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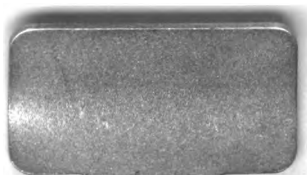
Structure of the Hammurabi code ; notes on the Hammurai ...

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Lyon



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The Structure of the Hammurabi Code.—By DAVID G. LYON,
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HAS the code of laws promulgated by Hammurabi any definite system of arrangement, logical or otherwise? This question forces itself on every student of the subject, and its solution is of no slight importance to the understanding of the code as a whole and of many of its parts.

That there is much grouping of laws is apparent at a glance (theft, 6-13; storage and deposit, 120-126; adoption, 185-193). But it also *seems* that in many cases all the laws relating to one subject are not grouped together, but are found in various parts of the code (slaves, 7, 15-20, 116, 119, 146, 147, 170, 171, 175-176A, 199, 205, 213, 214, 217, 219, 220, 223, 226, 227, 231, 252, 278-282). Is this seeming a reality?

Some students, recognizing it as such, declare that the code is without logical arrangement. Thus, Professor Oettli of Greifswald, in his discussion, *Das Gesetz Hammurabis und die Thora Israels*, Leipzig, 1903, p. 10, says: "Homogeneous materials are put together in a series of passages, but a strict arrangement according to subject is not carried out." He thinks that the code may have arisen from smaller collections which have grown together, and that this may account in part for the disorder. He therefore picks out the scattered laws and brings them together under thirteen great topics, as follows: 1. Marriage laws; 2. Parents and children; 3. Freemen and slaves; 4. Inheritance laws; 5. Injury and protection to honor and life; 6. General laws for protection of property; 7. Fief; 8. Lease, rent and hired labor; 9. Deposit; 10. Debt and security; 11. Responsibility (*Haftpflicht*); 12. Individual regulations regarding civil duties; 13. Criminal law and judicial proceeding. For his purpose, comparison with the laws of the Old Testament, this is a legitimate process, but it contributes no light on the structure of the code.

Prof. David H. Müller of Vienna (*Die Gesetze Hammurabis und ihr Verhältniss zur mosaischen Gesetzgebung sowie zu den XII Tafeln*, Vienna, 1903) makes forty-four co-ordinate divis-

Rec. Feb. 17, 1905.

ions. Müller's hypothesis of an *Ur-Gesetz*, from which the Hammurabi Code, the Mosaic Law and the XII Tables are all derived, however fascinating as a speculation, cannot be considered as a good preparation for the discovery of the grouping and arrangement of the laws in the code. That there is a well considered order he clearly perceives, and he has correctly stated (p. 190) one of the principles of arrangement, the rank of the parties concerned. His other principle, viz.: the order in the *Ur-Gesetz*, with certain modifications by Hammurabi, could be of force only to those who accept his hypothesis of an *Ur-Gesetz* and his conjecture as to the arrangement of its material. That the code as it stands, without any reference to an older form, which probably did exist, is arranged in a perfectly logical order according to the nature of the material, Müller has not seen.

It cannot be said that Kohler and Peiser (*Hammurabi's Gesetz*, Leipzig, 1904) have been more fortunate. They have indeed been most unfortunate in their attempt to lay upon the code the straight jacket of modern legal terminology. Their twelvefold division is as follows: 1. Procedure, 1-5; 2. Protection of Property, 6-25; 3. Fief and its Obligations, 26-41; 4. Agriculture and Cattle raising, 42-65; 5. Trade and Debt, 100-126; 6. Marriage, Laws relating to Woman, Laws relating to the Legitimate and to the Illegitimate Child, 127-177; 7. Temple Women and Concubines, 178-184; 8. Adoption of Children, 185-193; 9. Criminal Law, 194-233; 10. Navigation, 234-240; 11. Relations of Hire and Service, 241-277; 12. Slavery, 278-282.

This division of the code separates laws which belong together (as groups 6, 7, 8 and the first two of 9); it brings together laws which belong in different groups, not observing, for instance, the distinction in character between §§ 196-214 and §§ 215-233; and some of its descriptions are inept, as No. 9, "Criminal Law," because some of these laws have nothing to do with crime or punishment (doctors' fees, carpenters' fees), and because laws in various other parts of the code do relate to crime and its punishment.

This criticism of Kohler and Peiser, which might be greatly prolonged, is enough to show that they have not perceived the logical arrangement of the code. To recognize their designa-

tions of the successive sections as even approximately correct is to justify those who find little systematic arrangement in the laws.

Let us pass now to the question, What was the codifier's principle in the grouping and arrangement of his laws? His fundamental principle is the logical relation of the individual laws to one another. Several related laws form a group, several groups a larger group, several of these a still larger group. The process, however, was in the opposite direction, beginning with a few of the largest topics, and proceeding through groups and sub-groups down to the individual laws.

To Hammurabi there were but two of these largest topics, namely *things* and *persons* (slaves being reckoned, according to circumstances, in both categories). He conceived of things as Property, and the code gives the laws relating to Property under three groups, Personal Property, Real Estate, and Trade and Business Relations. There are likewise three groups under the second great topic, Person, namely, The Family, Injuries, and Labor (both human and animal).¹

These six groups are then divided into sub-groups. The two sub-groups under the Family, for instance, are: 1. Man and Wife; 2. The Children. The division under Children is into one's own children and adopted children. One's own children are considered under three aspects: 1. Children of a free father; 2. Children of a slave father and a free mother; 3. The free widow and minor children. The children of a free father are considered in three groups: 1. Children by a free mother; 2. Children by a slave mother; 3. The free widow and adult children. There are three divisions under the children by a free mother, and these three divisions are further subdivided into individual laws. Thus:

¹ In a sense the whole code might be said to relate to property, because this subject is involved, more or less directly, in nearly all the laws; just as it might be said to relate to persons, a person appearing or being assumed in every law. And yet the division represents a real distinction, property being the more prominent idea in the first division, and person in the second. Oxen are not persons, it is true, but they are introduced where they are (241-252) because of their connection with one of the laboring classes.

Taken as a whole, the laws might be called a penal code, because most of them prescribe penalties for offenses. The chief exceptions are in the group relating to the family.

1. Children by free mother, 165-169.
 - 1) Division of inheritance preceded by setting aside
 - (1) Father's special gift to a favored son, 165.
 - (2) Marriage settlement for unmarried son, 166.
 - 2) Children by two successive wives, 167.
 - 3) Disinheritance.
 - (1) Disallowed for slight offense, 168.
 - (2) Allowed only for repeated grave offense, 169.

Presented in tabular form this procedure is as follows:

II. Person.

- i. Family.
 2. Children.
 - 1) One's own children.
 - (1) Children of a free father.
 - a. Such children by a free mother.
 - a) Division of the inheritance.
 - (a) Special gift to favored son.

This method of division and subdivision according to logical relations prevails throughout the code, the extent to which it is carried depending entirely on the complexity of the subject.

The correct analysis of the laws explains the seeming inconsistency of the code in touching upon the same subject in different places, slaves for instance. The slave is mentioned in 7, 15-20 as a species of personal property; in 116 as a person seized for debt; in 119 as a wife sold for debt; in 146, 147 to define her relations to a votary wife; in 170, 171 to define the status of her children by a free husband; in 175-176A because certain classes of slaves might marry a free woman; in 199, 213, 214 because of damages due the owner for injuring a slave; in 205 to prescribe the penalty on a vicious slave; in 219, 220, 223 because slaves had to be treated by doctors and surgeons; in 226, 227 because they might be marked improperly; in 231 because of their possible relation to a falling house; in 252 because one might be killed by an ox; in 278-282 to define what might invalidate the sale of a slave and to give the penalty on a slave for denying his master. It thus appears that there are no laws relating to slavery as such, but that the slave is often introduced because of his relation to the many subjects into which the code is logically divided.

Nor is there legislation on the subject of temple women. Persons of this class figure at various points, but always on account of their relation to some larger subject. In 110 this larger subject is wine selling; in 127, 144-147, marriage; in 178-182, inheritance; in 192, 193, adoption of children. A comparison of these various passages shows that the temple woman or votary is not an immoral person. She dare not even enter one of the disorderly houses where wine is sold (110); she is expected to have a name above reproach (127); her station, if she be married, is one of honor (144-147); her father either gives her a dowry when she enters the temple service (becomes the god's bride), or she receives a share of his property at his death (178-182); and if she adopts a child, he may neither leave her nor renounce her (192, 193).

That Hammurabi or his jurists should have cast his system in such a logical mold is one of the most astonishing features of this admirable code. The arrangement is the result of deep thought, and every law has its well-considered place. It is true that one might logically change the position of certain laws or even groups of laws. For instance, the five laws about slaves, 278-282, might be grouped with the laws relating to stolen and fugitive slaves, 15-20. The codifier had a definite reason for the separation. He placed 278-282 in the second great division, because he here conceives of the slave as person; in the third group of the second division, because the slave is a laborer; and last in the third group, because slave labor is inferior to free labor.

Perhaps the most persistent questioning will concern the position under Farming of the group of laws relating to the vicious ox. We should be rather disposed to look for them under Injuries. But the ox, as the most important animal to the agriculturist, has his natural place under farming, along with the overseer, annual wages of laborers, and theft of farm implements. The ox is considered from the points of view of seizure for debt (prohibited on account of his necessity to farm life), annual rates of hire, and damages to oxen; and then comes the small group of laws on the ox which kills a man, placed here because of the relation of the ox to farming.

The code has many illustrations of the influence of rank on the order both of individual laws and of groups of laws. Thus, theft from temple or palace (6-8) precedes theft from individuals (9-13), and in the section on injuries (196-214) are

several illustrations of the order, freeman, freedman, slave. Males are treated before females; as 196-208 compared with 209-214, or 165-177 (male children) compared with 178-184 (daughters). The principle of rank was probably not without its influence in placing Property before Person, as well as in the order of the three great groups under each of these divisions. Thus, Personal Property contains several laws involving the temple and the palace; Real Estate, a large collection relating to land holders appointed by the king; while the third group is without important reference to either temple or king. Under Person, the Family seems to come first logically, and Labor last. But arrangement according to rank would also seem to suggest the same order, there being under laws about the family not a few which relate to votaries, while the slave laws in 278-282 naturally draw to the end of the code the group to which it belongs. Many other illustrations might be cited, but the principle is not invariable, other considerations at times taking precedence.

Sometimes the order is determined neither by logical relation nor by rank, but by some more remote principle of association. Thus, under grain fields damage is placed last (53-58). The same principle of arrangement should have placed damage last in the following section on date groves. But it actually stands first (59), doubtless in order to connect grain fields and date groves through the idea of damages. The offence of striking a parent (195) gives an easy transition to the section on Injuries (196-214). Damage to oxen (244-249) leads easily to the section on injury by oxen (250-252).

It remains to say a few words of special explanation. The code has no external marks separating the laws one from another, or indicating where the groups of laws end. The division into separate paragraphs was introduced by the editor, M. Scheil. For such division the criteria are the almost invariable introduction *Summa*, "if," and the connection of the thought. In a few cases Scheil's division might be open to criticism. Paragraphs 39, 40, for instance, are exceptions to 38, or modifications or explanations of it, and might therefore have been given under 38, without division. On the other hand, certain of Scheil's paragraphs, as 171, 172, might well be broken up into other paragraphs, as the following analysis indicates, by the use of a, b, c, after Scheil's numbers.

There are several obscure titles of classes of persons mentioned in the code, and some of these classes play an important rôle in society. Such are the MAŠ-EN-KAK, which I have rendered by "freedman"; the *bairu*, *riđ şabe* and *naši bilti*, three classes of fief holders; and the several classes of female votaries of the temple. The rendering "freedman" is only a suggestion. The class stood between the freeman and the slave in some particulars, though in other respects it seems to have been of greater consequence than the freeman, being mentioned in close connection with the palace. 'Palace' in the code is probably not the king's residence in particular, but also the residences of his governors in the various provinces.

In some instances the analysis here presented may be susceptible of rectification. Specially is this true of the subdivisions under the Introduction, owing to the uncertainty still attending the translation of this group of laws. There are also a few cases, indicated by question mark, where difficulty of translation (47, 185, 186, 242, 243, 258, 270), or break in the inscription (100, 262, 275) leaves doubt as to the meaning, and consequently as to the grouping.

And modifications may be possible elsewhere. In details they are perhaps inevitable. This paper is very far from claiming that its writer has seen the whole truth. But it does claim that he has seen the truth essentially as Hammurabi would have it seen. If the claim be just, Hammurabi's eminence as lawgiver does not surpass his eminence as logician. In the skillful arrangement of its material the code has never been excelled, and it has probably never been approached.

ANALYSIS OF THE CODE.

INTRODUCTION, ON EVIDENCE AND DECISION, 1-5

- i. The corrupt plaintiff, 1, 2.
 1. Decision by judges, 1.
 2. Decision by ordeal, 2.
- ii. The corrupt witness, 3, 4.
 1. In suit involving life, 3.
 2. In suit involving property, 4.
- iii. The corrupt judge, 5.

I. PROPERTY, 6-126.

i. **Personal**, especially theft of such property, 6-25.1. *Theft of things*, 6-13.

1) From temple or palace, 6-8.

(1) Treasure kept in the buildings, 6.

a. Buying or receiving from minor or slave, 7.

(2) Possessions not kept in the buildings, 8.

2) From individuals, 9-13.

(1) To discover the thief, 9-11.

a. Seller the thief, 9.

b. Holder the thief, 10.

c. Claimant the thief, 11.

(2) If seller be dead, 12.

(3) If witnesses be remote, 13.

2. *Kidnapping a minor*, 14.3. *Fugitive slaves*, 15-20.

1) Belonging to palace or freedman, 15, 16.

(1) Inducing to run away, 15.

(2) Harboring, 16.

2) Other fugitive slaves, 17-20.

(1) Restoring to owner, 17, 18.

a. Fee for restoration, 17.

b. Refusal to give owner's name, 18.

(2) Concealing slave, 19.

(3) Escape from captor, 20.

4. *Aggravated forms of theft*, 21-25.

1) Burglary, 21.

2) Highway robbery, 22-24.

(1) Capture of robber, 22.

(2) Escape of robber, 23.

(3) Murder with robbery, 24.

3) Theft from burning house, 25.

ii. **Real Estate**, 26 —¹1. *State lands, with duties, rights and restrictions of holders*, 26-41.

¹ Owing to the erasure of four or five columns of the inscription, it is impossible to say how many laws related to Real Estate. Scheil estimates that the erasure contained about thirty-five laws, though not all of them treated this subject.

- 1) Loss of one's holding, 26-31.
 - (1) By disobedience or employing substitute, 26.
 - (2) By being captured, 27-29.
 - a. Land assigned to another restored on holder's return, 27.
 - b. Land held by son of captured holder, 28.
 - a) Case of son too young to take charge, 29.
 - (3) By desertion, 30, 31.
 - a. For three years' desertion the loss is perpetual, 30.
 - b. For one year, temporary, 31.
 - 2) Relation of holder to others, 32-34.
 - (1) To one who ransoms him, 32.
 - (2) To superior officers, 33, 34.
 - a. They may not release him from obligations, 33.
 - b. They may not rob nor oppress him, 34.
 - 3) Holdings inalienable, 35-41.
 - (1) Animals, 35.
 - (2) Realty, 36-41.
 - a. Not to be sold, 36.
 - a) If sold, to be returned, 37.
 - b. Not to be given away, nor assigned for debt, 38.
 - a) Realty acquired by purchase different, 39.
 - b) Classes of holders who may sell, 40.
 - c. Not to be exchanged, 41.
2. *Private Realty*, 42 —.
- 1) Grain fields and crops, 42-58.
 - (1) Hired fields, and payment of rent, 42-47.
 - a. Condition of the land, 42-44.
 - a) Arable land, 42, 43.
 - (a) No grain produced, 42.
 - (b) No other crop produced, 43.
 - b) Unreclaimed land, 44.
 - b. Payment of rent in case of crop failure, 45, 46.
 - a) Field let for definite price, 45.
 - b) Field let on shares, 46.
 - c. Subletting (?), 47.
 - (2) One's own field, 48-52.
 - a. Payment of debt postponed in case of crop failure, 48.
 - b. Mortgage for borrowed money, 49-52.

- a) Of crop to be planted, 49.
- b) Of crop already planted, 50, 51.
 - (a) Payment in money, 50.
 - (b) Payment in produce, 51.
- c. Contract not cancelled by crop failure, 52.
- (3) Damage to fields and crops, 53-58.
 - a. By water of irrigation, 53-56.
 - a) Breach in dyke, 53.
 - (a) Impecunious offender, 54.
 - b) Sluice left open, 55, 56.
 - (a) Damage to crop, 55.
 - (b) Damage to prepared land, 56.
 - b. By cattle grazing, 57, 58.
 - a) Partial damage, 57.
 - b) Serious damage, 58.
- 2) Orchards or date groves, 59 —.
 - (1) Damage by cutting tree, 59.
 - (2) Training a grove on shares, 60-63.
 - a. Division of the yield, 60, 61.
 - a) If gardener plants all the space, 60.
 - b) If he plants only part of the space, 61.
 - b. Penalty for failure to plant grove, 62, 63.
 - a) In case of arable land, 62.
 - b) In case of unreclaimed land, 63.
 - (3) Letting productive grove to gardener, 64, 65.
 - a. Division of the yield, 64.
 - b. Penalty for neglect of grove, 65.

[The erased sections, which come at this point, continued the subject of orchards, gave the laws relating to houses (leases, etc.), and began the third division under Property, i. e. Trade and Business Relations.]

iii. **Trade and Business**, — 126.

- 1. *Merchant and Peddler*, — 107.
 - 1) Merchant provides money, — 103.
 - (1) Profitable tour (?), 100.
 - (2) Unprofitable tour, 101-103.
 - a. No gain, 101.
 - b. Positive loss, 102.
 - c. Peddler robbed, 103.

- 2) Merchant provides goods, 104a.
- 3) Receipts necessary, 104b, 105.
- 4) Suits, 106, 107.
 - (1) Peddler the plaintiff, 106.
 - (2) Merchant the plaintiff, 107.
- 2. *Wine selling*, 108-111.
 - 1) Offences of wine sellers, 108, 109.
 - (1) Practicing fraud, 108.
 - (2) Harboring disorderly persons, 109.
 - 2) Religious votaries and wine, 110.
 - 3) Sale on credit, 111.
- 3. *Carriage*, 112.
- 4. *Debt*, 113-119.
 - 1) Seizure for debt, 113-116.
 - (1) Grain, 113.
 - (2) Person, 114-116.
 - a. Unwarranted seizure, 114.
 - b. Legitimate seizure, 115, 116.
 - a) Person seized dies natural death, 115.
 - b) Death from abuse, 116.
 - 2) Sale for debt, 117-119.
 - (1) Wife or child. Serves three years, 117.
 - (2) Slaves. Sale may be perpetual, 118.
 - a. Exception of slave wife, 119.
- 5. *Storage and deposit*, 120-126.
 - 1) Grain, 120, 121.
 - (1) Loss by accident or theft, 120.
 - (2) Rates for storage, 121.
 - 2) Treasure, 122-126.
 - (1) Witnesses and record, 122.
 - (2) Failure to have such, 123.
 - (3) Suits, 124-126.
 - a. Receiver disputes deposit, 124.
 - b. Receiver loses deposited goods, 125.
 - c. Depositor makes fraudulent claim, 126.

II. PERSON, 127-282.

- i. **The Family**, 127-195.
 - 1. *Man and wife*, 127-164.
 - 1) Slander of wife, 127.

- 2) Definition of marriage, 128.
- 3) Interruption of the marriage relation, 129-143.
 - (1) By Adultery of the wife, 129-132.
 - a. Guilt established, 129, 130.
 - a) The woman actually married, 129.
 - b) The woman betrothed only, 130.
 - b. Guilt suspected, 131, 132.
 - a) The suspicious husband, 131.
 - b) Public gossip, 132.
 - (2) By captivity of the husband, 133-135.
 - a. Wife's remarriage prohibited, 133.
 - b. Wife's remarriage allowed, 134.
 - a) Case of husband's return from captivity, 135.
 - (3) By desertion of the husband, 136.
 - (4) By divorce, 137-143.
 - a. Husband the plaintiff, 137-141.
 - a) Divorce of concubine and votary wife, 137.
 - b) Divorce of spouse¹ without children, 138-140.
 - (a) In case there be a marriage settlement, 138.
 - (b) In case of no marriage settlement, 139, 140.
 - a. The freeman's spouse, 139.
 - β. The freedman's spouse, 140.
 - c) The vixen gadabout, 141.
 - b. Wife the plaintiff, 142, 143.
 - a) Successful suit, 142.
 - b) Unsuccessful suit, 143.
- 4) Rights of wives, 144-150.
 - (1) Votary wife, 144-147.
 - a. In relation to a concubine, 144, 145.
 - a) Concubine not allowed, 144.
 - b) Concubine allowed, 145.
 - b. In relation to a slave wife, 146, 147.
 - a) Slave wife, if mother, not to be sold, 146.
 - b) If not a mother, may be sold, 147.

¹ *Hirtu*, the free wife, as distinguished from the concubine, the votary wife, and the slave wife. The code distinguishes carefully these four classes of wives. The votary wife seems never to bear children. She was, perhaps, in the service of the temple until she passed the age of child-bearing, and was then free to marry. One might compare the Vestal virgins at Rome, who were also free to marry after thirty years of service.

- (2) Diseased wife, 148, 149.
 - a. To be supported by husband, 148.
 - b. May leave him, if she will, 149.
- (3) Widow's property rights, 150.
- 5) Mutual responsibility of husband and wife, 151, 152.
 - (1) Debts contracted before marriage, 151.
 - (2) Debts contracted after marriage, 152.
- 6) Killing a husband, 153.
- 7) Incest, 154-158.
 - (1) With a daughter, 154.
 - (2) With a son's fiancée, 155, 156.
 - a. In case the son has known her, 155.
 - b. In case the son has not known her, 156.
 - (3) With one's mother, 157.
 - (4) With a father's wife, 158.
- 8) Breach of promise, 159-161.
 - (1) By the young man, 159.
 - (2) By the woman's father, 160, 161.
 - a. For reason not given, 160.
 - b. Influenced by a "friend," 161.
- 9) Dowry of deceased wife, 162-164.
 - (1) If there be children, 162.
 - (2) If no children, 163, 164.
 - a. If marriage settlement¹ be returned, 163.
 - b. If marriage settlement be not returned, 164.
- 2. *Children (and widowed mothers)*, 165-195.
 - 1) One's own children, especially in relation to inheritance, 165-184.
 - (1) The father a freeman, 165-174.
 - a. Children by free mother, 165-169.
 - a) Equal distribution preceded by certain subtractions, 165, 166.
 - (a) Special gift to a son, 165.
 - (b) Marriage settlement for unmarried son, 166.
 - b) Children by two successive free mothers, 167.
 - c) Disinheritance, 168, 169.

¹ The code has three words for marriage gift; gift from the paternal house, *šeriktu*, 'dowry'; gift from the groom to the bride's family, *tir-hatu*, 'marriage settlement'; gift from the groom to the bride, *nudunnu*, 'gift.' From § 164 the dowry would seem ordinarily to have been larger than the marriage settlement.

- (a) Disallowed for light offense, 168.
- (b) Allowed for repeated, grave offense, 169.
- b. Children by slave mother (there being also children by free mother), 170, 171b.
 - a) Formal recognition by father prerequisite to inheritance, 170, 171a.
 - b) They and their mother to be free, 171b.
- c. The free widow and her children, 171c-174.
 - a) Her life interest in property and home, 171c-172.
 - (a) In case there be a gift (*nudunnu*), 171c.
 - (b) In case there be no gift, 172a.
 - (c) Attempt of children to dislodge her, 172b.
 - (d) Her voluntary departure, 172c.
 - b) Her dowry in case of re-marriage, 173, 174.
 - (a) If second marriage be fruitful, 173.
 - (b) If second marriage be not fruitful, 174.
- (2) The father a slave, the mother free, 175-176A.
 - a. Children of such union free, 175.
 - b. Inheritance, 176, 176A.
 - a) In case a dowry exists, 176.
 - b) In case of no dowry, 176A.
- (3) The free widow and minor children, 177.
 - a. Condition on which she may re-marry, 177a.
 - b. Guardianship of the children, 177b.
 - c. Restrictions on their property, 177c.
- (4) Daughters, 178-184.
 - a. Daughters consecrated to religion, 178-182.
 - a) Those dowered by father, 178, 179.
 - (a) By gift for life time, 178.
 - (b) By gift in perpetuity, 179.
 - b) Those not dowered by father, 180-182.
 - (a) Votary of first grade, 180.
 - (b) Votary of second grade, 181.
 - (c) Votary of Marduk of Babylon, 182.
 - b. Daughters by (?) concubine wife, 183, 184.
 - a) Dowered and married, 183.
 - b) Undowered and unmarried, 184.
- 2) Adopted children, 185-193.
 - (1) Reclaimable and unreclaimable, 185-190.

- a. Adopting in one's name (?), 185.
 - b. Incurable (?) child, 186.
 - c. Adopted by *nersega* or votary, 187.
 - d. Adopted by artisan, 188, 189.
 - a) If taught handicraft, 188.
 - b) If not so taught, 189.
 - e. Not formally recognized, 190.
 - (2) May not be disinherited, 191.
 - (3) Penalty for ingratitude to *nersega* or votary, 192, 193.
 - a. Renouncing sonship, 192.
 - b. Running away, 193.
 - 3) Death of child in care of nurse, 194.
 - 4) Penalty for striking a parent, 195.
- ii. **Injuries**, 196-214.
- 1. *To males*, 196-208.
 - 1) Eye or limb, 196-199.
 - (1) Of freeman, 196, 197.
 - a. Freeman's eye, 196.
 - b. Freeman's limb, 197.
 - (2) Freedman's eye or limb, 198.
 - (3) Slave's eye or limb, 199.
 - 2) Tooth, 200, 201.
 - (1) Of freeman, 200.
 - (2) Of freedman, 201.
 - 3) Blows, 202-208.
 - (1) Malicious blows, 202-205.
 - a. On person of higher rank, 202.
 - b. Freeman strikes freeman, 203.
 - c. Freedman strikes freedman, 204.
 - d. Slave strikes freeman, 205.
 - (2) Unmalicious blows, 206-208.
 - a. Man struck recovers, 206.
 - b. Man struck dies, 207, 208.
 - a) Freeman, 207.
 - b) Freedman, 208.
 - 2. *To females with child*, 209-214.
 - 1) Freeman's daughter, 209, 210.
 - (1) Miscarriage, 209.

- (2) Death, 210.
 - 2) Freedman's daughter, 211, 212.
 - (1) Miscarriage, 211.
 - (2) Death, 212.
 - 3) Slave woman, 213, 214.
 - (1) Miscarriage, 213.
 - (2) Death, 214.
- iii. **Laborers and Labor, 215-282.**
- 1. *Free labor, 215-277.*
 - 1) Skilled labor, 215-240.
 - (1) Surgeons and doctors, 215-225.
 - a. Practicing on men, 215-223.
 - a) Operation on wounds and eyes, 215-220.
 - (a) Fees for success, 215-217.
 - a. On freeman, 215.
 - β. On freedman, 216.
 - γ. On freeman's slave, 217.
 - (b) Fines for failure, 218-220.
 - a. On freeman, 218.
 - β. On freedman's slave, 219, 220.
 - a) Wound, 219.
 - β) Eye, 220.
 - b) Broken limbs and diseased organs, 221-223.
 - (a) Freeman, 221.
 - (b) Freedman, 222.
 - (c) Freeman's slave, 223.
 - b. Veterinary doctors, 224, 225.
 - a) Fee for success, 224.
 - b) Fine for failure, 225.
 - (2) Branders, 226, 227.
 - a. Penalty for unwarranted marking, 226.
 - b. Marking unwittingly, 227.
 - (3) House building, 228-233.
 - a. Builder's fee, 228.
 - b. Builder's fines, 229-233.
 - a) Falling of house, 229-232.
 - (a) Causing death, 229-231.
 - a. Of owner, 229.
 - β. Of owner's child, 230.
 - γ. Of owner's slave, 231.

- (b) Damaging property, 232.
- b) Insecure walls, 233.
- (4) Boat building, boats, and boatmen, 234-240.
 - a. Boat building, 234, 235.
 - a) Fee, 234.
 - b) Fine for poor work, 235.
 - b. Boating, 236-240.
 - a) Damages, 236-238.
 - (a) Sinking or losing hired boat, 236.
 - (b) Damage to freight in hired boat, 237.
 - (c) Sinking and raising a boat, 238.
 - b) Annual rate of boat-hire, 239.
 - c) Boats in collision, 240.
- 2) Unskilled labor, 241-277.
 - (1) Farming, 241-260.
 - a. Oxen as farm animals, 241-252.
 - a) Seizure for debt, 241.
 - b) Annual rates of hire, 242, 243.
 - (a) Trained (?) ox, 242.
 - (b) Untrained (?) ox, 243.
 - c) Damages to oxen, 244-249.
 - (a) By beast, 244.
 - (b) By man, 245-248.
 - a. Death of ox, 245.
 - β. Injury of ox, 246-248.
 - a) Broken foot, 246.
 - β) Blinded eye, 247.
 - γ) Broken horn, tail, &c., 248.
 - (c) By unavoidable accident, 249.
 - d) Death of man by ox, 250-252.
 - (a) Ox supposed to be innocent, 250.
 - (b) Ox known to be vicious, 251, 252.
 - a. Death of freeman, 251.
 - β. Death of slave, 252.
 - b. Overseer or superintendent, penalties for malfeasance, 253-256.
 - a) Theft of seed or feed, 253.
 - b) Theft of provisions and abuse of oxen, 254.
 - c) Letting oxen, and raising no crop, 255.
 - d) In case he cannot pay, 256.

- c. Annual wages, 257, 258.
 - a) Farm laborer, 257.
 - b) Ox driver (?), 258.
- d. Theft of farm implements, 259, 260.
 - a) Irrigating wheel, 259.
 - b) Irrigating bucket, or plough, 260.
- (2) Shepherding, 261-267.
 - a. Annual wages of shepherd, 261.
 - b. Penalties for unfaithfulness or fraud, 262-265.
 - a) (?), 262.
 - b) Animal lost, 263.
 - c) Rate of increase diminished, 264.
 - d) Theft and sale, 265.
 - c. Accidents, 266, 267.
 - a) Unavoidable, 266.
 - b) Culpable, 267.
- 3) Rates of hire per day, 268-277.
 - (1) Animals for threshing, 268-270.
 - a. Ox, 268.
 - b. Donkey, 269.
 - c. Calf (?), 270.
 - (2) Teams, 271, 272.
 - a. Ox, wagon and driver, 271.
 - b. Wagon alone, 272.
 - (3) Day laborer, 273.
 - (4) Artisans, 274, 275.
 - a. Male, 274.
 - b. Female (?), 275.
 - (5) Boats, 276, 277.
 - a. *Mahirtu* boat, 276.
 - b. Boat of sixty *GUR* capacity, 277.
- 2. *Slaves*, 278-282.
 - 1) Purchase invalidated, 278-281.
 - (1) By sickness before lapse of one month, 278.
 - (2) By existence of claim, 279.
 - (3) Purchase in foreign land, 280, 281.
 - a. Slave a native Babylonian, 280.
 - b. Slave not a Babylonian, 281.
 - 2) Penalty for denying a master, 282.

*Notes on the Hammurabi Monument.*¹—By DAVID G. LYON,
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EVERY student of the subject recognizes the excellence of M. Scheil's translation of the Hammurabi Code. As a first attempt at a difficult task its success is above all praise. That there should remain, however, possibility of improved translation in details and of new points of view, Scheil would be the last to question. To call attention to a few such improvements and new points of view is the object of this paper.

1. *Šalmu* = 'Statue' in 40⁷⁶.

The stone on which the code is recorded was set up in Mar-duk's temple at Babylon, before a statue of the king. That Hammurabi prepared statues of himself in the round we know from a fragment of one now preserved in the British Museum. The inscription² on this fragment is bilingual, Sumerian and Babylonian, and the statue to which the fragment belonged was to all appearances seated, like the well known representations of Gudea of a still earlier period.

That the monument containing the code was set up before such a statue, is expressly stated in the inscription (40⁷⁴⁻⁷⁸):

a-wa-ti-ya šu-ku-ra-tim
i-na na-ru-ya aš-tur-ma
i-na ma-ḥar šal-mi-ya
šarri mi-ša-ri-im
u-ki-in,

"I wrote my precious words on my stele, and set (it) up before the statue of myself as king of righteousness."

Scheil renders this passage thus:

¹ The first three notes were read on April 7, 1904, at the meeting of the Society in Washington. For sake of convenience the references are to column and line as given in Robert Harper's *The Hammurabi Code*, 1904.

² Translated in Schrader's *Keilinschriftliche Bibliothek* iii. 110, and in L. W. King's *Letters and Inscriptions of Hammurabi* iii. 175.

“ Mes volontés les plus chères
 sur ma stèle j'ai écrit,
 devant mon image
 de roi de justice
 je (les) ai placées.”

It is not clear whether this translation means, I placed my words (Scheil, 'volontés') before a separate image (or statue) of myself, or before the image or carving of myself at the top of the stele. But apparently the latter is the meaning of the translation. Otherwise Scheil should have rendered *šalmu* not by 'image' but by 'statue,' as he does in 44⁸, *ša-lam ti-ti-im*, "statue [or statuette] of clay," and he should have supplied as object to the verb 'I placed,' not 'them,' i. e. 'the words' or 'laws,' but 'it,' i. e. the stele itself. Or to repeat my own rendering, "I wrote my precious words on my stele, and set (it) up before the statue of myself as king of righteousness."

The note to Winckler's translation of this passage¹ leaves no doubt that this scholar sees reference to only one stone, i. e. the stone containing both the inscription and the carving at the top, the latter representing the king standing before the seated figure of the Sun-god. The note reads: "He is represented thereon as 'king of righteousness' (law giver); see the picture." Winckler's translation reads: [ich . habe] "meine kostbaren Worte auf meinen Denkstein geschrieben, vor meinem Bildnisse, als des Königs der Gerechtigkeit, aufgestellt."

How Robert Harper understands the passage is uncertain. He renders, "My weighty words I have written upon my monument, and in the presence of my image as king of righteousness have I established."² This translation seems to understand the passage as Winckler does.

The version of Peiser³ reads: [ich habe] "meine kostbaren Worte auf meine Inschrift geschrieben und vor meinem bild, 'dem König der Gerechtigkeit' aufgestellt"; on which he remarks: "According to this the stele was set up before Hammurabi's picture in relief(?)." This rendering of Peiser's agrees with my own, except in regard to *šalmu*. I have already given reasons for believing that the *šalmu* before which the stele was

¹ *Die Gesetze Hammurabi's*, 1903, p. 40.

² *The Code of Hammurabi*, p. 101.

³ *Hammurabis Gesetz*, by Kohler and Peiser, 1904, p. 100.

placed was a statue, rather than a relief, though the word might be used of either. But the important point is not whether *šalmu* was statue or relief, but whether *šalmu* was carved upon the stele or was not.

The inscription distinguishes between the *šalmu* (statue, relief?) and the *naru* (inscribed stele). The laws were written on the *naru* and this was set up before the *šalmu*.

2. *Kībā*, 'to speak, say' (41⁴⁰).

The passage discussed is followed after a short interval by another (41³⁻⁴⁰), in which the syntax has not received due attention. The king directs any one who has a suit or complaint to come before his statue (*šalmu*), and read his stele (*naru*), which will instruct him what his rights are, and will gladden his heart. He then expresses the wish that this man, impressed with what the king has done for him, may cry out in gratitude, "Hammurabi a lord is like a real father to the people," etc. This speech, to be made by the grateful reader of the code, extends from line 20 to line 38, and the whole is object of the verb *likbi*, 'may he say' in line 40. The failure to note this construction, a favorite construction in the Hammurabi inscription, that of placing the direct object before the verb, even where the object is a long sentence, has brought unnecessary obscurity into this passage.

If the speech (20-38) is not dependent on the verb *likbi*, 'may he say' (40), then there is no verb in the connection on which it can depend. Several interpreters have accordingly in their translations inserted a verb before the speech (Scheil, Winckler, Harper).

Correctly construed, however, the passage is not obscure. The successive steps are as follows: May the man who has a complaint 1) come before my statue (6), 2) read my inscribed stele (*li-iš-ta-as-si*, 'let him read,' from *šasū*, 11). 3) As a result, understand his case and rejoice. 4) May he say (40, *likbi*), Hammurabi is a real father, etc. 5) May he then pray before Marduk and Zarpanit. 6) May the gods then be favorable to him.

All interpreters have cut off the verb *likbi* (40), 'may he say,' on which the speech depends, and have constructed it with the word before it into a separate sentence. Thus, Scheil:

da-ni-tum

"le document

li-ik-bi

qu'il épèle!"

Winckler: "Wenn er die Urkunde gelesen." Harper: "Let him read the code." Peiser: "Die Urkunde möge er vortragen." These renderings are all wrong, because all based on a dismemberment of the sentence. That they are wrong appears further from the facts that *kibû*, "to speak, to say," often used in the code, never elsewhere in the inscription, means 'to read,' and that to render 'read' here is to repeat what was already said in line 11, *lištassi*, 'may he read.' Still further, this dismemberment leads to the creation of a new word, *da-ni-tum*, 'document, Urkunde, code,' as the object of *likbi*.

Apparently those who so read derive *danitu* from the stem *dānu* 'to judge,' which with its derivatives, *dānu*, 'a judge,' *dīnu*, 'judgment, case,' *dānātu*, 'judgment, judgeship,' occurs many times in the inscription. Nowhere else do we meet the form *da-ni-tum*. There is indeed doubt as to the reading, whether the first sign be really *da* or *id*. Scheil transliterates as *da*. The photographic reproduction looks more like *id* with a scribal correction to *da*.

Whether we should read *da* or *id*, or whether the three signs read by Scheil as *da-ni-tum* should be otherwise combined, it seems to me most probable that they contain or conceal some adverb of manner, telling *how* the reader is to cry out, Hammurabi is a father, etc. If *da* be correct, I would suggest reading: *da-ni-tam* (for *dannitam*, from *danānu*, 'to be mighty'; cf. *ir-ri-tim da-ni-a-tim*, 'mighty curses,' 44⁶⁵), understanding it as equivalent to *danniš*, 'mightily,' or, in this connection, 'with a loud voice.' The passage would thus mean: May he come before my statue, read my inscription, rejoice in heart, and cry aloud, Hammurabi is a real father, etc.

3. *Pi Matim*, 'Language of the Land' = Vernacular (5²²).

This expression occurs in the brief paragraph which precedes, as it were introduces, the code. The passage reads: "When Marduk sent me to govern the people, to bring help to the land, I established right and justice *i-na ka ma-tim*, I brought good fortune to the people." So, without essential variations all translators, except in regard to the words which I have not ren-

dered, *i-na ka-ma-tim* (reading of Scheil, who renders, 'dans la contrée'; and Peiser, who renders 'ringsum(?)'). By treating *ka* as an ideogram, we should read *i-na pi' ma-tim*. So Winckler, 'in den Mund der Leute'; and Harper, 'in the land.' Scheil and Harper in their translations seem to ignore the *ka* or *pi*. Peiser's reading *ka-ma-tim* is evidently derived from *kamû*, 'to surround.' Winckler only seems to consider the word important. If I mistake not, it is a very important word in this connection, for it seems to me to say that Hammurabi set up a system of law in the vernacular, in the mouth, or speech, or language of the land. I should therefore render the sentence in which *ina pi matim* occurs, "I established law and justice in the language of the land." The meaning would accordingly be, not, I taught the people righteousness, as Winckler's rendering, "I have placed right and righteousness in the mouth of the people," would seem to imply; but, I set up a system of law and justice in the language of the land, i. e. in Semitic Babylonian, not in Sumerian; spelled out syllabically, not written in ideograms, so that it could be understood by common people as well as by scholars.

That this is precisely what Hammurabi did is evident from the code itself. That he should appreciate the merit of his action and should state it distinctly as an introduction to his code, cannot be a matter of surprise. That many of these laws existed before his day we need not question, but they probably existed for the most part in Sumerian, the language of the scholar. His chief merit is that he codified the law, and above all, by giving it a Semitic form, made it universally accessible.

That these statements are not unfounded conjecture will appear from some further considerations. It is an interesting fact that we have from the library of Assurbanipal copies of a good many of the laws of the Hammurabi code, agreeing for the most part literally with the original.² It is a more interesting fact that from the same library have come the so-called Sumerian family laws, relating to denial of father or mother by

¹ The sign *ka* might also be read *lišānu*, 'tongue,' though *pi* (𐎶) is more common than *lišānu* in the meaning 'language.'

² See Bruno Meissner, *Altbabylonische Gesetze*, in *Beiträge zur Assyriologie* iii. 493-523.

a son, rejection of a son by a parent, rejection of husband by wife or vice versa, and the hiring of slaves. These laws are not dated, but the external form, the vocabulary, the syntax, the archaisms, the subjects treated, all suggest the period of Hammurabi, though the penalties imposed in the particular cases do not agree with those of the code. Moreover, these laws relating to the family are in a double recension, Sumerian and Babylonian. They doubtless represent usage before Hammurabi's time, or at the beginning of his reign. A comparison of these laws with those of the code dealing with the same subjects is instructive.¹

Such comparison shows what great thing it was which Hammurabi did. He amplified and modified existing usages and laws, and issued his code in the vernacular. It thus became the law of the kingdom, and no doubt set aside other and diverse systems which had prevailed in the various little kingdoms of the Babylonian valley. This law constituted a strong bond of union, and was one of the elements in the stability and power of Babylon. One of its great virtues was its appearance in a Semitic dress. The code indicates high attainment in the idea of right and order. Its promulgation in the vernacular added greatly to its usefulness. This was an act comparable to the translation of the Bible from a language understood only by priests and scholars into languages understood by uneducated peoples, and was in its way no less influential.

4. *Kinátim šaráku* = 'To communicate laws' (41⁰⁷).

We have seen how the code arose. Another question is, how Hammurabi represents the origin of the code. Is this great work done by unaided human wisdom, or does he consider the code as divinely communicated, and if so by what god? The references to this subject all occur, if I mistake not, in connection with mention of the sun-god Šamaš, or of the words *kittu*, *kinātu* and *mišaru*.

Šamaš is mentioned by name nine times. In the Prologue the king rises like Šamaš to illumine the land (1⁴⁰), he is obedient to Šamaš (2²³), he restores the temple of Šamaš his helper (2²⁶), and

¹ For the original text see Delitzsch, *Assyrische Lesestücke*, ed. 4, p. 115.

he even styles himself the mighty king, the Šamaš of Babylon (5'). In the Epilogue he prays that by the command of Šamaš he may cause right to shine in the land (40⁸⁴), he is the king of right to whom Šamaš has communicated the laws (41⁹⁷); he prays that Šamaš may prolong his good successor's reign as king of right and may lead his people in the right (42¹⁴), or as great judge of heaven and of earth, who leads all creatures aright, the lord of help, may do the opposite for an evil successor, overthrowing his rule, not helping him at law, watching his path with enmity, overthrowing his army, revealing an evil omen of the overturning of his throne and the ruin of the land, seizing him speedily with a dreadful curse, snatching him away from the living on earth, and depriving his ghost of water below, within the earth (43¹⁴⁻¹⁶).

Kittu 'right, law,' pl. *kinātu*, is mentioned as follows: "I established *kittu* and *mišaru* in the vernacular" (5²⁰). In connection with the work of restoring Anunit to her temple in Agane, he causes laws (*kinātīm*) to shine forth and leads the people aright (4⁸⁸). The only other passage with this word has already been adduced, Šamaš communicates to him *kinātīm* "laws" (41⁹⁷).

The other word for right, righteousness, *mišaru*, occurs more frequently. Some of the passages have been quoted in connection with Šamaš. The others now follow. Anu and Bel appoint him in order to cause right to shine forth in the land, etc. (1³³). He calls his code 'laws of righteousness' (40⁹), 'words of righteousness' (41⁸⁸), himself 'king of righteousness' (40⁷⁷, 41⁹⁶, 42¹⁸), and prays that Šamaš may lead his good successor *ina mišarim*, 'in righteousness' (42¹⁷).

There are other references to the code in connection with the stems *dānu*, *awātu* and *nāru*, but it is not necessary to give all of these, since they do not associate the origin of the code with any deity. But the many passages which I have quoted settle the question that for Hammurabi, Šamaš, the great judge of heaven and of earth, is the source of his code. There seems, therefore, no reason to doubt that the bas-relief on the stele, representing Hammurabi standing before Šamaš, the latter seated on his throne, his feet resting on a mountain, is meant to picture the giving of the law. The parallel of Exodus 19 and 20 will occur to every one.

We must now examine more closely the passage which expressly states that Šamaš gave the laws to Hammurabi (41^o). The passage is clear and simple, but seems not hitherto to have been understood. It has been rendered thus:

Scheil: "Hammurabi, king of justice, to whom Šamaš has granted rectitude, am I."

Winckler: "I am Hammurabi, the king of righteousness, to whom Šamaš has given *das Recht*." This translation is not inconsistent with my own. All depends on Winckler's understanding of *das Recht*, *kinātim*.

Peiser: "I am Hammurabi, the king of righteousness, to whom Šamaš has given truth (*Wahrheit*)," etc.

Harper: "Hammurabi, the king of righteousness, whom Šamaš has endowed with justice, am I," etc.

The text is: *Ha-am-mu-ra-bi šarri mi-ša-ri-im ša ilu Šamaš ki-na-tim iš-ru-ku-šum a-na-ku*, and the correct translation: "I am Hammurabi, king of righteousness, to whom Šamaš has given [=communicated] the laws."

The important word is *kinātim*. As to *šarāku*, 'to give, present,' whence *išruku*, this stem occurs often in the code, and is used, e. g., of Bel's gift to Hammurabi of the rule over men. *Šeriktu* is the gift to a bride from her father on her marriage.

Now this *kinātim* does not mean in this connection 'rectitude' (Scheil), nor 'das Recht' in abstract (Winckler?), nor 'Wahrheit' (Peiser), nor 'justice' (Harper), but 'laws,' or 'the laws.' As to its form, it is the simple plural of *kittu* from *kintu*, 'right, law,' like *libnāti* from *libittu*, 'brick,' *šunāti* from *šuttu*, 'dream,' *šanāti* from *šattu*, 'year.'

If further evidence of the correctness of this interpretation be asked for, it is furnished by the context. After saying that Šamaš gave him the laws, he adds *awātua nasga*, "my words are splendid." What words? Any words which he utters? No. But the words of this code. The phrase occurs one other time, in immediate connection with the code (40^o), where the king says, "I wrote my precious words [*awāti* again] on my monument . . . , and I placed it before the statue of myself as king of righteousness, I, the king who is all powerful among the city kings. My words are splendid, my wisdom unrivalled." He then proceeds to pray to Šamaš that right may prevail in the land.

The interpretation of these two passages turns on the meaning of *awâtua*, 'my words,' and the point is so important that it may be well to present all cases of the use of the word *awâtua* on this monument. It occurs eighteen times. In the code proper it occurs but twice, meaning 'declaration, statement at law' (5⁶²), 'testimony' (7²⁸). In the Epilogue there are three cases of its occurrence in col. 40, seven in col. 41, five in 42, and one in 43, a total of sixteen occurrences. The meaning in fourteen of these cases is perfectly clear. Twice it means 'case, suit, cause at law' (41⁴, 41¹⁵); once 'prayer or affair' (42⁹⁰); three times 'command' by a god (40⁸⁹, 41²⁶, 43³¹); eight times it means the words of the code (40⁷⁴, 41¹², 41⁶⁴, 41⁷⁸, 42³, 42⁷, 42¹⁹, 42²⁹), in such expressions as, "My precious words I wrote" (40⁷⁴), "Let him hear my precious words" (41¹²), "Words of righteousness which I have written" (41⁶⁴), "Words which I have written on my stele" (41⁷⁸, 42³, 42¹⁹), "If he disregard my words" (42²⁹), "If he do not disregard my words" (42⁷).

In these eight passages the king calls his code 'words' three times, 'words of righteousness' once, 'my words' twice, 'my precious words' twice, and these terms never mean anything but the code. The presumption, therefore, in the two remaining passages (40⁸¹, 41⁹⁹) is that the expression "my words are splendid" refers likewise to the code, and taken in the context they can have no other reference. It will suffice to quote the two passages in the context.

(40⁷⁰⁻⁸¹) "I wrote my precious words on my monument, in order to pronounce judgments for the land, to give decisions for the land, to lead the needy aright, and I placed it before the statue of myself as king of righteousness, I, the king who is all powerful among the city kings. My words are splendid, my wisdom unrivalled."

(41⁷⁰⁻⁹⁹) "If that man [the future ruler] have wisdom, and desire to lead his land aright, let him give heed to the words which I have written on my monument. May this monument teach him (the right) pathway, (good) government, the judgments which I have judged for the land, (and) the decisions which I have given for the land. May he lead aright the black-heads, judge for them, decide for them, root out from his land the bad and the vile, promote the welfare of his people. I am Hammurabi, king of righteousness, to whom Šamaš communi-

cated the laws. My words are splendid, my deeds are unrivalled."

That Šamaš is in Hammurabi's view the source of the law is thus demonstrated.

5. *Imtaḥar*, 'he reached an agreement' (13^{40,48}).

The verb *maḥāru*, 'to face, be in front of,' occurs in the code in the derived sense 'to receive' (6⁶⁴ and several other times). In the form III, 2 (*Ištafal*) it occurs twice (24^{17,21})¹ in the sense, 'to make oneself the equal or the superior of another,' i. e. 'to put oneself before another.' From the original meaning come the derivatives *maḥru*, 'front,' *maḥar*, 'before,' *maḥīru*, 'price,' *miṭḥāru*, 'agreeing,' *miṭḥariš*, 'equally,' *miṭḥurtu*, 'agreement,' *tamḥāru*, 'battle,' i. e. 'meeting face to face, encounter.' Four times the code uses the form I, 2 (*Ifteal*). In two of these the meaning 'to receive' seems clear (18^{17,19}), though the passage is somewhat difficult, and the word is commonly understood to have the same meaning in the two remaining passages.

These are in §§ 45 and 46, and relate to the payment of rent in case of damage by storm. Johns² renders § 45: "If a man has given his field for produce to a cultivator, and has received the produce of his field, and afterwards a thunderstorm has ravaged the field or carried away the produce, the loss is the cultivator's"; § 46: "If he has not received the produce of his field, and has given the field either for one half or one third, the corn that is in the field the cultivator and the owner of the field shall share according to the tenour of their contract." So essentially also Winckler,³ Müller,⁴ Kohler and Peiser,⁵ and Harper.⁶ These translations all agree with that of Scheil⁷ in making the

¹ The text of 24⁵¹ is *uš-ta-tam-ḫi-ir*, an unusual form, apparently a scribal error for *uš-tam-ḫi-ir*. The scribe either wrote *tam* for *am*, the two signs being much alike; or, he started to write *ta-am*, and after writing *ta* still kept in mind *tam* instead of *am*, and wrote *tam* accordingly.

² *The Oldest Code of Laws*, 1903.

³ *Die Gesetze Hammurabis*, 1903.

⁴ *Die Gesetze Hammurabis*, 1903.

⁵ *Hammurabi's Gesetz*, 1904.

⁶ *The Code of Hammurabi*, 1904.

⁷ *Code des Lois de Hammurabi*, 1902.

essential difference between § 45 and § 46 to lie in prepayment or non-prepayment of rent.

That this is really the point of difference between the two laws seems improbable for three reasons: 1. Prepayment was not the usage in the days of Hammurabi. The only exception to this rule in the code is in regard to a shepherd's wages (§ 264), but the text, and in consequence the translation, is doubtful. 2. Crop rent being paid in kind, prepayment naturally follows the ingathering of the crop. 3. It seems unjust that a tenant should suffer so severely in case of storm, simply because of prepayment of rent.¹

Kohler and Peiser felt the difficulty, and consequently paraphrase the laws, contrary to their translation, thus: "He who hires a field [the tenant] for definite rent has to bear the loss in case of crop failure." "In letting on shares the crop is divided according to circumstances."

This paraphrase differentiates the two laws in a reasonable way. Can it be justified by the translation? The answer depends on the word *imtahar*, the usual meaning of which is 'he has received.' But from the primary meaning 'to face' might easily come derivative meanings 'to be equal to' (cf. the form III, 2 in kindred sense, 24^{42, 61}), 'to be in agreement with' (cf. *mitḥāru*), 'to have an agreement concerning.' I would accordingly propose the following translation of the two laws in question:

§ 45.

"If a man has given his field to a tenant for crop-rent, having agreed on (a definite) crop-rent for his field, (and) afterwards the storm god inundate the field, or destroy the produce, the loss falls on the tenant."

§ 46.

"If he has not agreed on (a definite) crop-rent for his field, be it that he has given his field for a half or a third of the yield, the tenant and the owner of the field shall share the grain which shall be in the field according to what is produced (?)."

¹ There is, however, a parallel in our own shipping laws, according to which, if the cost of freight has been prepaid, it cannot be recovered in case of shipwreck.

6. *Zakáru*, 'to say, mention' (41³).

This stem occurs as verb six times in the code. It means always to 'name, say,' and only in connection with swearing 'to take an oath,' which applies to all the four cases in the Qal. In 41³ we have the form IV, 1. The king says, *i-na Esagila ša a-ra-am-mu šu-mi i-na da-mi-ik-tim a-na da-ar li-iz-za-ki-ir*, 'In Esagila which I love may my name be mentioned with favor forever.' The translation, 'may my name be remembered with favor in Esagila forever' suggests deification of the king. This is not what he desires, but to be spoken of favorably by Marduk, or by the other gods in intercession with Marduk.

A similar wish, a little farther along, Hammurabi expresses in behalf of the man who reads the code and praises its author: "May the protecting deities, the gods who enter Esagila, daily in Esagila favor (his) plans(?) before Marduk my lord and Zarpanit my lady" (41⁶⁻⁸). That is, may the gods help forward his undertakings before the great gods of the temple, Marduk and Zarpanit.

With this passage must be compared the prayer in the next column addressed by Hammurabi to Belit, the wife of Bel of Nippur (42⁸¹⁻⁹⁷). In E-Kur, the temple of Bel, the goddess appears only as intercessor, and she is entreated to induce Bel to overthrow any future king who should damage the code, or not conduct the state according to its provisions. "May Belit, the august mother, whose word is weighty in E-Kur, who favors my plans(?), in the place of judgment and decision turn his words to evil before Bel. May she put into the mouth of Bel, the king, the ruin of his land, the destruction of his people, (and) the pouring out of his life like water," i. e. may she induce Bel to decree these disasters. The *kibitu* in this passage is not a decree, but the word or request which Belit addresses to Bel in hostility to the man whom Hammurabi is cursing. The 'words' referred to are doubtless the man's prayer. These are to be turned to evil, *lamānu* II, 1. This stem is very common in Assyrian, especially in the form *limnu*, 'evil, wicked.'

A pretty close Hebrew parallel to this imprecation is Ps. 109⁷, "Let his prayer be turned to sin," תפלתו תהיה לחטאה. Here, however, his prayer is to become sin without the intervention of another to make it such, unless indeed we combine the verse with the one before it.

“Set thou a wicked man (עֲשֵׂר) over him:
And let an adversary (אֹיֵב) stand at his right hand.
When he is judged let him come forth guilty;
And let his prayer be turned to sin.”

In E-Kur Bel is the commander, the autocrat, the determiner of destinies. The office of Belit, his companion, is to dispose him favorably or unfavorably to the interests of men. That is the picture here. At other times and in other inscriptions she has more active traits.

