

SOCIAL LIFE OF THE BABYLONIANS  
AS SEEN IN THE CODE OF HAMMURABI

從漢摩拉比法典看巴比倫的社會生活

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本文試圖從殘存的漢摩拉比法典探討公元前兩千年初期巴比倫的社會階級、封建義務以及生活中的契約行爲。

現在雖然已經發現比漢摩拉比法典更古老的西亞法律文書，但是漢摩拉比法典仍然是目前所知保存最完整，內容最豐富之法典，也是我們瞭解古代巴比倫人生活最重要的依據之一。

巴比倫社會最少有貴族、士民（awilum）、平民和奴隸四個階級。此外，與國王之間有封建義務（feudal obligation）關係的人似應屬於士民階級中特殊之一群。這種封建義務可能是以一種契約（contract）的形式存在。契約行爲幾乎表現在巴比倫人生活的每一方面。巴比倫人對契約如此重視，因此其國王亦有可能以契約約束那些服務王室的士兵、工匠、商人、和祭司等。

INTRODUCTION

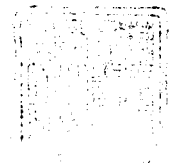
The reputation of Hammurabi as a world-conqueror and as a law-giver has been dimmed by archaeological discoveries of recent years. In the first edition (1927) of *The Cambridge Ancient History*, Hammurabi was portrayed as "a genius full of fire", and as one who was "destined to be both a law-giver and a fighter." He conquered "the whole of the hostile lands" and even once had firm control of Assyria. Great though<sup>1</sup> its deeds as a soldier may have been, "they pale before his wonderful creation, the Code of Laws, one of the most important documents in the history of the human race."<sup>1</sup> However, the third edition (1971) of the book pictured Hammurabi in a quite different mood. The title of the corresponding chapters on Hammurabi was dramatically changed from "The golden Age of

Hammurabi” to “Hammurabi and the End of His Dynasty.”<sup>2</sup> This new edition, supported by new evidence, stressed repeatedly that “it is now apparent that Hammurabi was for the greater part of his reign no more than a struggling aspirant.”<sup>3</sup> Hammurabi’s successes in the east and north were hard-won and probably ephemeral. He never subdued Assyria, though he did unify the city-states in the lands of Akkad and Sumer.<sup>4</sup> Regarding his achievement in law, Hammurabi “was no longer without comparison and challenge.”<sup>5</sup> For example, the Code of Lipit-Ishtar, like the Code of Hammurabi, had a prologue, corpus and epilogue form but preceded Hammurabi by one hundred and fifty years. As a law-giver, Hammurabi was only one of a whole succession of kings who had taken similar measures in Mesopotamia. Hammurabi was nothing special.

The Code of Hammurabi, however, so far is the most well-preserved collection of ancient Mesopotamian laws. The Code of Lipit-Ishtar only has about one third of its original code tablet preserved.<sup>6</sup> The other early code, the Code of Ishnunna, has only fifty-nine extant sections.<sup>7</sup> Both these codes do not compare with the code of Hammurabi in completeness and in length. Although out of 282 sections of the Hammurabi code there are ten sections (§§ 68, 79-87, 92) not preserved and twelve sections (§§ 67, 70, 72-77, 95, 97, 262, 274) in an incomplete condition, we still have 260 complete sections which are a unique source not only for the history of codification of laws but also for studies on the daily life of the Babylonians. These laws deal with nearly every aspect of the Babylonian society during the time of Hammurabi. A comprehensive treatment is beyond the scope of this paper; but this paper attempts to study some aspects of the code dealing with social classes, feudal obligations, and the significance of the contract in the daily life of a Babylonian. Before going on, a brief survey of the discovery, date, content, arrangement, and nature of the Hammurabi code will be presented.

### THE CODE OF HAMMURABI

In the winter of 1901-1902, French archaeologists, while excavating the site of the old Elamite capital, Susa, uncovered three large blocks of diorite which on being put together made up a single cone-shaped stele. It is 2.25 m. high and has a circumference of 1.65 m. at the top and 1.90 m. at the base. At the top, there is a bas-relief showing Hammurabi in the act of receiving the commission to write the law-book from the god of justice, the sun-god Shamash. The text of the laws is engraved round the stele beneath the sculpture. A part of the text has been erased by the Elamites. Fortunately most of this part was restored from a number



of fragments of clay-tablets containing portions of the code. It is generally believed that some Elamite raider (Shutruk-Nahhunte, king of Elam, about 1207-1171 B.C.) carried the diorite stele off to Susa as a trophy of war.<sup>8</sup>

Hammurabi ruled for forty-three years, from 1728 to 1686 B.C. He probably promulgated his code at the very beginning of his reign, but the copy which we have could not have been written so early because the prologue refers to events much later than this.<sup>9</sup>

This code of Hammurabi has prologue, corpus, and epilogue in the complete form of the earlier laws of Lipit-Ishtar. Yet, there is no clear evidence that Hammurabi directly borrowed from Lipit-Ishtar. The similarities in the two codes probably came about because both were ultimately derived from or were based on a common source such as the written laws of the adjoining city-states.<sup>10</sup>

In the world of Mesopotamia, law was an aspect of the cosmic order. The human ruler was a temporary trustee who was responsible to the gods for the implementation of this order.<sup>11</sup> Thus to promulgate laws, as shown in the prologue and epilogue in the laws of Hammurabi, was a sacred undertaking conducted under the auspices of gods.

The prologue is a religious introduction telling of the call of Hammurabi to be king of Babylon and to give justice to the people entrusted to his care. It also tells of his pacification of the neighboring lands. The epilogue begins by stating that the laws are the "just laws". Hammurabi refers to himself as "king of justice". He has made justice appear in the land under the auspices of Shamash and Marduk. However, neither of these two gods, mentioned in the text, is said to be the author of the laws. Hammurabi himself claims to have written them. The general character of the laws is secular. In this respect they strongly contrast with the Hebrew laws which are divine pronouncements.<sup>12</sup>

Regarding the corpus of the laws, the stele indicates no division of the text into sections. Sections, as they appear in all modern editions of the laws, are the work of Scheil.<sup>13</sup> But this is not to say that there is no perceptible principle or order underlying their arrangement. The laws may be roughly grouped under several main headings: offences against the administration of justice (§§1-5), offences against property (§§6-25), land and houses (§§26-65), trade and commerce (§§66-126), marriage, family, and property (§§127-194), assaults and talion (§§195-214), professional men (§§215-240), agriculture (§§241-273), wages and rates of hire (§§274-277), and slaves (§§278-282).

Some scholars suspect that the Hammurabi "code" is not a code as there is an obvious "omission of so many topics which a real law-code would have to



include.”<sup>14</sup> They therefore suggest that Hammurabi code is rather a series of amendments and restatements of parts of the laws in force when Hammurabi wrote it.<sup>15</sup> In fact, Hammurabi did not claim to codify or republish the whole existing law in an improved form.

### SOCIAL CLASSES

In southern Babylonia, society under Hammurabi was distinctly defined by the laws into at least four classes of inhabitants: the aristocrat, the seignior, the commoner, and the slave. Unfortunately, the laws do not furnish information on how strictly these classes were actually distinguished in society, and upon what basis (property, birth, or other) the distinctions were made. However, on the basis of information derived from the laws, we can make a few comments on each social class.

The composition of aristocracy is not clear at all. It probably consisted of the ruling princes and their families, the palace administrators, and the more important priests.<sup>16</sup> But this can not be inferred from the laws. In the translation of the Hammurabi code, T.J. Meek translated the term *mar awilim* into “a member of the aristocracy.” This is hardly an appropriate translation. *Mar awilim* literally means “the son of a man”, but Meek argued that “son” is used in the technical sense of “belonging to the class of, species of,” and therefore “man” clearly is used in the sense of “noble, aristocrat.”<sup>17</sup> Yet, the laws do not show any hint that the *mar awilim* was in any sense superior in status to the *awilum* (man, or seignior). For example, in §§196-7, “if a seignior has broken another seignior’s bone, they shall break his bone”, “if he he has destroyed the eye of a member of the aristocracy, they shall destroy his eye.” The principle of talion was commonly applied to both cases, even though one of the victims was an *awilum*, the other one was a *mar awilim*. If *mar awilim* belongs to a higher class, it seems to me that the punishments in these two cases should be different at least in degree, if not in kind. As shown in other sections of the code, e.g. §§197-201, 201-212, punishments differed in terms of classes. Thus, *mar awilim* very likely is not “a member of aristocracy.”<sup>18</sup> In other words, *mar awilim* and *awilum* probably belong to the same class of seignior. If this is true, there is no single section of the code dealing with the aristocrat. This does not mean there was no aristocratic class in the Babylonian society at the time of Hammurabi. According to some other documents, aristocrats did exist.<sup>19</sup> Why did Hammurabi not include any section about them in his collection of laws? Is it because there was another specific code for the aristocrats which we

have not discovered yet? or simply because the Hammurabi code is incomplete? Up to now it seems that no one can definitely answer these questions.

Almost every section in the code deals with a subject called "seignior" (*awilum*). Undoubtedly, the seigniors made up the main body of the Babylonian society.<sup>19</sup> They were free men and citizens. They could have slaves or clients working on their lands and could engage in every trade of life. Their families were patriarchal. A seignior could have more than one wife in case his wife was barren or even merely because his wife was seized by a fever (§§145, 148). If he wished to divorce his wife who did not bear him children, he should give her money to the full amount of her marriage-price (§138). He also had the right to decide the marriage of his children (§155). If an obligation came due against a seignior, he could sell the services of himself, his wife, and his children. They should work in the house of their obligee for three years, with their freedom reestablished in the fourth year (§117). In other words, the status of a seignior is not fixed. He could lose his freedom temporarily because of debt. Very likely he also could lose his citizenship if he was sentenced to leave the city (§154).

The sections 200 and 202 indicate that within the seignior class there might have different ranks: "if a signior has knocked out a tooth of a seignior of *his own rank*, they shall knock out his tooth" (§200); "if a seignior has struck the cheek of a seignior who is *superior to him*, he shall be beaten sixty times with an oxtail whip in the assembly" (§202). We do not know, however, how the ranks were formed or how many ranks there were.

The seigniors were definitely superior in status to the commoner (*muškenum*). Their superiority was shown, for example, in 200, 201, 210, and 212. If a seignior knocked out a commoner's tooth, he should only pay one-third mina of silver (§201). But if a seignior knock out another seignior's tooth, they should knock out his tooth too. In another case, if a seignior struck another seignior's daughter to death, the daughter of the seignior who committed the crime should be put to death. But if she was a daughter of a commoner, the seignior should only pay one-half mina of silver (§§210, 212). It is interesting to note that a commoner was obliged to pay a physician only a half of the money which a seignior should pay for the same operation (§§215-6). Does this indicate a principle that the higher one's status in the society, the more financial obligation one should assume?

Commoner (*muškenum*) is a class between that of seignior and slave. As we have shown above, a commoner is inferior in rank and circumstances to a seignior but superior to a seignior's slave. Sections 175 and 176 suggest that the *muškenum* ranked above the slave of the palace with whom his own slave is equated. It is

interesting that the *muškenum* or his slave are often mentioned in connection with the palace. It is provided in 8 that one who steals certain property of a *muškenum* shall be treated similarly to the thief who steals such property from the temple or the palace. In §§15-16, the fugitive slave of a *muškenum* is equated with the slave of the palace. The facts seem to show that the *muškenum* belonged to a class under the protection of the crown and was in some sense dependent on the palace, employed perhaps on the land of the king.<sup>20</sup> It is also possible that people of this class were clients connected with the temples or the nobles.<sup>21</sup>

Slavery was a recognized institution, and palace, seigniors, and commoners all could own slaves. Many slaves were prisoners of war or slaves bought from abroad.<sup>22</sup> There were also slaves of native stock. The people enslaved for debts or had sold themselves or were sold by their parents.<sup>23</sup>

The slave was the property of his master. All the ownerships of slave were recorded in the palace. In case one caught a fugitive slave, he should take the slave to the palace in order that his record might be investigated and be returned to his proper owner (§18). Another way of identifying their owners was the slave-mark, a emblem or the name of the owner branded on the slave's arm or hand.<sup>24</sup> Such a mark would be a protection to a purchaser to show his title and thus prove that he had not stolen, but had bought, the slave. It could be changed in case the ownership changed. The slave-mark is not only a mark of ownership but also a mark of status. In the section 146, a seignior's wife marked her husband's female slave with a slave-mark in order to prevent the latter from claiming equality with her. The slave in case had born children to her husband. It seems that a female slave could claim a higher status if she had born children to her master, but the slave-mark could deprive her that chance. Slave-mark was, therefore, so important that any violation of it might cause severe punishment. A mark-brander would lose his hands, if he cut off the slave-mark of a slave without the owner's consent. And if a seignior deceived a brander into cutting off the mark, the seignior should be put to death (§§226-7). Since a slave was the property of his master, any compensation for injury done to the slave was awarded to the master, not to the slave (§§199, 213-4). The fees paid to a physician for curing a slave were less than those paid for a seignior or a commoner, but it was the master's responsibility to pay (§§215-217). A slave could be sold or pledged by his master. And if a slave refused to call his master "master", his master could cut off the slave's ear (§§118-9, 147, 282).

The conditions of the slaves in Babylon, however, were not totally miserable. They had certain legal rights. They could buy their freedom (§117). If a palace

slave or a commoner's slave married a seignior's daughter, the slave's children were free (§§175-6). Furthermore, under certain circumstances, a female slave had the right to inherit from her master. If she bore children to the seignior and if the father during his life-time ever referred to them as "my children", these children had in equal right to inherit from the paternal estate as did the children of seignior's wife. If the father did not do so, the children did not have any right to claim his property; however, they and their slave mother became free (§§170-171).

### FEUDAL OBLIGATIONS

In the code of Hammurabi, there were still some people whose status did not seem to fit exactly in any of these four classes. Specifically they were soldiers, hunters, fishers, and priestesses. According to some other documents, they were also archers, riders, shepherds, bakers, masons, smiths, jewellers, and so on.<sup>25</sup> They were probably free citizens as there are a number of sections which deal with the seignior who served as king's soldier and was taken captive (§§133-135). This indicates the soldier's similar standing with the seignior. The studies of W.F. Leemans show that the merchants serving the king were free citizens.<sup>26</sup> In this sense this group of people belongs to the class of seignior; however, they had some particular connections to the king which were expressed as "feudal obligation" (*likum*). These people were granted some field, orchard, and house which may be regarded as payment for military or civil services.<sup>27</sup> From such grants they could maintain their livelihood and be capable of performing their service when required by the king. The major concern of the sections 27-41 is to protect such feudal obligations from violation.

A private soldier or a commissary, who was carried off and dis-appeared while in the armed services of the king, had his grants given to someone else. However, if he returned within three years, he could reclaim his grants. If someone had taken over his property and had looked after the feudal obligations for three years, the missing soldier or commissary could not claim his feudal obligations even after his return (§§27, 30, 31). But if his son was able to look after the feudal obligations, the field and orchard should be given to the son during the period of his father's absence. If his son was too young, one-third of the field and orchard should be given to his mother in order that his mother might rear him (§§28-9). The laws did not mention how they dealt with the other two-thirds. Probably it was given to another soldier or commissary who could fulfill the feudal obligations. Under no circumstance could a soldier, a commissary or a feudatory sell his *ilkum*. He

could not even deed them to his wife or daughter. But he could freely manage any other property he purchased (§§36-38). The prohibition of sale or exchange is clearly to protect the king's servants from being impoverished. Another probable reason for the prohibition is that the king could thereby control the servants under him.<sup>28</sup>

Nevertheless, we do not exactly know why the king, in some cases, allowed certain kinds of servants to sell their feudal obligations. A hierodule, a merchant, or a feudal extraordinary could sell her or his feudal obligations if the purchaser could assume the service required by the king. It seems reasonable to assume that the feudal obligations were granted under different conditions for different services. The condition for a soldier therefore could differ from that for a hierodule. A merchant, though, could carry on trade on behalf of the king and would then receive an *ilkum* as reward. In such a case *ilkum* seems like an honorarium and the merchant, in the main, continued to be a private merchant.<sup>29</sup> According to section 182, a hierodule of Marduk of Babylon could not assume any feudal obligation, "since a hierodule of Marduk might give her heritage to whomever she pleased." The meaning of this section is not entirely clear. Presumably it shows that a hierodule of Marduk enjoyed some privilege and a higher status than the other hierodule who served the other minor gods. The conditions of service thus were varied. Was there a sort of contract which regulated the right and obligation between the king and his servants? This question may be ridiculous at first sight as an Oriental king seemingly could impose any obligation on his subjects. Nevertheless, as Hammurabi proclaimed in his law code, one of the major concerns of his rule was that "the strong might not oppress the weak." And if we consider the importance of the contract which was revealed not only in the Hammurabi code but also in many other Babylonian documents, we may consider this question seriously.

### A SOCIETY OF CONTRACT

The contract penetrated nearly every aspect of the Babylonian life. It was used in all kinds of transactions, loans, deposits, leases, hire of persons and things, sureties, partnerships, and family affairs such as marriage, divorce, adoption and inheritance. The Babylonians were ardent believers in texts, particularly the legal document. The written word served as a tangible guarantee of the rights of the individual in society.<sup>30</sup> Section 7 of the code stated explicitly that a purchase without contract and witnesses would expose the buyer to suspicion of theft and a



possible death penalty. According to section 123, if a seignior deposited silver, gold, or any sort of thing with another seignior for safekeeping without witnesses and contract and if the latter denied its receipt, that case was not subject to claim. Perhaps the most interesting case in terms of contract is that of marriage. Section 128 stipulated that if a seignior acquired a wife, but did not draw up the contract for her, that woman was no wife. A marriage contract might include the items about marriage-price, dowry, family property, debts, inheritance and so on. For example, if a woman made a contract with her husband that a creditor of her husband might not distrain her, and if there was a debt against her husband before he married her, his creditors could not distrain his wife. Also if there was a debt against that woman before she entered her husband's house, her creditors could not distrain her husband. But if a debt developed against them after their marriage, both of them should be answerable to the creditors (§152). Usually the children had the right of inheritance. If their father had left a sealed document with their mother presenting her his property, she then had the right of inheritance. The children could not lay a claim against her (§150). There are also a great number of sections dealing with marriage-price and dowry. In short, the Babylonians were very cautious of their rights and obligations. This cautiousness was not only documented by the law but also by a variety of contracts which have been discovered.<sup>31</sup>

### CONCLUSION

In such a milieu of this, it is not impossible that a Babylonian king bound his servants with some kind of contract. The variety of feudal obligations can be viewed from this perspective. A soldier or a commissary was bound by a more restrictive contract. They could not sell their feudal obligations, while a hierodule or a merchant was under no obligation to this restriction. Although a merchant could carry on trade on behalf of the king, he remained a free citizen and a private merchant. The case of merchant may not be applied to other employees of the king, but it is clear that all those who held *ilkum* were very likely free citizens. In other word, they could therefore be classified into the class of seignior.

### NOTES

1. *The Cambridge Ancient History*, vol. 1, Cambridge University Press, 1923, pp. 487-492.
2. *Ibid.*, p. 494: *The Cambridge Ancient History*, vol. II, pt. 1, Cambridge University Press,

- 1971, p. 176.
3. Ibid., vol. II, p. 184.
  4. Ibid., vol. II, p. 183.
  5. Ibid., vol. II, p. 187.
  6. S.N. Kramer, *The Sumerians, their History, Culture, and Character*, The University of Chicago Press, 1963, pp. 336-339; F.R. Steele, "The Code of Lipit-Ishtar" *American Journal of Archaeology*, 52:3 (1948), pp. 425-450.
  7. G.R. Driver & J.C. Miles, *The Babylonian Laws*, vol. I, Oxford University Press, 1952, pp. 7-8; J. B. Pritchard ed., *The Ancient Near East*, vol. I, Princeton University Press, 1958, pp. 133-138.
  8. Driver & Miles, op. cit., p. 28.
  9. Pritchard, op. cit., p. 138.
  10. Driver & Miles, op. cit., p. 11; *The Cambridge Ancient History*, vol. II, pp. 188-9.
  11. E.A. Speiser, "Cuneiform Law and the History of Civilization" *Proceeding of the American Philosophical Society*, 107:6 (1963), p. 537.
  12. Driver & Miles, op. cit., p. 39.
  13. Ibid., p. 42.
  14. *The Cambridge Ancient History*, vol. II, pp. 188-189; Driver & Miles, op. cit., p. 407.
  15. Ibid. The quotations of the Hammurabi Code appeared in this paper are based on an English version of the code translated by Theophile J. Meek in J. B. Pritchard ed., *The Ancient Near East*, vol. I, pp. 138-167.
  16. Kramer, op. cit., p. 76.
  17. Pritchard, op. cit., pp. 160-161.
  18. Ibid.
  19. Kramer, op. cit., p. 77.
  20. Driver & Miles, op. cit., pp. 92-93.
  21. Kramer, op. cit., p. 77.
  22. Kramer, op. cit., p. 78; Driver & Miles, op. cit., p. 222; W.F. Leemans, *Old Babylonian Letters and Economic History*, Leiden: E.J. Brill, 1968, p. 181, CH, 280.
  23. Leemans, op. cit., p. 181, CH, 280-281.
  24. Driver & Miles, op. cit., p. 308.
  25. Ibid., p. 112.
  26. W.F. Leemans, *The Old Babylonian Merchant*, Leiden: E.J. Brill, 1950, p. 125.
  27. Driver & Miles; op. cit., p. 112.
  28. Ibid., p. 126.
  29. Leemans, *The Old Babylonian Merchant*, p. 125.
  30. Speiser, op. cit., p. 538.
  31. J.H. Stevenson, *Assyrian and Babylonian Contracts*, American Book Co., 1902; W.F. Leemans, *Legal and Administrative Documents of the Time of Hammurabi and Samsuiluna*, Leiden: E.J. Brill, 1960, pp. 69-79.