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## BABYLONIAN LAW: HOW AN EARLY STATE REGULATED ITS SUBJECTS

Once he successfully reunited Mesopotamia by victories over Assyria and the neighboring Sumerian city-states, the Babylonian king Hammurabi (ca. 1850–1750 B.C.E.) played a dominant role in the Near East. In his 43-year reign, he earned a reputation for just and efficient administration, secured prosperity within his domain by strict control of western trade routes and judicious regulation of trade, and encouraged the production of extensive literature. Although his ephemeral empire gave way to Kassite tribes after his death, Hammurabi left for posterity the famous Code of Hammurabi, the earliest major collection of laws in history currently extant. Consisting of 282 case laws inscribed in the Akkadian (Semitic) language and presented in a series of horizontal bands on a massive diorite slab (discovered in 1901 at Susa, Iran, and now in the Louvre), the code represented no attempt by Hammurabi to produce a codification of existing statutes and/or common laws into a formal legal system. Rather, it was a formal collection of select decisions rendered by Hammurabi, the “just” judge, on a variety of isolated cases intended for public dissemination that represented recommended rules of justice. As amendments to the Babylonian common law, the code omitted many important areas in the law and virtually ignored procedural law and the judiciary. Extant legal documents and reports indicate that neither judges nor litigants viewed laws in the code as binding or enforceable in Babylonian courts.

Despite the fact that Hammurabi’s compilation represents only a minor contribution to the advancement of law and jurisprudence, his laws offer historians important insights into Babylonian social structure, real and personal property, land tenure, trade and commerce, marriage and family, agriculture, wages and prices, slaves, and professions.

Writing down and maintaining formal law are among the chief functions of any organized government, but although certain acts are almost always defined as crimes, other definitions—and related punishments—have varied greatly from one culture to the next. Judging by the following passages, what kind of social and family relations was the Babylonian state trying to uphold? How did it define crime and punishment?

## THE CODE

When the lofty Anu, king of the Anunnaki, and Enlil, lord of heaven and earth, who determines the destinies of the land, committed the rule of all mankind to Marduk . . . when they pronounced the lofty name of Babylon, made it great among the quarters of the world and in its midst established for him an everlasting kingdom whose foundations were firm as heaven and earth—at that time Anu and Enlil named me, Hammurabi, the exalted prince, the worshiper of the gods, to cause righteousness to prevail in the land, to destroy the wicked and the evil, to prevent the strong from plundering the weak.

. . .

1

If a man accuse a man, and charge him with murder, but cannot convict him, the accuser shall be put to death. *"Loser pays!" Why so harsh?*

2

If a man charge a man with sorcery, but cannot convict him, he who is charged with sorcery shall go to the sacred river, and he shall throw himself into the river; if the river overcome him, his prosecutor shall take to himself his house. If the river show that man to be innocent and he come forth unharmed, he that charged him with sorcery shall be put to death. He who threw himself into the river shall take to himself the house of his ancestor.

3

If a man, in a case (before the court), offer testimony concerning deeds of violence, and do not establish the testimony that he has given—if that case be a case involving life, that man shall be put to death.

4

If he offer testimony concerning grain or money, he shall himself bear the penalty imposed in that case.

5

If a judge pronounce a judgment, render a decision, deliver a sealed verdict, and afterward reverse his judgment, they shall convict that judge of varying his judgment and he shall pay twelve-fold the claim in that suit; then they shall remove him from his place on the bench of judges in the assembly, and he shall not (again) sit in judgment with the judges.

22

If a man practice robbery and be captured, that man shall be put to death.

If the brigand be not captured, the man who has been robbed shall establish the amount of his loss before the god, and the city and the governor, in whose land or border the robbery was committed, shall compensate him for whatsoever was lost.

If there were loss of life, the city and governor shall pay one mana of silver to his heirs.

If a man owe a debt and Adad [a god] inundate the field or the flood carry the produce away, or, through lack of water, grain have not grown in the field, in that year he shall not make any return of grain to the creditor, he shall alter his contract-tablet and he need not pay the interest for that year.

If a man obtain money from a merchant and give (as security) to the merchant a field prepared for grain or sesame, and say to him, "Cultivate the field, and harvest and take to thyself the grain and sesame which is produced"; and the cultivator raise grain or sesame in the field, at the time of harvest the owner of the field shall receive the grain or sesame which is in the field and he shall give to the merchant grain for the loan which he had obtained from him and for the interest and for the expenses of the cultivation.

If a man open his canal for irrigation and neglect it and he let the water carry away an adjacent field, he shall measure out grain on the basis of the adjacent fields.

If a man borrow money from a merchant, and his merchant foreclose(?) on him, if he have no money for repayment, but give his orchard, after (it has been) pollinated, to the merchant, and say to him, "The dates, as many as there (are produced) in the orchard, take for your money," that merchant shall not agree. The dates, as many as there are in the orchard, the owner shall take (gather) and shall pay the merchant the money and its interest according to the wording of his tablet; and the remaining dates which are in the orchard the owner shall take (for himself).

If he put out money at interest, for one shekel of silver he shall receive one-fifth of a shekel (*lit.*, one-sixth of a shekel plus six SHE) as interest.

If the agent be careless and do not take a receipt for the money which he has given to the merchant, the money not receipted for shall not be placed to his account.

127

If a man point the finger at a nun or the wife of a man and cannot justify it, they shall drag that man before the judges and they shall cut the hair of his forehead.

128

If a man take a wife and do not draw up a contract with her, that woman is not a wife.

129

If the wife of a man be taken in lying with another man, they shall bind them and throw them into the water. If the husband of the woman spare the life of his wife, the king shall spare the life of his servant (i.e., subject).

130

If a man force the (betrothed) wife of a man, who has not known a male and is living in her father's house, and lie in her bosom, and they take him, that man shall be put to death and that woman shall go free.

131

If a man accuse his wife and she have not been taken in lying with another man, she shall take an oath in the name of God and she shall return to her house.

132

If the finger have been pointed at the wife of a man because of another man, and she have not been taken in lying with another man, for her husband('s sake) she shall throw herself into the sacred river (i.e., she shall submit to the ordeal).

133 (Partly Restored)

If a man be taken captive and there be something to eat in his house and his wife go out of her house and she do not protect her body and she enter into another house, because that woman did not protect her body and entered into another house they shall convict that woman and they shall throw her into the water.

134

*Wt For the?*  
If a man be taken captive and there be nothing to eat in his house and his wife enter into another house, that woman has no blame.

135

If a man be taken captive and there be nothing to eat in his house, and his wife enter into another house and bear children; if later her husband return and reach his city, that woman shall return to her husband; the children shall go to their father.

194

If a man give his son to a nurse and that son die in the hands of the nurse, and without (the knowledge of) his father and mother the nurse come to an agreement (with some other family to substitute) another son, they shall convict her, and

because she has made an agreement (to substitute) another son without the consent of the father and mother, they shall cut off her breast.

195

If a man strike his father, they shall cut off his hand.

196

If a man destroy the eye of another man, they shall destroy his eye.

197

If he break a man's bone, they shall break his bone.

198

If he destroy the eye of a common man or break a bone of a common man, he shall pay one mana of silver.

199

If he destroy the eye of a man's slave or break a bone of a man's slave, he shall pay one-half his price.

200

If a man knock out a tooth of a man of his own rank, they shall knock out his tooth.

201

If he knock out a tooth of a common man, he shall pay one-third mana of silver.

202

If a man smite on the cheek a man who is his superior, he shall receive sixty strokes with an oxtail whip in public.

203

If the son of a gentleman smite the son of a gentleman of his own rank on the cheek, he shall pay one mana of silver.

204

If a common man smite a common man on the cheek, he shall pay ten shekels of silver.

205

If a man's slave smite the son of a gentleman on the cheek, they shall cut off his ear.

206

If a man strike (another) man in a quarrel and wound him, that man shall swear, "I did not strike him intentionally," and he shall be responsible for the physician.

207

If he die as the result of the blow, he shall swear (as above), and if it were the son of a gentleman, he shall pay one-half mana of silver.

208

If it were a common man, he shall pay one-third mana of silver.

209

If a man strike the daughter of a man and bring about a miscarriage, he shall pay ten shekels of silver for her miscarriage.

210

If that woman die, they shall put his daughter to death.

211

If through a blow he bring about a miscarriage to the daughter of a common man, he shall pay five shekels of silver.

212

If that woman die, he shall pay one-half mana of silver.

213

If he strike the maidservant of a man and bring about a miscarriage, he shall pay two shekels of silver.

214

If that maidservant die, he shall pay one-third mana of silver.

215

If a physician make a deep incision upon a man (i.e., perform a major operation) with his bronze lancet and save the man's life; or if he operate on the eye socket of a man with his bronze lancet and save that man's eye, he shall receive ten shekels of silver.

216

If it were a common man, he shall receive five shekels.

217

If it were a man's slave, the owner of the slave shall give two shekels of silver to the physician.

218

If a physician make a deep incision upon a man with his bronze lancet and cause the man's death, or operate on the eye socket of a man with his bronze lancet and destroy the man's eye, they shall cut off his hand.

If a physician make a deep incision upon a slave of a common man with his bronze lancet and cause his death, he shall substitute a slave of equal value.

If a barber without (the consent of) the owner of the slave cut the hair of the forehead of a slave (making him) unrecognizable, they shall cut off the hand of that barber.

If a shipbuilder construct a boat for a man and he do not make its construction trustworthy, and that boat develop structural weakness the same year (and) have an accident, the shipbuilder shall dismantle that boat and he shall strengthen it at his own expense and he shall give the strengthened boat to the owner of the boat.

### STUDY QUESTIONS

1. Is it apparent that the Hammurabic Code is clearly the product of a civilization, rather than some other kind of early society? Does the code illustrate key elements of what a civilization is?
2. How many social classes did Babylonia have? Does the code suggest wide gaps among them?
3. What protections did women have in Babylonian law? Why is it clear that this was a patriarchal society?
4. Did Babylonia have a powerful state with a large bureaucracy? What state services, now taken for granted in dealing with crimes, were absent in this society? Why was so much attention given to issues of false accusation?
5. What religious beliefs did the code reflect? Are these the same beliefs as those suggested in *The Gilgamesh Epic*?
6. What kind of economy did Babylonia have? What were some common problems relating to economic activity that the code addressed? What principles were used to deal with such problems? How do they compare with principles used in more modern societies?