

The background of the book cover is a low-angle photograph looking up at a building's facade, with bare tree branches and a clear sky visible in the upper portion.

***C. H. W. JOHNS***

***THE RELATIONS  
BETWEEN  
THE LAWS  
OF BABYLONIA  
AND THE LAWS  
OF THE HEBREW  
PEOPLES***

**C. H. W. Johns**

# **The Relations between the Laws of Babylonia and the Laws of the Hebrew Peoples**

**The Schweich Lectures**

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# PREFACE

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It has long been held that the laws of the Israelites, as revealed by God to Moses, by him embodied in the books of the Pentateuch and since preserved by the zealous care of the Jewish people, are incomparable. Accordingly they have been adopted professedly by most Christian nations and were early accepted by our own king Alfred<sup>1</sup> as the basis of the law system of this our land.

We live in an age of devotion to comparative methods, when it is an article of faith to hold that the most fruitful means to attain a clear understanding of the exact nature of anything is to compare it with its like. This comparative method forms a large part of modern scientific research and, with proper safeguards and reserves, has become a favourite weapon of literary research into the history of human institutions.

Long ago, as it seems to us, SIR HENRY MAINE used it<sup>2</sup> when he wrote his *History of Early Law*. As a consequence of his investigations and those of many who have followed in his footsteps, the Science of Comparative Law has grown up. All the great law systems of the world have been classified and compared, and comparative lawyers felt qualified to assign to any new-found fragment of ancient law its true position in their schemes. The results had rather confirmed than traversed ancient claims for the supremacy of Mosaic Laws. Men had settled down to the belief that we might compare, and that to its great advantage, the Legislation of Moses with the Roman Laws of the XII Tables, with the Indian Laws

of Manu or the Greek Code of Gortyna. We had recognized the broad outlines of a process of evolution and begun to understand the way in which, as a people advanced along the path of progress in the elements of civilization, similar human needs called forth similar solutions of the questions of right and wrong.

Nevertheless much remained obscure in many ancient legislations. It was the opinion of JHERING,<sup>3</sup> the great authority on Roman Law, that for the ultimate solution of the puzzles of Roman Law we should have to go back to Babylon. In his days comparatively little was known about the laws of Babylonia, and that little was badly attested. Men were still of opinion that the Mosaic Law was the oldest of which we had any trustworthy account and that Babylonian laws, if there ever were any worthy of the name, must have been more barbarous and unformed.

Then there came, in the early days of this century, a great surprise, calling at once for much revision of our neatly arranged systems of knowledge. A Code of Laws was discovered, certainly the oldest known, by far the most complete and best attested, and at the same time the most advanced of all but the most modern.

Fragments of it were already known from late copies, had been recognized as probably parts of a Babylonian Code of Law, were even conjecturally styled the Code of Hammurabi by PROFESSOR FRIEDRICH DELITZSCH,<sup>4</sup> but very little could be concluded from them. Then suddenly at Susa in Elam was discovered practically the whole text of it. Ever since it has been the subject of profound study from all points of view.

The comparison of this Code of Hammurabi with the Laws of Moses was bound to be made. Many reasons would suggest the likelihood that much similarity would be observed between two early legislations both Semitic in complexion. Comparisons with other ancient codes were equally sure to be made and the differences naturally to be expected would be carefully weighed and considered. But while most surprising results came out of these comparisons, especially in the realm of Roman Law, a much keener interest has attached to the comparison with Hebrew Law, not only because of the sacred nature of the Old Testament, but even more because this had been the special study of the Higher Critics. These scholars had almost decided what their view of the composition of the Pentateuch should be, what were the ultimate sources implied, what dates should be assigned to the constituent documents, and the arguments to be considered valid in such discussions. Those who rejected the Higher Critical conclusions flew at once to the new-found Code for arguments to refute Higher Criticism; while Higher Critics found confirmations in many directions.'

It may be hoped that this side issue has lost its interest, and that a hearing may now be obtained for a simple attempt to use the two legislations for mutual understanding. When on the appearance of the Code in its first edition I lectured upon it at Queens' College, Cambridge, it was solely as a new document of human history. When a month or two later I was privileged to point out its 'significance for comparison with the Hebrew legislation' in a paper read before the Cambridge

Theological Society,<sup>5</sup> of which an abstract appeared in the *Journal of Theological Studies* (Jan. 1903), it is probable enough that the contrasts to the Mosaic Law were more apparent than the likenesses. In the next few months there was ready for press an extensive work on the Code, illustrating its meaning from the innumerable legal documents, most of them contemporary, which had been my study for years. As bearing on this comparison I soon found that a baldly literal translation of the Code gave a most Biblical turn to its phraseology which the easy, lucid, but paraphrastic renderings given by others perpetually disguised. The general likenesses, Semitic characteristics, and apparent cases of adaptation were separately classed and those most suggestive of dependence insisted upon. The index of subjects compiled from the Code and contemporary legal documents appeared to constitute a substantial advance in the knowledge of ancient law.

Of all this work, prepared in 1904, it was not possible to publish more than the translation, under the title *The Oldest Code of Laws in the World* (T. & T. Clark, Edinburgh), with a selection from the index. The other results were freely communicated to various scholars, but it was not without some pangs that I saw most of them attained in time independently. Later an article on the *Code of Hammurabi* in the Supplementary Volume of Hastings's *Bible Dictionary* and one on *Babylonian Law* in the *Encyclopaedia Britannica* afforded me the chance of setting out some results of my research upon the Code in its relation to the ancient civilization of Babylonia, with a rapid glance at its relations to Israelite Law. When writing a work for the American

public on *Assyrian and Babylonian Laws, Contracts, and Letters*, I expanded some parts of this treatment.

I trust that I may be pardoned for thus simply stating why, when the British Academy conferred upon me the great honour of inviting me to deliver the Schweich Lectures for 1912, I selected the subject of *Babylonian Law in its relation to the Laws of Moses*. It was a subject in which I had taken an interest for some years, and I was anxious to seize an opportunity of making public the work done in 1903-4.

A very large amount of work has been done by others on various aspects of the Code of Hammurabi, especially on the Continent, where the facilities for publication appear to be greatly superior to those in England. What is done here is, however, of excellent quality; and MR. S. A. COOK undertook a detailed comparison with the laws of Hammurabi and other codes which<sup>6</sup> leaves very little to be desired. MR. ST. CHAD BOSCAWEN in his *First of Empires* stated some interesting opinions, and MR. CHILPERIC EDWARDS has given a fresh translation. PROFESSOR R. F. HARPER gave a useful handbook of the text with new translation, index, vocabulary, sign-list, &c., which makes the study simple to those who can read cuneiform.

Reference may be made to the Bibliographies given in these and other books listed in the Bibliography printed on pp. 65 ff.

With such a volume of literature already published, it may seem superfluous to add a further contribution. Indeed, when the present writer read an account of the Code to the Cambridge Theological Society in October 1902, he was quite content to call his paper *The Code of Hammurabi*,



*fresh material for comparison with the Mosaic Code.* He would have been well content to leave it as such, being rather concerned to furnish material for study than to make direct contributions to the application of it to subjects beyond his competence. Much that has been published on this comparison, however, seems to him really inadequate or so ill-considered that it appears to be a duty to submit a different view. He is fully conscious that it is only one view and may prove to be wrong. Yet it seems to him that it is a view which takes account of more facts than any other, and, while not admitting of formal proof, is both reasonable and probable.

Briefly stated, the view thus taken is that the Code of Hammurabi belongs to the same group of ancient legislations as the Hebrew, and that both are compromises between two distinct types of law.

One type is that which is perhaps best seen in the customs of the Arabs, as still surviving among the modern Bedawin, and known to us from the ancient Arabic writers. This has been called primitive Semitic custom. The Israelites, before their entrance into Canaan, as a nomad pastoral people, would be governed by such law, if it can be called law. The dynasty to which Hammurabi belonged was foreign to Babylonia. It owed its rise to an incursion of a Semitic people. That Semites were in Babylonia long before is true, but this was a fresh invasion by a probably nomad pastoral race. They had previously obeyed the same primitive laws as it is assumed the Israelites did before their settlement in Canaan. Forming as they did the ruling race in Babylonia, they yet clung with Oriental conservatism to

their ancient customs. Even such a powerful ruler as Hammurabi could not, or at any rate did not see fit to, entirely change those customs. In the period when the Laws of Moses were instituted, the Israelites were similarly the ruling race in Canaan. Their earlier laws, as known to us, show the same conservation of primitive custom, and that of the same type.

The other type of law is that due to a settled community. In Babylonia it may have been evolved through long ages. It may have been, and probably was, largely due to a non-Semitic people, usually called Sumerians, whose racial affinities are not yet well made out. These were conquered by the Semites of Hammurabi's race. In Canaan too the invading Israelites found a long-settled people in possession. They were governed by very similar laws to those of the settled Babylonians. That these laws had been imported from Babylonia is open to question. Much that is common to the laws of the two settled communities may have arisen independently. There is as yet no evidence that the Canaanites were of the Sumerian stock.[7] But Babylonian influence on the Canaanite law is quite conceivable, and is supported by historical evidence of long-continued intercourse between Babylonia and the West. As the Israelites became a settled population many of their nomad customs must have become inappropriate. They might have evolved new laws. They might have taken over the laws of the Canaanites, so far as these were innocent, or not too obnoxious to Hebrew prejudices. Exactly which course they followed in each case is a matter of history. The

historical evidence may be inconclusive. We must make the best of it.

When, therefore, the Code of Hammurabi is compared with the Laws of Moses, the common material may be due to one of two common sources, primitive Semitic law (otherwise nomad law) and the law of settled communities. For the latter we may hesitate to fix on a racial name. But it is not necessarily that of any and every settled community. Inasmuch as we find it in its most developed form in the Code of Hammurabi, we may call it Babylonian. On the other hand, as the oldest known witness to the primitive type is the same Code, we may call that Babylonian also. In this modified sense we shall be able to speak of the Laws of Moses as being primitive Semitic law modified by Babylonian influence. That, however, would be a description easily misunderstood if divorced from its context.

It is better to say that both legislations are compromises between the two types of law, that they show different degrees of preponderance of one or the other type, and that the Laws of Moses manifest an independent development strongly influenced by the Code of Hammurabi.

We may still claim an independent development of the Laws of Moses.

For during the whole time that the Israelites were in Canaan they were, as usually supposed, independent of Babylonian rule. If they adopted laws which were already prevalent in Babylonia, we may be sure it was not solely because they were Babylonian. This may be disputed. For there were times when, if we may believe their own tradition, they did receive embassies from Babylonia, or

even adopt Assyrian cults. This kind of influence might conceivably lead to the adoption of Babylonian or Assyrian law, which latter was always practically the Code of Hammurabi.

The Israelites may never have adopted Canaanite law consciously, but always supposed themselves to be creators of their own laws. But they could hardly avoid knowing the Canaanite law. When a man does as his neighbours do, he may be perfectly independent in his choice so to do, as some men count independence. But it is usual to regard him as influenced by their conduct. Even when he decides to do the very opposite to what they do we may contend that he was influenced by his knowledge of their conduct. Reaction may be claimed as a sign of independence, but it is also a sign of influence. The truth always is that every action exhibits both independence and influence. We may hold to the explanation that a man's circumstances determine him, but we must then give a wide meaning to circumstance.

Now one of Israel's circumstances was Canaan. The Canaanites had settled laws, and to some extent those laws must have embodied the results of experience of what was suitable in Canaan. Israel might have arrived at the same results, by the same way. It is, however, surely difficult to deny that they availed themselves of Canaanite experience and adopted Canaanite laws. If they did so at all, it is mere quibbling to deny Canaanite influence. Even if they had so framed their laws as to avoid a likeness to Canaanite laws altogether, that would still show Canaanite influence. That they did neither, but achieved a totally distinct type of law, can alone show complete independence. That they did not

adopt all Canaanite customs, but made a selection, shows the best sort of independence. That there was always a strong tendency to adopt too much that was Canaanite, is the lament of their best teachers. These also protested against much that was Israelite custom. But it is not certain that these protests were always against what had been Canaanite. It may sometimes have been more primitive custom, properly more Israelite. For, at any rate, regarded from the point of civilization, we must admit that the Canaanites were more advanced.

It might now be supposed that the differences of opinion which have been called forth by comparisons of the Hebrew and Babylonian legislations resolve themselves into this: that one opinion emphasizes the independence, the other dwells upon the influence. That is partly true, but does not cover all the divergence. For when similarities are accounted for by a common Semitic origin, or an *Urgesetz*, or as the natural outcome of human intellect acting similarly in similar circumstances, not all the factors of the problem are taken into account. These might be adequate solutions if Israel had been separated from all other Semitic races and entered an empty Canaan. They might even account for the similarities, such as they are, between the laws of the Babylonians and the Aztecs. Men everywhere do reach the invention of pottery, but man anywhere will use the pot he finds ready made.

What these contentions leave out of account is the existence of ready-made laws. This cannot be denied. The Canaanites were there, by all admitted. They must have had laws and customs. No one surely denies that. What proof

could ever be produced that Israel did not adopt such as were convenient? In the selections and rejections which the Israelites made they showed whatever independence we may give them credit for. That they could have invented the same themselves, or obtained them elsewhere, is perfectly irrelevant. To assert that they did invent them, not adopt them, is to describe the same fact in different words. It looks very like perversity. We may pretend to have invented something exactly like what some one else has done before, but the Patent Laws usually prevent our getting much profit out of it. Even when we introduce judicious little variations there is sometimes astonishing reluctance to credit us with the inventiveness which we feel to be our own.

Some writers have boldly gone to the root of the matter and minimized the extent to which Canaan was influenced by Babylonia. This is perfectly legitimate. We cannot be too cautious how we use the facts of history. Eastern lands show to-day that the tide of conquest may roll over them and leave little trace behind. Egypt was influential in Palestine once, but there is not much trace of its influence in Canaan. This, however, is not entirely absent. Explorations in Palestine do exhibit considerable traces of Egyptian influence in some directions. What traces of Israelite influence are there to compare with it? Here, however, the question is being taken into a totally irrelevant field.

The Canaanites adopted exactly what suited them, they submitted to what was imposed, just so long as they were obliged. That they adopted all the Babylonian laws is absurd to suppose. Just as absurd as to suppose that under Israelite rule, they adopted all Israelite law or custom. If they had,

there would then be nothing left for Israel to select or reject. Let us give them credit for some independence even when conquered. Their law was a Canaanite version of Babylonian or Israelite law, in any case. If they had it written down in cuneiform even, it was probably translated into Canaanite. Some would maintain that that was Hebrew. At any rate, what we know of it is very similar. But that they could have escaped Babylonian influence on their laws is almost inconceivable. What we know of the Laws of Moses either proves that they were, in some cases, practically the same as Babylonian, or else shows direct Babylonian influence. We may turn this evidence the other way and say that the Code of Hammurabi shows Canaanite influence, from what we can see in it to be like the Laws of Moses. There are not lacking some to call the dynasty of Hammurabi 'Canaanite'. But the evidence rather goes to show that what Hammurabi's race contributed to his Code was more like what Israel contributed to the Laws of Moses and not at all like what a settled folk, such as the Canaanites, would contribute. We may perhaps concede that the Canaanites were Semitic and of the same race as those who conquered Babylon and founded Hammurabi's Dynasty. At that time they may have been nomads, as the Israelites were later when they came into Canaan. But if, in Canaan, they retained a primitive type of law and evolved a settled law or adopted it from some previous inhabitants, so that their law also, like the Code of Hammurabi and the Laws of Moses, was a blend of the two types; then we have no longer the means to separate their particular blend from the other two.

It is of great importance to discern what was Canaanite law, and we shall find some traces of it. But on the whole, we can only infer it by separating from Israelite law what they are likely to have contributed to it. It is not a very safe method, but we have no other yet. Some contributions are made by the Tell-el-Amarna tablets. More may be expected from fresh discoveries. There is another indirect method. The laws of Phoenicia and Carthage may give some help. Even the Roman Laws of the XII Tables may be of use. They do show surprising likenesses to the Code of Hammurabi. How these laws could find their way from Babylonia to Rome is not easy to imagine. Phoenicia may be thought of as an intermediary. If this be tolerated as a solution, then we may assume that where Babylon agrees with Rome, especially if Phoenicia can be shown to agree also, it is probable that Canaan was also very similar. If then Israel is the same as well we can hardly doubt whence the original motive came.

There are possibly some indications that the Laws of Moses mark an advance on the customs which ruled in the days of the Patriarchs. In view of modern critical contentions that these stories of the Patriarchs are a sort of reflection back into the past of what the later writers felt would be appropriate to the time in which they set the eponymous heroes of the old days, we may hesitate to regard such attributed customs as trustworthy for a comparison. Nor is it beyond question whether the Israelites ever obeyed the laws of Bedouin Arabs. But assuming that on their entrance into Canaan the Israelites acquired fresh customs, we may make some important reflections. Supposing there was a change in law, can we detect it? If we can, what exactly



does it establish? Have we merely a change due to a change of habitat, or have other factors to be taken into account?

Now we may question whether this change of law was due to the change in habits from a nomadic life to a settled state, simply and solely. The Israelites when they invaded Canaan found there an already settled people, if we may believe their own account. There were cities and houses and crops already there. From secular sources, such as the Tell-el-Amarna tablets, we know that some time before the conquest there was an advanced state of civilization in Canaan. We even know the names of many kings and cities. What became of this settled population? It is contrary to all analogy and to the Israelite tradition itself to suppose that they were all exterminated. They were obviously possessed of a higher civilization than their invaders, already, what the Israelites in time became, a settled people. Can it be thought that they exerted no influence on their conquerors? We cannot but expect that as the Israelites became settled they would adopt the customs of the settled population. We have it on record that their own teachers charged them with doing this. Some of these customs must have been innocent enough, and such as would be equally appropriate for Israelites when settled. Others would be obnoxious to the racial prejudices, religious or social, of the more conservative Israelites. There would naturally be conflict in some cases between conflicting views of right. In some cases one view would prevail, in others a different result would follow. Even compromises are not inconceivable. To insist that all laws in Israel were the product of the national

genius, even if dignified by the name of revelation, is to make a heavy demand on our credulity.

It seems then to be a reasonable working hypothesis that the Israelites did at first succeed in impressing a primitive type of law on the land, especially in those matters which were not entirely unsuited to both peoples. This seems to be supported by the character of what is regarded as the earliest law code in Israel. We at any rate may say that they themselves regarded such as their laws. It would require strong proof before we could admit that the surviving conquered people obeyed them too. As the Israelites became a settled people they may have invented fresh laws. It does require proof, however, that these were invented, and not already the laws of the conquered race. Provided that they were not too repugnant to the Hebrew genius it would be a step towards unification to adopt existing laws. Proof must be overwhelming that they were not adopted before we can think otherwise. The selective power to adopt or reject, to modify and concede, completely guards independence. On the other hand, unless we can prove that there was no adoption at all, we admit influence. Here the controversialists seem to have confounded the issue. They either deny all influence in order to maintain independence, or they destroy all independence by hardening influence into origination. On either assumption Moses does not get credit for much initiative.

Hitherto we have not considered the question whether the settled Canaanites were governed by the Code of Hammurabi before the Israelites came. Some have tried to make the whole controversy turn on this point. It is difficult