

Comparing Laws: *The Importance of the State*

Codes of law were a common product of relatively early civilizations. The following two selections reflect the development of written laws, associated with the operations of organized government. The first selection, the earliest law code on record, comes from the early civilization period in Mesopotamia. The second, the Jewish Code, originated a bit later from a society in the same region. Jewish law was undoubtedly influenced by Mesopotamian precedent- an early case of formal cultural contact. But it also reflected some different ideas, some developed before Hebrew writing itself emerged and others originating at a later stage of social organization. Society without formal states had all sorts of regulations, but they were not written down, and sometimes they had very personal aspects relating to birth relationships and kinship groups. Civilizations generated somewhat systematic statements, though they reflected deep divisions in legal status between different social groups and between the genders. The first known code is that of the Babylonian emperor Hammurabi, issued at around 1700 B.C.E. Jewish law, ultimately written as part of the Bible, particularly in the book of Deuteronomy, developed later, beginning about 950 B.C.E.

Law codes provide evidence well beyond simply defining crimes and punishments. They reveal beliefs about religion and the nature of the state, and they provide definitions of the family and society. Comparing codes can indicate deep seated contrasts and commonalities between societies, though they must be interpreted beyond literal meanings.

Law codes in early civilizations shared many features- indeed, in defining crimes such as murder, they share features with modern codes as well. Codes worked toward replacing private feuds and violence with government-sponsored justice, for example- though early states often failed to enforce such edicts. Mesopotamian law surely influenced Jewish codes, for the Jewish state was often under Mesopotamian control. A surprising array of laws dealing with gender and regulation sexual behavior, particularly for women, characterized both systems, though in Judaism the rules were slightly harsher and the concern for limited protective rights slightly less well developed. Law in both societies reflected bureaucracies in early states- hence a concern for punishing false testimony, in the absence of extensive investigatory police forces, and an emphasis on harsh punishments designed to deter crime. Provisions in both societies also expressed some interest in protecting general social welfare, for example in trying to assure wages for work or (in the Mesopotamian case) reimbursing for loss in crime- a notion still being debated in the United States.

The two codes displayed crucial differences as well, reflecting different religion cultures and political institutions. Mesopotamian law was more bent on defining social hierarchy and assuring the property rights of slave owners; Jewish law emphasized charity more heavily. What wider differences between the two societies might account for these distinctions? What caused the differences that also existed concerning the treatment of women? On a possibly related point: Mesopotamian law stressed the power of the state, though sanctioned by gods such the creator Marduk and a polytheistic religion. In contrast, Jewish law was seen as emanating from Jehovah, in the world's first real monotheistic religion. Did this difference in framework show up in the laws themselves and in efforts to assure obedience? How much change was involved?

Mesopotamia: Hammurabi's Code

The Babylonians were invading people who reunited the city states of Mesopotamia by conquest. The victorious king, Hammurabi, reigned for forty-three years, earning a reputation for justice and efficiency. His law code, from around 1700 B.C.E., consisted of 282 case laws written in stone slab; it was discovered in 1901 in Iran. The code does not represent a carefully articulated philosophy of law or state, but rather highlights selected decisions the king and his officials rendered for the purpose of providing precedents for just rulings. It is not clear that the code had great influence on the law itself, but it does provide a window into various aspects of Babylonian society.

Source: From *The Code of Hammurabi, King Of Babylon*, trans. Robert Francis Harper (Chicago: University of Chicago Press, 1904), 3, 9, 11, 17, 19, 29, 45, 51, 73, 75, 89, 99, 101, 103, 105

When the lofty Anu, king of Anunnaki, and Bel, lord of heaven and earth, he who determines the destiny of the land, committed the rule of all mankind to Marduk, the chief son of Ea; when they pronounced the lofty name of Babylon: when they made it famous among the quarters of the world and in its midst established and everlasting kingdom whose foundations were firm as heaven and earth—at that time, Ann and Bel called me, Hammurabi, the exalted prince, the worshiper of the gods, to cause justice to prevail in the land, to destroy the wicked and the evil, to prevent the strong from oppressing the weak... to enlighten the land and to further the welfare of the people. Hammurabi, the governor named by Bel, am I, who bought about plenty and abundance;

...the ancient seed of royalty, the powerful king, the Sun of Babylon, who caused light to go forth over the lands of summer and Akkad; the king, who caused the four quarters of the world to render obedience; the favorite of Nana, am I. when Marduk sent me to the people and to bring help to the country, I established law and justice in the land and promoted the welfare of the people.

1. 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.

2. If a man charge a man with sorcery, and cannot prove it, he who is charged with sorcery shall go to the river, into the river he shall throw himself and if the river overcome him, his accuser shall take to himself to his house (estate). If the river show that man to be innocent and he come forth unharmed, he who charged him with

sorcery shall be put to death. He who threw himself into river shall take to himself the house of his accuser.

If a man has come forward to bear witness is to a felony and then has not proved the statement he has made, if that case (is) a capital one, that man shall be put to death.

If a man aid a male or female slave of the palace, or a male or female slave of a freeman to escape from the city gate, he shall be put to death.

If a man seize a male or female slave, a fugitive, in the field and bring that (slave) back to his owner, the owner of the slave shall pay him two shekels of silver.

23. If the brigand be not captured, the man who has been robbed, shall, in the presence of god, make an itemized statement of his loss, and the city and the governor, in whose province and jurisdiction the robbery was committed, shall compensate him for whatever was lost.

24. If it be a life (that is lost), the city and governor shall pay one mana of silver to his heirs.

26. If either an officer or a constable, who is ordered to go on an errand of the king, do not go but hire a substitute and dispatch him in his stead, that officer or constable shall be put to death; his hired substitute shall take to himself his (the officer's) house.

53. If a man neglect to strengthen his dyke and do not strengthen it, and a break be made in his dyke and the water carry away the farm-land, the man in whose dyke the break has been made shall restore the grain which he has damaged.

127. If a man point the finger at a priestess or the wife of another and cannot justify it, they shall drag that man before the judges and they shall brand his forehead.

128. If a man take a wife and do not arrange with her (proper) contracts, that woman is not a (legal) 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 would save his wife, or if the king would save his male servant (he may).

130. If a man force the (betrothed) wife of another who has not known a male and is living in her father's house, and he 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 has 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 river.
142. If a woman hate her husband, and say: "Thou shalt not have me," they shall inquire into her antecedents for her defects; and if she have been a careful mistress and be without reproach and her husband have been going about and greatly belittling her, that woman has no blame. She shall receive her dowry and shall go to her father's house.
143. 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.
144. If a man take a wife and that wife give a maid servant to her husband and she bear children; if that man set his face to take a concubine, they shall not countenance him. He may not take a concubine.
145. If a man take a wife and she do not present him with children and he set his face take a concubine, that man may take a concubine and bring her into his house. That concubine shall not rank with his wife.
146. If a man take a wife and she give a maid servant to her husband, and that maid servant bear children and afterwards would take rank with her mistress; because she has borne children, her mistress may not sell her for money, but she may reduce her to bondage and count her among the maid servants.
196. If a man destroy the eye of another freeman [i.e., a man in the upper class], they shall destroy his eye.
197. If one break a man's bone, they shall break his bone.
198. If one destroy the eye of a villein [a dependent laborer] or break the bone of a freeman, he shall pay one mana of silver.
199. If one 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 our a tooth of a man of his own rank, they shall knock out his tooth.
201. If one knock out a roorh of a villein, he shall pay one-third mana of silver.
203. If a man strike another man of his own rank, he shall pay one mana of silver.
204. If a villein strike a villein, he shall pay ten shekels of silver.
205. If a man's slave strike a man's son, they shall cut off his ear.
253. If a man hire a man to oversee his farm and furnish him the seed-grain and intrust him with oxen and contract with him to cultivate the field, and that man steal either the seed or the crop and it be found in his possession, they shall cut off his fingers.
254. If he take the seed-grain and overwork the oxen, he shall restore the quantity of grain which he has hoed.
257. If a man hire a field-laborer, he shall pay him 8 GUR of grain per year.
258. If a man hire a herdsman, he shall pay him 6 GUR of grain per year.

The righteous laws, which Hunmurabi, the wise king, established and (by which) he gave the land stable support and pure government. Hammurabi, the *Perfect king*, *am I*. . . The great gods proclaimed me and I am the guardian governor, whose scepter is righteous and whose beneficent protection is spread over my city. . .

The king, who is pre-eminent among city kings, am I. My words are precious, my wisdom is unrivaled. By the command of Shamash, the great judge of heaven and earth, may I make righteousness to shine forth on the land. By the order of [the god] Marduk, my lord, may no one efface my statues...

. . . Let any oppressed man, who has a cause, come before my image as king of righteousness! . . .

. . . Let him read the code and pray with a full heart before Marduk, my lord, and Zarpanit, my lady, and may the protecting deities. . . . Look with favor on his wishes (plans) in the presence of Marduk, my lord, and Zarpanit, my lady! . . .

If that man pay attention to my words which I have written upon my monument, do not efface my judgment, do not overrule my words, and do not alter my statues, then will Shamash prolong that man's reign, as he has mine, who am king of righteous, tha he may rule his people in righteous. If that man do not pay attention to my words which I have written upon my monument: if he forgot my curse and do not fear the curse of god: if he abolish the judgments which I have formulated, overrule my words, alter my statues, efface my name written thereon and write his own name: on account of these curses, commission another to do so-as for that man, be he king or lord, or priest-king or commoner, whoever he may be, may the great god, the father of the gods, who has ordained my reign, take from him the glory of his sovereignty, may he break his scepter, and curse his fate!

May Ea, the great prince, whose decrees take precedence, the leader of the gods, who knows everything, who prolongs the days of my life, deprive him of knowledge and wisdom! May he bring him to oblivion, and dam up his rivers at their sources! May he not permit corn, which is the life of the people, to grow in his land!

Jewish Law

Jewish settlers established a small kingdom along the eastern Mediterranean between 1200 and 1100 B.C.E. The people may have developed elements of their religion and culture earlier -this is what is claimed in the initial stories of the Old Testament, particularly the book of Exodus. The definite emergence of a Jewish state occurred at a time when the greater empires of the region had weakened, at the end of the river valley civilization period. Jewish culture was marked by its elaborate, intense religion, which featured the first durable articulation of monotheistic beliefs. Laws, dealing with various social issues as well as with religious rules, were combined with the religion, and that is why they began to be written down, from the eighth century onward, in the books that were later collected into the Old Testament. Most of the book of Deuteronomy, from which the following passages come, was written in the seventh century B.C.E., though elements of the laws themselves had undoubtedly developed earlier.

Source: From *The Jerusalem Bible* (Garden City, N.Y.: Double Day, 1966) 241-48, 252-53. Copyright 1966 by Darton, Longman, & Todd, Ltd. and Doubleday, a division of Bantam Doubleday Dell Publishing Group, Inc.

You must be entirely faithful to Yahweh your God. For these nations whom you are dispossessing may listen to soothsayers and diviners, but this is not the gift that Yahweh your God gives to you: Yahweh your God will raise up for you a prophet like myself, from among yourselves, from your own brothers; to him you must listen. This is what you yourselves asked of Yahweh your God at Horeb on the day of the Assembly. "Do not let me hear again" you said "the voice of Yahweh my God, nor look any longer on this great fire, or I shall die"; and Yahweh said to me, "All they have spoken is well said. I will raise up a prophet like yourself for them from their own brothers; I will put my words into his mouth and he shall tell them all I command him. The man who does not listen to my words that he speaks in my name, shall be held answerable to me for it. But the prophet who presumes to say in my name a thing I have not commanded him to say, or who speaks in the name of other gods, that prophet shall die."

You may say in your heart, "How are we to know what word was not spoken by Yahweh?" When a prophet speaks in the name of Yahweh and the thing does not happen and the word is not fulfilled, then it has not been spoken by Yahweh. The prophet has spoken with presumption. You have nothing to fear from him. . . .

If anyone has struck his fellow accidentally, not having any previous feud with him (For example, he goes with his fellow into the forest to cut wood; his arm swings the axe to fell a tree; the head slips off the handle and strikes his companion dead), that man may take refuge in one of these cities and save his life. It must not be allowed that the avenger of blood, in the heat of his anger, should pursue the killer and that the length of the road should help him to overtake and fatally wound him; for the man has not deserved to die, having had no previous feud with his companion....

But if it happens that a man has a feud with his fellow and lies in wait for him and falls on him and wounds him fatally and he dies, and the man takes refuge in one of these cities, the elders of his own town shall send to have him seized and hand him over to the avenger of blood to die. You are to show him no pity. You must banish the shedding of innocent blood from Israel, and then you will prosper.

Boundaries

You must not displace your neighbour's boundary mark, set by your forbears, in the inheritance you receive in the land Yahweh is giving into your possession.

Witness

A single witness cannot suffice to convict a man of crime or offence of any kind; whatever the misdemeanor, the evidence of two witnesses or three is required to sustain the charge.

If a malicious witness appears against a man to accuse him of rebellion, both parties to this dispute before Yahweh must be brought before the priests and judges then in office. The judges must make a careful inquiry, and if it turns out that the witness who accused his brother is a lying witness, you must deal with him as he would have dealt with his brother. You must banish this evil from your midst. Others will hear of it and be afraid and never again do such an evil thing among you. You are to show no pity.

The 'Lex Talionis'

Life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.

War and Combatants

When you go to war against your enemies and see horses and chariots and an army greater than your own, you must not be afraid of them; Yahweh your God is with you, who brought you out of the land of Egypt. When you are about to join battle the priest is to come forward and address the people. He is to say to them, "Listen, Israel; now that you are about to join battle against your enemies, do not be faint-hearted. Let there be no fear or trembling or alarm as you face them. Yahweh your God goes with you to fight for you against your enemies and to save you."

Then the scribes are to address the people in words like these:

"Is there any man here who has built a new house and not yet dedicated it? Let him go home lest he die in battle and another perform the dedication.

"Is there any man here who has planted a vineyard and not yet enjoyed its fruit?

Let him go home lest he die in battle and another enjoy its fruit.

Is there any man here who has betrothed a wife and not yet taken her, let him go home lest he die in battle and another take her."

The scribes shall also address the people like this:

"Is there any man here who is fearful and faint of heart? Let him go home lest he make his fellows lose heart too. "

And when the scribes have finished speaking to the people, commanders will be appointed to lead them.

Captured Towns

When you advance to the arrack on any town, first offer it terms of peace. If it accepts these and opens its gates to you, all the people to be found in it shall do forced labour for you and be subject to you. . .

When you go to war against your enemies and Yahweh your God delivers them into your power and you take prisoners, if you see a beautiful woman among the prisoners and find her desirable, you may make her your wife and bring her to your home. She is to shave her head and cut her nails and take off her prisoner's garb; she is to stay inside your house and must mourn her father and mother for a full month. Then you may go to her and be a husband to her, and she shall be your wife. Should she cease to please you, you will let her go where she wishes, not selling her for money: you are not to make any profit out of her, since you have had the use of her.

If a man has two wives, one loved and the other unloved, and the loved one and the unloved both bear him children, and if the first-born son is of the unloved wife, then when the man comes to bequeath his goods to his sons, he may not treat the son of the wife whom he loves as the first-born at the expense of the son of the wife he does not love, the true first-born. He must acknowledge as first-born the son of the wife he does not love and give to him a double share of his estate, for this son is the first-fruit of his strength, and the right of the first-born is his.

If a man has a stubborn and rebellious son who will not listen to the voice of his father or the voice of his mother, and even when they punish him still will not pay attention to them, his father and mother shall take hold of him and bring him out to the elders of the town at the gate of that place. And they shall say to the elders of his town, "This son of ours is stubborn and rebellious and will not listen to us; he is a wastrel and a drunkard." Then all his fellow citizens shall stone him to death. You must banish this evil from your midst. All Israel will hear of it and be afraid. . . .

If a man marries a wife, and sleeps with her and then turns against her, and taxes her with misconduct and publicly defames her by saying, "I married this woman and when I slept with her I did not find the evidence of her virginity," the girl's father and mother must take her and produce the evidence of her virginity before the elders of the town at the gate. The girl's father shall then declare to the elders, "I gave this man my daughter for a wife and he has turned against her, and now he taxes her with misconduct: I found no evidence of her virginity in your daughter, he says. But the evidence of my daughter's virginity is here." And they shall spread the cloth out before the elders of the town. Then the elders of the town shall take the man and flog him and fine him one hundred silver shekels for publicly defaming a virgin of Israel, and give this money to the girl's father. She shall remain his wife and as long as he lives he may not repudiate her.

But if the accusation that the girl cannot show the evidence of virginity is substantiated, they shall take her to the door of her father's house and her fellow citizens shall stone her to death for having committed an infamy in Israel by disgracing her father's House. You must banish this evil from your midst. . . .

You must not allow a master to imprison a slave who has escaped from him and come to you. He shall live with you, among you, wherever he pleases in any one of your towns he chooses; you are not to molest him. . . .

You are not to exploit the hired servant who is poor and destitute, whether he is one of your brothers or a stranger who lives in your towns. You must pay him his wage each day, not allowing the sun to set before you do, for he is poor and is anxious for it; otherwise he may appeal to Yahweh against you, and it would be a sin for you. . . .

You must not pervert justice in dealing with a stranger or an orphan, nor take a widow's garment in pledge. Remember that you were a slave in Egypt and that Yahweh your God redeemed you from there. That is why I lay this charge on you.

When reaping the harvest in your field, if you have overlooked a sheaf in that field, do not go back for it. Leave it for the stranger, the orphan and the widow, so that Yahweh your God may bless you in all your undertakings.

When you beat your olive trees you must not go over the branches twice. Let anything left be for the stranger, the orphan and the widow. . . .

When you harvest your vineyard, you must not pick it over a second time. Let anything left be for the stranger, the orphan and the widow. . . .

When two men are fighting together, if the wife of one intervenes to protect her husband from the other's blows by putting out her hand and seizing the other by the private parts, you shall cut her hand off and show no pity. . . .

If you do not keep and observe all the words of this Law that are written in this book, in the fear of this name of glory and awe: Yahweh your God, Yahweh will strike you down with monstrous plagues, you and your descendants: with plagues grievous and lasting, diseases pernicious and enduring. Once more he will bring on you the diseases of Egypt that you dreaded, and they will infect you. Further, Yahweh will bring on you every sickness, every plague, not mentioned in the Book of this Law, until you perish. There will be only a handful of you left, you who were as many as the stars of heaven.