

THE CODE OF HAMMURABI AND THE LAWS OF
MOSES. II.¹

BY JOHN R. SAMPEY, D.D., LL.D.

IV. COMPARISON OF HAMMURABI'S CODE WITH THE PEN-
TATEUCH.

In instituting a comparison of the Code of Hammurabi with the Laws of Moses, we are embarrassed by the wealth of material in the two codes that might properly be brought under review. It will be necessary, in this brief article, to omit much that one would like to include. We shall consider

1. PRINCIPLES AND PRECEPTS IN WHICH HAMMURABI AND
MOSES AGREE.

(a) Here we put at the front that which probably first attracts the attention of the general reader as he takes a rapid survey of Hammurabi's Code, viz., the *lex talionis*: "If a man destroy the eye of another man, they shall destroy his eye. If one break a man's bone, they shall break his bone. If a man knock out a tooth of a man of his own rank, they shall knock out his tooth" (CH,² 196, 197 and 200). In the Pentateuch the law of retaliation is fully stated in Ex. 21:23-25; Lev. 24:19f; Deut. 19:21. That law required the sacrifice of "life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe."

(b) Intended harm must be punished as well as the overt act. Compare CH, 1-4 with Deut. 19:16-21. Hammurabi's Code opens with a recognition of this principle:

¹Completed from the Baptist Review and Expositor, April, 1904.

²CH stands for Code of Hammurabi.

“If a man bring an accusation against a man, and charge him with a (capital) crime, but cannot prove it, he, the accuser, shall be put to death.” Moses lays down as the punishment for the man who testifies falsely against his brother: “Then shall ye do unto him as he had thought to do unto his brother.”

(c) The principle of full restitution for damage has the approval of both lawgivers. Moses deals with this subject at length in Ex. 21:33—22:15. The principle receives frequent recognition in the Code of Hammurabi, and he does not hesitate to use the multiplication table in assessing damages. While Moses requires fivefold restitution for stealing an ox, Hammurabi demands sixfold from the merchant who tries to cheat his agent, twelvefold from the judge who alters his verdict and thirtyfold for stealing an animal from temple or palace (CH, 107, 5 and 8). Where the blame is not great, the general principle obtains in both codes that justice is satisfied if a man restores to the owner “ox for ox, sheep for sheep” (Ex. 22:12, 14 and CH, 245, 53, 59, and often).

(d) Both Hammurabi and Moses admit the use of an oath of innocence to avoid making restitution. Hammurabi writes: “If a man hire an ox and a god strike it and it die, the man who hired the ox shall take an oath before god and go free” (CH, 249. Compare Ex. 22:10 f).

(e) Neither lawgiver would allow a creditor to hold in pledge what was necessary to health and life. For the Hebrew the outer garment served as a covering from the night chill (Ex. 22:26f), and the handmill was indispensable in preparing food (Deut. 24:6). For the agriculturist of the Babylonian plain the ox was his means of earning a living, and so Hammurabi writes: “If a man seize an ox for debt, he shall pay one-third mana of silver” (C H, 241).

(f) Both codes make large use of the death penalty.

(1) For kidnaping (Ex. 21:16; Deut. 24:7 and C H, 14).

The Mosaic law applies to man-stealing in every form, while Hammurabi limits the penalty to stealing a minor son.

(2) For burglary when caught in the act (C H, 21 and Ex. 22:2-4). Moses simply *permits* the destruction of the burglar in the act of breaking in by night; Hammurabi *requires* the destruction of every burglar and brigand when captured.

(3) For adultery, rape and the more flagrant forms of incest. Compare C H, 129 with Deut. 22:22; C H, 130 with Deut. 22:25; and C H, 155, 157 with Lev. 20:11-21. While Moses commands the death of both adulterer and adulteress, Hammurabi says, "if the husband of the woman would save his wife, or if the king would save his male servant (he may)."

2. LAWS WITH PENALTIES MORE SEVERE IN HAMMURABI'S CODE THAN IN THE PENTATEUCH.

(a) The death penalty is affixed by Hammurabi to theft and related crimes (C H, 6-11, 21 f, 25). Hammurabi reverses the Biblical order by visiting sins against property with heavier penalties than sin against the person. To the ancient Babylonian the thief was worse than the murderer. "If a man steal the property of a god or palace, that man shall be put to death; and he who receives from his hand the stolen property shall also be put to death" (C H, 6). While death was the usual penalty for theft, in some cases restitution was accepted. "If a man steal ox or sheep, ass or pig, or boat—if it be from a god or a palace, he shall restore thirtyfold; if it be from a freeman, he shall render tenfold. If the thief have nothing wherewith to pay he shall be put to death" (C H, 8). Even careless buying from minors or slaves, without witnesses or contracts, made one liable to death as a thief (C H, 7). Failure to establish an asserted claim of own-

ership might lead to death on account of attempted fraud (C H, 11).

Moses permits a man to kill a burglar caught in the act of breaking in at night. For stealing, the heaviest penalty is to be sold into slavery, if restitution cannot otherwise be made (Ex. 22:1-4).

(b) Hammurabi also exacts heavier financial compensation. The heaviest fine affixed in the Pentateuch is to pay fivefold for the theft of an ox. The Code of Hammurabi requires from tenfold to thirtyfold compensation, with death as the penalty for failure to pay. In case of dishonesty in a matter of deposit Moses required restitution of the principal plus one-fifth (Lev. 6:2-5), while Hammurabi exacted fivefold restitution for dishonesty in appropriating goods committed to one for transportation (C H, 112).

(c) The ordeal through which Hammurabi forced a wife suspected of unfaithfulness to pass, was much more severe than the trial by water as laid down in Numbers 5:12-28. The Babylonian law is as follows: "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 river" (C H, 132).

(d) Mutilation, which was almost unknown in Israel (Deut. 25:11f), was quite common among the Babylonians. Both Moses and Hammurabi, as we have seen, enjoin it as the penalty for mutilating another, "an eye for an eye and a tooth for a tooth." Hammurabi specifies the following forms of punitive mutilation: (1) Branding of the forehead for slandering a woman (C H, 127). (2) Cutting off the ear of a slave for striking the son of a gentleman (205), or for denying his master (282). (3) Cutting off the fingers of a son for striking his father (195), of a bungling surgeon for causing the death of his patient (218), of a brander who brands a slave without the

owner's consent (226) and of a tenant who steals the seed or crop (253). (4) Cutting off the breast of a wet nurse for substituting, without permission, a second child (194). (5) Tearing out the eye of a scornful adopted son (193). (6) Cutting out the tongue of an adopted son who denies his foster parents (192).

(e) Moses names forty stripes as the maximum penalty for any offense punishable with the rod (Deut. 25: 1-3), but Hammurabi says: "If a man strike the person of a man who is his superior, he shall receive sixty strokes with an ox-tail whip in public" (202).

3. LAWS WITH PENALTIES MORE SEVERE IN THE PENTATEUCH THAN IN THE CODE OF HAMMURABI.

(a) Moses assigns the death penalty to some offenses visited with lighter punishment by the Babylonians. (1) For smiting parents (Ex. 21:15) Hammurabi prescribes mutilation (195). Reverence for parents is a cardinal feature in Hebrew ethics. A drunken, disobedient, worthless son might be brought to trial by his parents and suffer death for his crimes (Deut. 21:18-21). The law is an evidence of rigorous parental authority among the Hebrews. We may well doubt the occurrence of one death to the century under this law. Hammurabi safeguarded the son against the caprice of the father, in two statutes which give evidence of a high civilization: "If a man set his face to disinherit his son and say to the judges: 'I will disinherit my son,' the judges shall inquire into his antecedents, and if the son have not committed a crime sufficiently grave to cut him off from sonship, the father may not cut off his son from sonship. If he have committed a crime against his father sufficiently grave to cut him off from sonship, they shall condone his first (offense). If he commit a grave crime a second time, the father may cut off his son from sonship" (C H, 168, 169).

(2) Moses affixes death as the punishment for the care-

less owner of a goring ox, who refuses to protect the public against his murderous assaults (Ex. 21:28-30). Hammurabi exacts a fine of one-half mana of silver, if the bull destroys the son of a gentleman (C H, 250-252).

The heavy penalties on careless physicians and house builders ought to be read in this connection (C H, 218, 229-233).

(3) Moses named death as the penalty for witchcraft, sorcery and kindred arts (Ex. 22:18; Lev. 19:26, 31; 20:6, 27; Deut. 18: 10-14). Soothsayers had recognized standing in the religious life of Hammurabi's time, as we learn from one of his letters to Siniddinam. Sorcery to the injury of another man was accounted a crime, as we learn from C H, 2.

(4) Moses carries the death penalty for incest even further than Hammurabi (Compare Lev. 20:11 with C H, 158).

(b) The term of service of a bondservant is twice as long in the Pentateuch as in the Code of Hammurabi (C H, 117 and Ex. 21:2-6; Lev. 25:39-43; Deut. 15:12-14). But observe the superior philanthropy of the Hebrew lawgiver in Deut. 15:13f. The servant is to receive liberal gifts out of the flock and the granary and the wine-press.

(c) According to the Pentateuch divorce is more completely in the husband's hands (Compare Deut. 24:1f with the elaborate provisions and safeguards of C H, 137-142). But while a good wife might prefer to live under the Code of Mammurabi, a wicked woman might well dread the application of its statutes. When such a woman applies for divorce, "if she have not been a careful mistress, have gadded about, have neglected her house and have belittled her husband, they shall throw that woman into the water" (143).

4. OFFENSES CONDEMNED BY HAMMURABI, BUT NOT NAMED BY MOSES.

(a) Hiding a fugitive slave, or aiding a slave to escape, was punishable by death (C H, 15, 16). Moses, on the other hand, forbids the Hebrews to deliver up a fugitive slave to his master (Deut. 23:15f).

(b) Buying from minors or slaves without witnesses and contracts is expressly forbidden in the Code of Hammurabi (7).

(c) The ingratitude of an adopted son is punished with the loss of an eye or of the tongue (C H, 192, 193).

(d) A wet nurse who after the death of the child committed to her care takes another without the consent of the parents of the dead child, is punished by mutilation (C H, 194).

5. OFFENSES CONDEMNED BY MOSES, BUT NOT BY HAMMURABI.

a. Moses forbids all unnatural crimes and abuses, with severe penalties, and absolutely forbids lust under the forms of religion (Ex. 22:19; Lev. 18:21-23; 20:10-21; Deut. 23:17f). Hammurabi recognizes religious prostitution (C H, 110, 178-182, 193). Moses warns the Hebrews against the surrender of their daughters to a life of shame (Lev. 19:29). Incest in the Law of Moses is made more inclusive than in the Code of Hammurabi (Lev. 18:6-18, C H, 154-158).

b. Moses expressly forbids false weights and false measures (Lev. 19:35f; Deut. 25:13-16). No doubt Hammurabi punished men for the use of dishonest weights and measures. The silence of his code does not argue indifference on a subject so vital to the commercial development of his realm.

c. Moses does not allow a Hebrew to lend to a brother Hebrew on interest. Foreigners were required to pay

interest just as among other nations (Deut. 15:7-11; 23:19f). The Babylonians lent on interest in the same fashion as modern bankers, taking mortgages on real estate and personal property as security.

d. Unkindness to strangers, orphans, the blind, hired servants and slaves is repeatedly forbidden in the Pentateuch (Ex. 22:21-24; Lev. 19:33f; Deut. 24:14f, 17f). By Moses, slaves are regarded as human beings and also as property; by Hammurabi they are treated as merely the property of their owner (Compare Ex. 21:20f, 26f with C H, 199, 231, 219). Moses founded his ethical code on love towards one's neighbor, and it is worthy of note that the Hebrew was commanded to love the stranger as himself (Lev. 19:9-34). Many persons fail to link Lev. 19:34 with Lev. 19:18.

e. Moses forbids cruelty to animals (Ex. 23:19; Deut. 25:4). Hammurabi protects them merely as property having a money value (C H, 245-248).

f. Moses punished severely a son for cursing father or mother (Ex. 21:17; Lev. 20:9).

g. Moses and Hammurabi are in sharp contrast on the subject of punishing children for the sins of their parents. In naming the penalties for neglect in constructing a house, Hammurabi states that the builder shall be put to death if the house collapse and kill the owner of the house. Yet further he decrees: "If it cause the death of a son of the owner of the house, they shall put to death a son of that builder" (230). This law of retaliation applies also to daughters, so that a man who had killed the daughter of another man would suffer punishment not in his own person but in that of his daughter. "If that woman die, they shall put his daughter to death" (210).

The Law of Moses sounds a bugle blast against any such procedure. "The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers: every man shall be put to death for

his own sin" (Deut. 24:16). This ringing prohibition in the Law of Moses may have been aimed at such laws and usages as are recounted in C H, 210 and 230.

Many merciful provisions of the Mosaic system are not found in Hammurabi's Code. The weekly Sabbath, the Sabbatic year and the year of jubilee brought rest and joy to the poor in Israel (Ex. 23:10-12; Lev. 25:1-55). The gleanings of harvest and vintage and the corners of the field belonged to the poor and needy (Deut. 24:19-22; Lev. 19:9f). Every third year the people were to lay up a tithe of their increase for joyous feasts to which the Levite, the stranger and the orphan were to be invited (Deut. 14:28f). Kindness to the unfortunate and helpless was to be the rule of Israel's life (Lev. 19:14; Deut. 27:18).

Any general estimate of the two systems of law which we have been comparing the one with the other will almost certainly be colored by our own attitude toward the Bible. If we try to make an impartial comparison, we may frankly admit the superiority of Hammurabi's Code in certain particulars. The civilization of Babylon 2250 B.C. was higher than that of the Hebrews during the Egyptian bondage and the wilderness wandering. Back of Hammurabi lay centuries and milleniums of human progress in the plains of Babylonia. The organization of law courts and the development of the processes of legal procedure were in advance of the forms common among the Hebrew tribes. Advanced critics have sometimes overlooked the evidence that Israel too had courts for the trial of civil suits from the very earliest period of the national life (Ex. 18; Deut. 1:9-18; 16:18-20; 17:8-13). But the Babylonians of Hammurabi's day had the modern conception of the state, while the Hebrew put a large emphasis on the tribe. Hence among the Babylonians the distinctions between foreigners and natives were almost ignored, while the Hebrews remained on the Bed-

ouin plane of blood revenge. The next of kin was the executioner among the Hebrews, but the Babylonians had courts with regular judges, constables, and other officers. This official class administered justice in the name of the state and in the interest of the realm.

In many details the rights of women and minors were better safeguarded by Hammurabi than by Moses. The rights of inheritance were better defined by Hammurabi.

And yet when the most generous recognition of the best features of Hammurabi's Code has been made, the candid scholar must accord to the law of Moses a position far above the ancient Babylonian system.

In the Mosaic scheme the first and greatest commandment is, "Thou shalt love Jehovah thy God with all thy heart, and with all thy soul, and with all thy might" (Deut. 6:5), and the second is like it in both form and spirit, "Thou shalt love thy neighbor as thyself" (Lev. 19:18). All the ethical precepts and legal enactments of the Pentateuch strike their roots down into the fertile soil of these two commandments. Religion and conduct are vitally related in the Bible. A man must do what is just and right because he worships a just and holy God. As his knowledge of God increases, his ethical standards are raised, and the Bible contains a progressive revelation attaining finality in Jesus Christ.

V. THE CODE OF HAMMURABI AND THE HIGHER CRITICISM.

As it is the purpose of the author of this article to discuss this subject at greater length at a later time, only a few conclusions are here briefly stated.

1. The historicity of the patriarchal stories receives the support that comes from agreement with a contemporary witness. The story of Abraham and Hagar, of the purchase of the cave of Machpelah, of the wooing of Rebekah, of the threatened burning of Tamar, and other

incidents in Genesis agree with the customs of the Babylonian world. Babylonian influence was supreme in Canaan in the days of Abraham and for centuries afterward.

2. The influence of Hammurabi's Code was as powerful on the earlier laws in the Pentateuch as upon the later. The attempt to prove that the priestly legislation shows greater indebtedness to Hammurabi than Deuteronomy or the Book of the Covenant has signally failed. It is not at all certain that Moses borrowed anything directly from Hammurabi's Code. The most conservative scholar ought to have no objection to borrowing from such a venerable monument, if the evidence should point in that direction.

3. The discovery of the existence of an extensive written code of laws in the Semitic world almost a thousand years before Moses, has put a severe strain upon the theory of the late origin of the Pentateuchal codes.