary, who were already distinguished from one another in the old civilization of the Euphrates. 'If a surgeon,' we read, 'performs a serious operation on a man with a bronze lancet, and the man recovers after a tumour has been opened with the lancet or a disease of the eye has been cured, he shall receive ten shekels of silver' (£1 10s.).

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‘If the operation has been performed on a poor man, he shall receive five shekels of silver.

‘If the operation has been performed upon a slave, the slave’s master shall pay him two shekels of silver.

‘If the surgeon has performed a serious operation with a bronze lancet upon a man, and the man die, either through his opening a tumour with his lancet or destroying the man’s eye, his hands shall be cut off.

‘If the surgeon has performed the operation upon a slave (or) poor man, and the man dies, slave for slave shall he render.

‘If he has opened the tumour unsuccessfully or destroyed the eye, he shall pay the equivalent of the slave’s value.

‘If the surgeon heals a man’s broken limb, or has cured a disease of the intestines, the patient shall pay the surgeon five shekels of silver.

‘If a veterinary has performed an operation on an ox or an ass and has cured it, the owner shall pay the veterinary a fee of the sixth part of a shekel (5*d.*).

‘If he has performed an operation on an ox or an ass and the animal dies, he must pay the owner a fourth part of its value.’

The code of Moses knows nothing of either surgeon or veterinary. The doctor and the medical school had been left behind in Egypt; there was as yet no need to legislate for them. Until Canaan had been conquered, with its Babylonian culture and medicine and its Babylonian law, the law-book was necessarily silent in regard to medical jurisprudence.

The Mosaic code contains indeed a law analogous to those we have been considering, but in it the place of the doctor is taken by the ordinary tribesman. 'If men strive together,' it is enacted, 'and one smite another with a stone, or with his fist, and he die not, but keepeth his bed; if he rise again, and walk abroad upon his staff, then shall he that smote him be quit; only he shall pay for the loss of his time, and shall cause him to be thoroughly healed' (Exod. xxi. 18, 19). We are at once transported from the civilized monarchy of Babylonia to the rude life of the Arabian wilderness.

The contrast which a comparison of the Babylonian and Israelitish codes thus shows to exist between them is enhanced by another and significant fact. Usages and laws are

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referred to in the patriarchal history as described in the Book of Genesis for which we can find no parallel in the Mosaic legislation. They are explained, however, by the newly-found code of Khammu-rabi. I have long since pointed out that the details of the purchase of the cave of Machpelah by Abraham are in strict conformity with the requirements of Babylonian commercial law as it was administered in the Abrahamic age. Even the technical term 'shekels of silver' was borrowed from Babylonia, as well as the description of the property as consisting of 'field,' 'rock-chamber,' and 'trees.'

But we are now learning that in other respects also the law which lies behind the narratives of Genesis is the law, not of Moses, but of Khammu-rabi. Thus the action of Sarah in giving Hagar to Abraham and of Rachel in giving Bilhah to Jacob when they themselves were childless was in strict accordance with the Babylonian code. This ordained that the wife could present her husband with a concubine, and if she had had no children it was even permitted him to take a second and inferior wife. As a corollary of this it was further enacted that 'if a man has

married a wife, and she has given a concubine to her husband by whom he has had a child, should the concubine afterwards have a dispute with her mistress because she has borne children, her mistress cannot sell her; she can only lay a task upon her and make her live with the other slaves.' Now, therefore, we can understand the conduct of Sarah after her quarrel with Hagar; the law did not allow her to sell her former maid, and all that could be done was to induce Abraham to drive Hagar from his camp.

Equally striking is the explanation now afforded us of the words of the childless Abraham when speaking of his house-steward, Eliezer, as his heir. Adoption plays a prominent part in the code of Khammu-rabi as well as in the family life of later Babylonia, and by the act of adoption the heir to the property of a free man became himself free, even though his status originally was that of a slave. Adoption, in fact, whether of the slave or of the free man, was as familiar to the Babylonian code as it was unfamiliar to the code of Israel.

Even the infliction of death by burning, with which Judah threatened his daughter-in-law

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Tamar on the supposition that she was a widow, finds its explanation in the Babylonian code, where the same punishment is enacted against a nun who has been unfaithful to her vows of virginity or widowhood. Perhaps, too, we may see in Jacob's admission that whoever had stolen Laban's gods should be put to death (Gen. xxxi. 32), a reference to the Babylonian law, which punished sacrilege with death.

The conclusion that must be drawn from the foregoing facts is obvious. A comparison of the code of Babylonia with that of Israel has made it clear that the latter was intended for a body of nomad tribes who were not yet settled in a country where the laws of Babylonia were still in force. In other words, the Mosaic code must belong to the age to which tradition assigns it, and presupposes the historical conditions which the Biblical narrative describes. Not only has the code of Khammu-rabi proved that the legislation of Moses was possible, it has also shown that the social and political circumstances under which it claims to have arisen are the only ones under which it could have been compiled.

And yet more. While the Mosaic code, in

contradistinction to the Babylonian code, belongs to the desert rather than to the city, the laws implied in the narratives of the Book of Genesis are those which actually were current in Canaan in the patriarchal age. No writer of a post-Mosaic date could have imagined or invented them; like the names preserved in Genesis, they characterize the patriarchal period and no other. The answer of archaeology to the theories of modern 'criticism' is complete: the Law preceded the Prophets, and did not follow them.

At present it is the civil law alone which we can compare with that of Babylonia. The Babylonian ritual code has not yet been discovered. But many of its provisions are known to us from the religious and magical texts, and their resemblance to the provisions of the ritual law of Israel is at times startling. Even the technical terms of the Mosaic ritual are found again in Babylonia. Those who wish to study the subject may turn to my Gifford *Lectures on the Religions of Ancient Egypt and Babylonia*, where the chief points of likeness and connexion are pointed out.

There was, in fact, a closer connexion between

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the ritual code of Babylonia and that of Israel than there was between their civil codes; and before long we may hope to have clear archaeological evidence that the ritual enactments of the Pentateuch, which have been assigned to different periods of history and religious development, all alike have their analogues in a ritual that was in force in Babylonia centuries before Moses was born.

At all events the civil code of Khammu-rabi explains the form under which the civil code of Moses has come down to us. The formula of the individual laws is the same in both. Each law is introduced by the particle 'if.' The reason of this has been furnished by the cuneiform documents. Babylonian law was, like English law, 'judge-made,' each law embodying a decision of the royal judges in some special suit. The code of Khammu-rabi, in fact, consists of a collection of judicial decisions; Babylonian law resting as much on precedent as the law of our own country.

The code of Moses, the several enactments of which have the same verbal form as the enactments of the Babylonian code, must therefore have been based on similar decisions. A

more remarkable confirmation of the Biblical narrative could not have been afforded. We read in the Book of Exodus how, before the codification of the law at Sinai, judges were appointed who 'judged the people at all seasons'; only the more important cases being reserved for Moses himself. Moses thus occupied the same position as a court of final appeal as that which was occupied by the king in the Babylonia of Amraphel or by the high-priest in the Babylonia of an earlier age, and it is noteworthy that the arrangement was suggested to him by the high-priest of Midian—a country that had once been within the Babylonian sphere of influence.

The origin of the several laws of which the Babylonian and Mosaic codes are composed explains their heterogeneous and unsystematic character. The different groups into which they fall are not connected with one another by any general principle running through them, and enactments which belong to different stages of social development and organization stand in them side by side. It is not that the codes themselves consist of compilations made at various dates, but that the

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individual laws which constitute them are decisions of the courts, and consequently were not pronounced at one and the same time.

In the body of the code Khammu-rabi assumes the credit of the legislation; it was he alone who had collected and published the laws of which it was composed. But the code is preceded and followed by an address to the gods of the Babylonian cities, at the head of whom stands 'the supreme god,' the special deity, it may be, of the monarch himself. And at the top of the monument on which the code is engraved is a bas-relief representing the king receiving the laws from the Sun-god, 'the divine judge of heaven and earth.' The ultimate source consequently to which the laws are referred is the inspiration of the god. This is in accordance with the older Babylonian belief, which assigned the first law-book to the creator-god Ea, and made him the instructor of man in all the arts of life.

The parallelism between the Babylonian belief and the history of the Mosaic legislation is too obvious to need emphasizing. Moses was the legislator of Israel, and his civil code consisted in large measure of the legal 'judge-

ments' of himself and his fellow judges. With all this, however, it was nevertheless derived from God; the inspiration of Yahveh was the true source from which it had come. It was the same spirit of inspiration as that which fell on the seventy 'elders' and judges of the Israelitish tribes, and in regard to which Moses declared that he would 'that the Lord would put His Spirit upon' the whole people (Numb. xi. 24-29).

We may now sum up the results of the latest discovery in Assyriology. It has for ever shattered the 'critical' theory which would put the Prophets before the Law, it has thrown light on the form and character of the Mosaic code, and it has indirectly vindicated the historical character of the narratives of Genesis. If such are the results of a single discovery, what may we not expect when the buried libraries of Babylonia have been more fully excavated, and their contents copied and read?