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VIKTOR KOROŠEC

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**GROWTH OF LEGISLATION  
IN ANCIENT MESOPOTAMIA**

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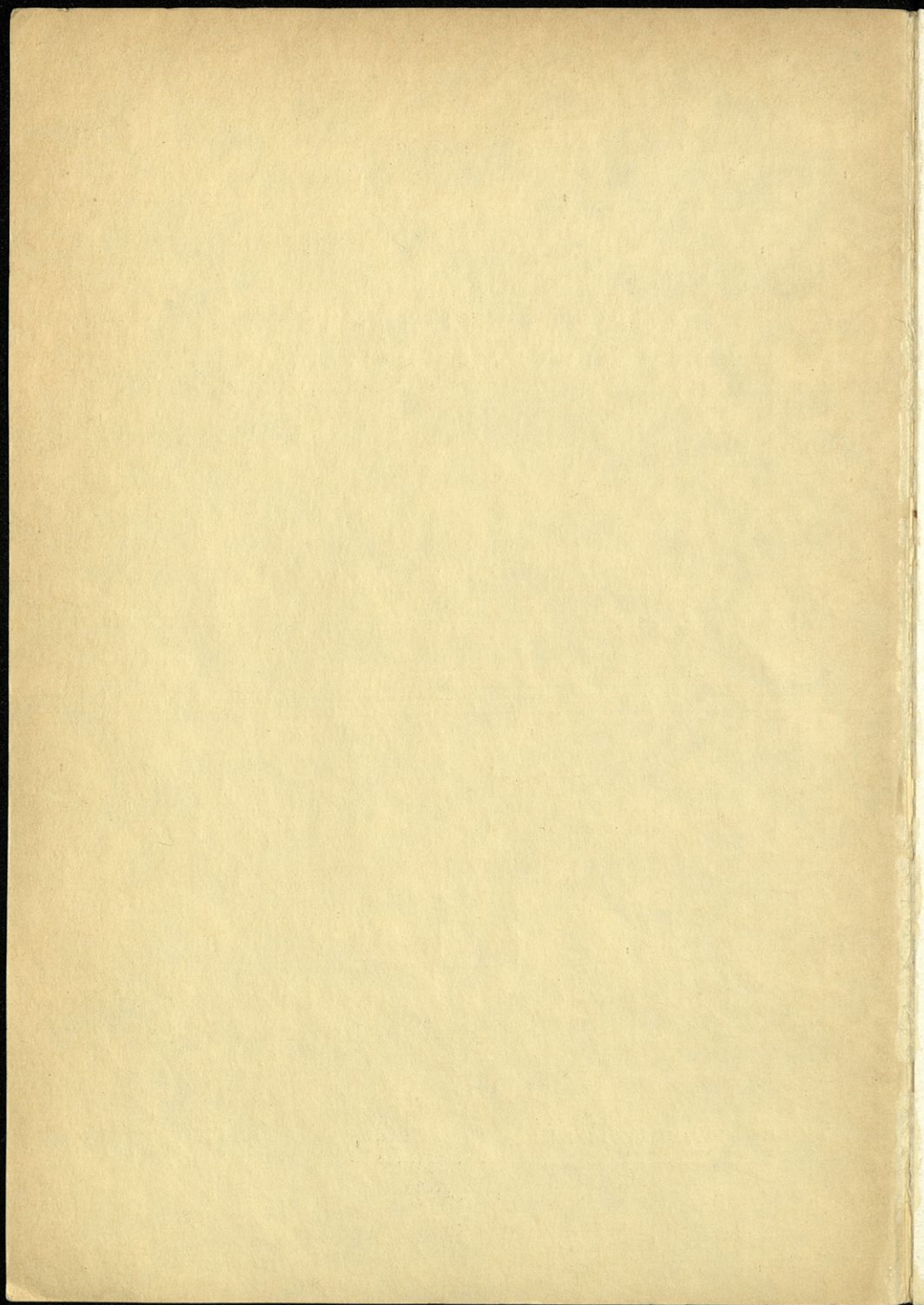
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GROWTH OF LEGISLATION IN ANCIENT MESOPOTAMIA \*

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Half a century ago, the late Paul Koschaker in his pioneering book on the legislation of Hammurabi<sup>1</sup> ascertained that the Babylonian king sometimes inserted in his legislation old Sumerian laws, supplementing or changing them when required. Considering the scarcity of legal sources, being known in 1917, it is obvious that the further question, how far and where this took place, then could not be resolved in detail.

In the meantime, however, several newly discovered legal sources have been published (many of them unfortunately being very incomplete) thus<sup>2</sup>: in 1920 the Middleassyrian law collection, bearing witness of a wide-spread Assyrian legislative activity; in 1921 the Hittite law collection; various fragments of enacted law in the Sumerian language (the codes of Ur-Nammu [1953, 1965] and of Lipit-Ištar [1948, 1965], some fragments of Kiš (?) [1952] and of Ur [1965]), and in Babylonian language (The Laws of Ešnunna [1948], the *mišarum*-edicts of Ammišaduqa [1958] and of Samsuiluna [1965])<sup>3</sup>. Moreover, two monumental treatises, one on the Assyrian laws, the other on the Babylonian laws have been published by G. R. Driver and John C. Miles<sup>4</sup>.

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<sup>1</sup> *Rechtsvergleichende Studien zur Gesetzgebung Hammurapis, Königs von Babylon*, Leipzig, 1917, 3 ss.

<sup>2</sup> For the various legal sources cfr. the items in the abbreviations.

<sup>3</sup> F. R. KRAUS, *Ein Edikt des Königs Ammišaduqa von Babylon*, SD, V, Leiden, 1958; *Ein Edikt des Königs Samsu-iluna von Babylon*, *Studies in honor of B. Landsberger*, Chicago, 1965, 225-231; J. J. FINKELSTEIN, *Some New Mišarum Material and Its Implications*, *Studies in honor of B. Landsberger*, Chicago, 1965, 233-246.

<sup>4</sup> G. R. DRIVER and JOHN C. MILES KT., *The Assyrian Laws; Edited with translation and commentary*, Oxford, 1935. - *The Babylonian Laws*, Volume I: *Legal commentary*, Volume II: *Transliterated text, translation, philological notes, glossary*, Oxford, 1952, 1955.

Due to the new legal sources, we shall try to observe, in general lines the evolution and the growth of the enacted laws in cuneiform characters, in the ancient Mesopotamia, from Urukagina<sup>5</sup>, ruler of Lagaš (about 2350 B.C.), down to the Neobabylonian times. This task meets, however, with two serious obstacles. The fragmentary state of sources, for the most part, makes a comparison rather difficult. Further in the absence of any theoretical treatise on the law or on the State, the fundamental legal terminology remained for a great deal rather undeveloped; thus, there was no term for « ownership » in spite of the existing term for « owner »<sup>6</sup>.

Urukagina's reform, the oldest legislation, mentioned in historical documents, was evoked by abuses committed by his predecessors<sup>7</sup>. Hence the reformer pursued firstly public aims, although he touched variously on the civil law problems too. The protection of widows and orphans, solemnly proclaimed by Urukagina, reappeared constantly with later legislators<sup>8</sup>. The fact that Urukagina abolished many taxes (levied on divorce, on production of perfume)<sup>9</sup> shows that some legal regulations had been introduced even before Urukagina by unknown legislators.

<sup>5</sup> His reform is known to us owing to his records; for the text with German translation s. F. THUREAU-DANGIN, *Die sumerischen und akkadischen Königsinschriften* (= SAK), *Vorderasiatische Bibliothek*, I, 1, Leipzig, 1907, 44-46, 46-57.

<sup>6</sup> Cfr. G. CARDASCIA, *Le concept babylonien de la propriété*, RIDA, 1959, 19-32, 1: ... une difficulté quasi insurmontable qui vient de l'absence d'écrits dogmatiques dans la littérature cunéiforme. - 22: Si l'akkadien connaît un terme qui rend approximativement « propriétaire » (*bêlu*), il n'en a pas qui corresponde à « propriété ».

<sup>7</sup> Cfr. A. FALKENSTEIN, *La Cité-Temple Sumérienne* (traduit de l'allemand), *Cahiers d'Histoire Mondiale*, Paris, 1954, vol. I, no. 4, 784-814, particularly, 790 ss., 800.

<sup>8</sup> Cfr. F. THUREAU-DANGIN, SAK: (for Urukagina), 52 s.; Kegel B, C, 12, 23-25: « Der Waise und der Witwe tat der Mächtige kein (Unrecht) an » [cfr. S. N. KRAMER, *The Sumerians*, 319: « Urukagina made a covenant with Ningirsu that a man of power must not commit an (injustice) against an orphan or widow »]; - (for Gudea) 72 s., Statue B, 7, 42 s.: « Der Waise tat der Reiche kein (Unrecht), der Witwe tat der Mächtige kein (Unrecht) ». - Code of Ur-Nammu, Prologue, 150-161 (S. N. KRAMER, *Ur-Nammu law code*, *Orientalia*, N.S., 23, 1954, 4 and 8): « The orphan was not given over to the rich, the widow was not given over to the powerful ». - Code of Hammurabi (DRIVER-MILES, *The Babylonian Laws*, 96 s. (XXIV b, 59 ss.)): « That the strong may not oppress the weak (and) so to give justice to the orphan (and) the widow, I have inscribed my precious words on my monument ». - Cfr. P. KOSCHAKER, *Rechtsvergleichende Studien zur Gesetzgebung Hammurapis*, 4, n. 8.

<sup>9</sup> Cfr. S. N. KRAMER, *The Sumerians*, 82 and 321.

Three centuries later, we encounter in the Ur-Nammu code<sup>10</sup> already rules in form of conditional clauses, concisely drafted, each containing a legal disposition, followed by a sanction. Public problems have been touched upon in the prologue (and probably in the epilogue, now lost).

The Ur-Nammu code together with the contemporaneous fragments from Ur, together with the code of Lipit-Ištar, with the fragments published by A. T. Clay<sup>11</sup>, and with those from Kiš<sup>12</sup>, together with the bilingual (Sumerian and Akkadian) laws from the Series *ana ittišu*<sup>13</sup>, represent as a whole a considerable bulk of law, originating from the final Sumerian period. This is followed by two remarkable law collections in Akkadian, the laws of Ešnunna and the code of Hammurabi. Later the tradition is continued by the large Middle-assyrian law collection; nearly contemporaneous was the Hittite law collection<sup>14</sup>.

Besides we meet with the term *mišarum*. In its proper sense *mišarum* means « justice » and is thus the leading motif of various lawgivers. Further, numerous governors in their inscriptions are emphasizing that they « have established justice » (*mišaram šakanu*); in this connection *mišarum* designates a provisional enactment aiming to remedy some urgent social or economic problems<sup>15</sup>. The occasional character of such a *mišarum* legislation makes it easier to understand

<sup>10</sup> S. N. KRAMER, *Ur-Nammu Law Code*, *Orientalia*, N.S., 23, 1954, 40 ss. (with appendix by A. Falkenstein); cfr. S. N. KRAMER, *The Sumerians*, 83-85.

<sup>11</sup> ALBERT T. CLAY, *Miscellaneous Inscriptions of the Yale Babylonian Collection*, Nr. 28, 18-27, New Haven, 1915; FURLANI, 6 s.; HAASE, 5 s.

<sup>12</sup> JEAN NOUGAYROL, *Un fragment oublié du Code (en) sumérien*, *Revue d'Assyriologie*, 46, 1952, 53 ss.

<sup>13</sup> BENNO LANDSBERGER, *Die Serie ana ittišu (Materialien zum sumerischen Lexikon)*, I, 101-106, Rom, 1937. Cfr. KOROŠEC, *Keilschriftrecht*, 83 s.; DRIVER-MILES, *The Babylonian Laws*, II, 308 ss.

<sup>14</sup> Cfr. for the respective items the abbreviations.

<sup>15</sup> About the *mišarum* cfr. B. LANDSBERGER, *Die babylonischen Termini für Gesetz und Recht*, *Symbolae Koschaker*, SD, II, Leiden, 1939, 219-234. The legal historian is much indebted to B. Landsberger for having elucidated (in SD II) the term *mišarum*, and also to F. R. Kraus for his commentaries on the *mišarum* acts of Ammišaduqa and of Samsuiluna and to J. J. Finkelstein for his contribution of new texts. Cfr. above the note 3. Cfr. D. O. EDZARD, *Die « zweite Zwischenzeit » Babylonien*, Wiesbaden, 1957, 69, 83, 125 s.

the incompleteness and the lack of a clear system in the cuneiform codes. It is curious that from the millennium after 1300 B.C. only the small Neobabylonian law collection<sup>16</sup> is preserved, comprising now but 16 prescriptions.

Our paper will give an outline of the evolution of certain legal regulations, sufficiently documented from the Sumerian period to the later Babylonian and the Assyrian times (eventually taking in consideration also the Hittite law collection).

A survey of the sources of the enacted laws, preserved in cuneiform characters shows that the internal evolution of the various legal institutions was rather conservative.

### *The Family Law.*

This appears particularly in the family law. We dispose now of rather good informations about it, reaching from Urukagina to the Neobabylonian laws. In spite of many considerable nuances becoming evident in the course of about 2000 years, one might find out that the Sumerian matrimonial law was based on substantially the same principles as later on the Babylonian and the Assyrian family laws. Having this in view we can ascertain the existence of an unwritten common law<sup>17</sup>, valid in Mesopotamia from the Sumerian to the Neobabylonian and to the Neoassyrian epoch. Thus in Mesopotamia the family was established as monogamous and permanent, naturally with restrictions, resulting from the existence of divorce and of slave-concubines. Another characteristic feature of the Mesopotamian family laws is the constant underestimation of the woman towards her husband during the marriage.

The bride was not technically a party to the marriage-contract, as usually her father was acting for her. On the other hand, the

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<sup>16</sup> Cf. DRIVER-MILES, *The Babylonian Laws*, II, 324-347; HERBERT PETSCHOW, *Das neubabylonische Gesetzesfragment*, ZSS, 76, 1959, 37-96; HAASE, *op. cit.*, 117-119.

<sup>17</sup> Cf. DRIVER-MILES, *The Babylonian Laws*, I, Oxford, 1952, 9: ... the conclusion that there was a common customary law throughout the Fertile Crescent seems irresistible; and this common law was to a considerable extent written law.



bridegroom approached himself the bride's father, bringing him the bridal (*biblum*) and the betrothal gifts (*terhatum*)<sup>18</sup>. Through their delivery and acceptance the « inchoate » marriage<sup>19</sup> was brought about. It could be dissolved by a unilateral declaration either of bride's father or of the bridegroom, whereas the bride's own will was nowhere legally taken into account<sup>20</sup>. In the Neobabylonian epoch the terminology of those various gifts (*šeriktum-nudunnūm*) has changed and the liability of the bride's father, to give the promised dowry<sup>21</sup> has been enacted, nevertheless the wife's legal position did not considerably improve.

Further, the matrimonial infidelity was to be punished by death of the adulterous wife and of her paramour. Meanwhile the deceived husband could pardon his wife, simultaneously saving the life of her accomplice, who was formally forgiven either by the king (in Babylon and in Hattušaš) or by the king or the judges (in Assur)<sup>22</sup>. On the contrary, the man's adultery was nowhere taken in consideration. We meet with such a regulation already in the Ur law-fragments<sup>23</sup>, later on in Babylon, in Assur and in Hattušaš<sup>24</sup>, while according to the laws of Ešnunna the death penalty was inflicted only on the adulterous wife, her paramour not being mentioned (§ 28 CE).

According to all the Mesopotamian cuneiform laws the husband was entitled to divorce his wife wilfully<sup>25</sup>. On the other hand, the various legislators tried to ensure the maintenance of the repudiated woman, particularly of a blameless one. The author of the Ur law-fragments

<sup>18</sup> P. KOSCHAKER, *Rechtsvergleichende Studien zur Gesetzgebung Hammurapis*, 130 ss., 136, 162. Cfr. DR. A. VAN PRAAG, *Droit matrimonial assyro-babylonien*, Amsterdam, 1945, 156; 128 ss., 130 ss., 152 ss.; DRIVER-MILES, *The Babylonian Laws*, II, 249 ss.

<sup>19</sup> DRIVER-MILES, *The Assyrian Laws*, Oxford, 1935, 166-168, 173 ss.; assentient P. KOSCHAKER, *Eheschliessung und Kauf nach alten Rechten, mit besonderer Berücksichtigung der älteren Keilschriftrechte*, *Symbolae Hrozny*, IV, Praha, 1950, 226.

<sup>20</sup> Cfr. the §§ 159-161 CH; cfr. §§ 29 s. HLC.

<sup>21</sup> Cfr. the §§ 8-13 of the Neobabylonian laws (DRIVER-MILES, *The Babylonian Laws*, II, 340 ss.).

<sup>22</sup> § 129 CH; §§ 197 s. HLC; A §§ 13; 15 ALC.

<sup>23</sup> Cfr. § 1.

<sup>24</sup> Cfr. above the note 22.

<sup>25</sup> Cfr. § 28 CL; § 59 CE; §§ 137; 141 CH; A §§ 37 s. ALC; § 26 b HLC.

provided a divorce-money in general of one mina of silver, of the half amount for a former widow (§§ 3-4). Lipit-Ištar assigned to the guiltless divorced wife the maintenance in the house of her husband (§ 28: « he shall continue to support her »), if she was willing to stay there (« if she has not gone out of the house »). According to the laws of Ešnunna (§ 59) a divorced wife, who had borne children to her husband, retained his whole property. Hammurabi distinguished, whether the repudiated woman was guilty or blameless, and in the latter case whether there were children born in the wedlock. When there were none, the divorce-money was equal to the former betrothal gift (*terbatum*) and in its default it amounted in general to one mina of silver, to one third of a mina for the wife of a *muškēnum* (§§ 137-143). The wife was unable herself to start the divorce procedure; only in the course of the procedure started by her husband, the Babylonian woman could prove her innocence and obtain the permission to go off to her father's house (§ 142).

According to the Middleassyrian law (A §§ 37-38) the husband was at full liberty to repudiate his wife without giving her any divorce-money. He was even entitled to deprive her of ornaments which he himself had bestowed on her.

Finally, the position of a widow was not in the least enviable. In the Ur law-fragments a lower divorce-money was fixed, when the divorced wife had been a former widow (§ 4). Moreover it seems that in Ur the marital relations with a widow could be brought about without any formal contract and without incurring any damages (§ 5).

In Assur a widow could freely marry only, if she had no children of her own, and if her father-in-law was no longer alive (*ALC*, A, § 33, l. 67 ss.). With such a widow a marriage was introduced simply by cohabitation and became a full marriage after two years duration (§ 34).

In Babylon a widow, having still small children could remarry by permission of judges who took care that the estate of the first husband remained kept to his children (§ 177 *CH*).

On the other hand, the maintenance of the widow was proclaimed as a duty of her husband's children in so far as the husband had not provided for her (§ 172 *CH*, § 46 *ALC*), (§ 172 *CH*, § 46 *ALC*).

### *The Forms of Marriages.*

Marriages were arranged in several ways. In the new Ur-fragments « a written agreement (of marriage) » (dub-ka-keš) is incidentally mentioned (§ 5) as a requirement of an ordinary marriage. Probably in imitation of this Sumerian model, the lawgiver of Ešnunna (§ 27) and Hammurabi (§ 128) insist upon a written document, ordering that without it a woman does not become the lawful wife of the man, although she might have been taken by him to wife. However, it is remarkable, that Hammurabi never more mentions this provisions of the § 128 CH, so that this requirement remained somehow isolated. It seems that in Isin, Ešnunna, Babylon and Assur (in solemn form §§ 42 s.) in general marriages were brought about by delivery of some traditional bridal and of betrothal gifts given either to the bride's master or to the bride herself (Koschaker<sup>26</sup> distinguished here the Brautpreis in favour of the bride's father and the Eheschenkung for the benefit of the bride); thus the inchoate marriage was accomplished.

In some few exceptional cases the marriage was brought about without ceremonies or formalities. Thus in Assur the marriage with a widow was brought about by cohabitation (§ 34) and probably in the ancient Ur too (cfr. the § 5 of the Ur law-fragments). In Ešnunna (§§ 29 s.), in Babylon (CH §§ 133-136) and in Assur (ALC, A, §§ 36; 45) a marriage could be accomplished with a wife, whose husband has been as soldier long time absent from home, without having provided her the necessary means for living; such a marriage remained dissoluble; if the absent soldier returned home, she had to come back to him.

An Assyrian could marry his captive woman (*esirtu*) by veiling her in presence of his neighbours and by proclaiming her as his lawful wife (*aššati šit*) (A § 41 ALC). Similar unilateral declarations occur often

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<sup>26</sup> P. KOSCHAKER, *Rechtsvergleichende Studien zur Gesetzgebung Hammurapis*, 130, 137, 162 ss.; IDEM, *Symbolae Hrozny*, IV, 1950, 230: « Nach dem Gesetze ist die *tirhatum* ein effektiver Preis, der dem Gewalthaber der Frau gebührt, und nicht der Frau, der zumindest im semitischen Bereich noch keine Tendenz zeigt, zur Eheschenkung zu werden ».

in various legal prescriptions <sup>27</sup> and in contracts <sup>28</sup>; they are aiming to the dissolution of an existing tie.

This variety of forms, in which marriages were brought about, shows that the contracting of marriages was more influenced by traditional and social customs than by enacted laws.

### *Law of Inheritance.*

The law of inheritance was considered as a part of the family law regulations. Since the Sumerian epoch the unwritten principle prevails that only the children are the ordinary heirs <sup>29</sup>. In various legal sources some particular rules are preserved incidentally. Lipit-Ištar (§ 24 ss.) and Hammurabi (§ 167) take a particular interest in the division of the deceased father's estate among his children, borne to him by two successive wives. The estate ought to be divided equally, among all the sons of the same father, whereas the children of a slave-concubine usually had no right to the succession (§§ 25 *CL*; 170 *CH*). The dowry (*šeriktum*) belonged to the children of the same mother (§ 24 *CL*, § 167 *CH*). The Neobabylonian laws increased the share of the children of the first wife to two-thirds of their father's estate (§ 15). The Assyrian law laid down some provisions about the division of the father's estate among his sons (B § 1), copying probably some rules of Lipit-Ištar (cfr. § 31).

### *Slavery.*

The slavery was the basis of the social and economic life in the Antiquity. The legal protection was in favour of the owner's power.

<sup>27</sup> The Series *ana ittišu* (LANDSBERGER, *MSL*, I, 101-103; DRIVER-MILES, *The Babylonian Laws*, II, 308-311), §§ 1-6: «Thou art not my father (my mother, my son; my husband; my wife)». Cfr. *CH*: (adoption) § 192: «Thou art no my father (my mother)». Cfr. *CH* §§ 159-161.

<sup>28</sup> J. KOHLER - (P. KOSCHAKER) - A. UNGNAD, *Hammurabi's Gesetz, Übersetzte Urkunden*, III-VI, Leipzig, 1909, 1910, 1911, 1923: contracts numbers: III, 2, 3, 7, 8; IV, 777, 778; V, 1086, 1087. (adoption IV 779, 781-783; V, 1088; VI, 1421-1426. Cfr. M. SCHORR, *Urkunden des altbabylonischen Zivil- und Prozessrechts, Vorderasiatische Bibliothek*, V, Leipzig, 1913, numbers 1-6 and passim.

<sup>29</sup> KOSCHAKER, Art. «*Erbrecht*», *Eberts Reallexikon für Vorgeschichte*, III, 116; J. KLÍMA, *Untersuchungen zum altbabylonischen Erbrecht, Monographien des Archiv Orientalní*, Prag, 1940.

The slave's right to dispute the owner's title, was very limited. If the slave was not successful with it, in Isin for a second time, he was punished by mutilation. Even more severe was Hammurabi (§ 282): the master who had proved his title to the slave in the first dispute, was allowed to cut off the slave's ear. This is probably also the sense of the final sentence in the section § 173 of the Hittite law: « If a slave rises against his master, he shall go into *pit* (?) ».

The lawgivers wanted to make impossible that slaves come to liberty by running away, or that fugitive slaves be harboured by somebody.

Ur-Nammu (§ 15) and Hammurabi (§ 17) prescribed a reward in silver for capturing and restoring the fugitive slave to his master. In Hattušaš (§§ 22 s.) the reward varied according to the distance of the spot, where the fugitive had been caught (§§ 22 s.).

The harbouring of a fugitive slave involved the loss of one's own slave; in default of a slave a sum in silver had to be paid in Ur (fragments § 28), Isin (*CL* § 12) and Ešnunna (§ 49), while in Hattušaš an indemnity for the slave's labour was required. In Babylon the harbourer was menaced by death penalty (§§ 1, 6; 19 *CH*).

Further the slave-concubine, presuming herself to be the equal of her mistress, evoked the attention of the author of the Ur law-fragments and later on of Hammurabi. For having called down curses upon her mistress, in Ur « her teeth shall be scrubbed with 1 s i l a<sup>30</sup> of salt » (§ 29). The punishment for her « striking her mistress » (§ 30) is not preserved on the tablet. In a more general form, Hammurabi (§§ 46 s.) leaves the punishment to the mistress, allowing her « to mark the slave-concubine, who has borne children, with the slave-mark and count her among the slaves »; if the concubine had not borne children, the mistress could sell her.

The seduction of another man's slave-girl is dealt with in the Ur-fragments (§ 2) and in Ešnunna (§ 31). In Ur the culprit had to pay

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<sup>30</sup> 1 s i l a = 0,404 l. - Cfr. FR. THUREAU-DANGIN, *Journal Asiatique*, 1909, 101; A. FALKENSTEIN, *Die neusumerischen Gerichtsurkunden*, III, *Abhandlungen der Bayerischen Akademie der Wissenschaften, Phil.-hist. Klasse, N.F.*, 44, München, 1957, 156.

five shekels of silver, in Ešnunna a third of a mina of silver, obviously to the slave's master (§ 31 CE).

### *Property and Obligations.*

Owing to the many gaps particularly in the Sumerian legal sources, our knowledge of property and obligations is rather incomplete. Therefore our comparison is confined within some few legal institutions.

In the Code of Ur-Nammu the owner is called *lugal* (l. 214), the term designating also the governor of a city, while in the Ur-fragment the term « owner » does not occur. In later sources the owner is called (sum.) *en*, (akkad.) *bēlu* or (hitt.) *išpaš*, a word meaning also the master or lord - a striking resemblance to the Latin term *dominus*.

Lipit-Ištar mentions as house-owner a man or a woman (§ 18). When because of heavy burdens the house had been given up by the owner, a stranger could acquire this ownership by carrying the duties during three years (§ 18). Hammurabi (§§ 30 s.) applied a similar rule to the performance of the *ilku* (= fief) duties.

Hammurabi regulated in the sections §§ 9-13 the recovery of the lost movable property. The Assyrian section B § 6 prescribed the procedure at the transfer of the immovable property.

The property, as it appears in the law collections, had rather individualistic features. A general liability to assist one another was prescribed for the owners of the adjoining fields in regard to the irrigation work (B §§ 17; 18).

Rare traces in the Ur-Nammu's code reveal that there were treated with some problems, connected with the irrigation work (§ 5)<sup>31</sup>.

Accordingly to the Ur fragments (§ 37), amends in corn were to be made for having flooded another's field by water. The same penalty in corn was prescribed for failure of a cultivator, who was liable to plough another's field (§ 38).

The last subject is treated also by Lipit-Ištar (§ 8), and both subjects by Hammurabi more in details (§§ 53 s.; § 60-65). The section § 36 of the Ur fragments deals with a cultivator who has wilfully ploughed another's field. The man cannot claim any reward for his

<sup>31</sup> S. N. KRAMER, *Ur-Nammu Law Code*, 45, n. 8.

labour. This problem seems not to have been of great importance in Babylonia, probably it is not even considered by Lipit-Ištar and by Hammurabi. On the other hand it was treated and resolved in the same way in the Middleassyrian law (B § 19) and also — nearly 2000 years later in the medieval Byzantine and Serbian law<sup>32</sup>. — On the contrary, according to the most ancient Hittite law the culprit together with his chattel was drawn and quartered. Rather early this terrible penalty was substituted by sacred offerings (§§ 166 s.).

The liability for a hired boat is dealt with in the fragment of Uruk (§ 3), by Lipit-Ištar (§ 5), in Ešnunna (§ 5), and in details by Hammurabi (§§ 236 ss.).

Many contracts, frequent in daily life, are known to us only from the documents. Some contracts are incidentally mentioned in the legal collections. Thus the Laws of Ešnunna touch on purchase and sale, on the loan and on the deposit (§§ 36 s. *CE*, cfr. § 125 *CH*). In the Lipit-Ištar's code this part is not preserved, with exception of planting of waste land (§ 8) and of hiring of a boat (§ 5) and of hiring of oxen (§§ 36 ss.).

The legal rate of interest is fixed in Ešnunna (§§ 20 s.) and by Hammurabi (§ L): for loans in silver, 20 %; for corn, 33 <sup>1</sup>/<sub>3</sub> %.

The notion of the *vis major*, overpowering circumstances, occurs first in the Uruk-fragments (published by Clay)<sup>33</sup>. While in general the shepherd was liable for cattle entrusted to him (§ 9), the owner bore the loss, when a lion had devoured an ox from the fold (§ 8). Similarly in Babylon a hirer and a shepherd were not liable when the loss has been caused by a lion or by a stroke of god (§§ 244, 249, 266 *CH*). In such a case the Hittite law (§ 75) demands an oath that the entrusted animal « died by the hand of god » (§ 75).

### *Criminal Law.*

The criminal law too was neither systematically arranged nor was it complete: The lawgiver dealt with such subjects that in his opinion

<sup>32</sup> Cfr. V. KOROŠEC, *Droit cunéiforme et droit médiéval Serbe et Croate, Synteleia Vincenzo Arangio-Ruiz*, Napoli, 1964, III 6 s.

<sup>33</sup> See above note II.

required an amendment. In general, in the most ancient law, Sumerian and Hittite, the penalties were severe, they became milder in later periods. The Ur law-fragments prescribed for the presumptuous slave-girl who uttered a curse against her mistress, that her teeth should be scrubbed with 1 sila of salt (§ 29), a mirroring punishment, reflecting the offence committed. Another instance is preserved from Urukagina's time. The teeth of an arrogant woman were crushed with burnt bricks (S. N. KRAMER, *The Sumerians*, Chicago, 1963, 322). The gradual transition from the severe to milder penalties can be especially clearly observed in the Hittite law.

To a great extent, a comparison is possible as to the punishment penalties prescribed for bodily injuries: in the Ur-Nammu code (§§ 16-185), in Ešnunna (§§ 42-48) and in the Hittite law (§§ 17-18) the culprit in various cases had to pay a sum of silver, while in Babylon (§§ 196 s., 200 CH) the law of talion was applied, partly at least.

Concerning the competence of the courts, only the Ešnunna laws contain a provision on the competence of the king's court and of the ordinary court (§ 48).

For the contempt of the king's court or of the court of a dignitary (dugud) there are very severe provisions in the Hittite laws (§ 173).

### *Procedure.*

Very little is known about the procedure. Nevertheless, we can infer that its importance was considerable.

The Ur law-fragments contain at least two rules about witnesses (§§ 34 s.). Hammurabi's code begins with two provisions about false charges (§§ 1-2) and with two provisions on false testimony (§§ 3-4), while a fifth article prescribed the penalty for a judge who afterwards changed his decision (§ 5).

The ordeal by river was used in Sumerian epoch frequently<sup>34</sup>. In the Ur law-fragments it is provided in the case of suspicion of the wife's infidelity (§ 10). Ur-Nammu prescribed it probably for sorcery

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<sup>34</sup> A. FALKENSTEIN, *Eine gesiegelte Tontafel der altsumerischen Zeit*, AfO, XIV, 1941-1944, 333 ss. Cfr. KOROŠEC, *Keilschriftrecht*, 69, n. 4.



(§ 10). Hammurabi applied it in two cases: if someone was accused of sorcery (§ 2), and if a married woman was accused of adultery (§ 132). The draftsman of the Middleassyrian law collection prescribed the ordeal by water in three cases (§§ 17; 22; 24).

### *Conclusion.*

This hasty outline of the growth of the enacted Mesopotamian cuneiform laws shows that the evolution from the Sumerian to the Akkadian and even to the latest epoch, took on the whole an organic course, without fundamental changes. This is in favour of Miles' supposition of the existence of a common Mesopotamian law in the third millennium B.C.<sup>35</sup>

The legal historian of the Antiquity should state his satisfaction with the Sumerians for their having framed legal provisions in a conditional form, so that the legal disposition is followed by a legal sanction. Moreover, the rather numerous fragments of the law collections in Sumerian language, discovered in our time, bear testimony of a successful activity of various city rulers as lawgivers. As far as we know at present, it was not before the Neosumerian period that some far-sighted great rulers, as Ur-Nammu, Lipit-Ištar, and Hammurabi felt called to lay down and to proclaim a collection of legal provisions, introduced by a prologue and concluded by an epilogue.

In the periods of social and economic crisis, the rulers of various city-States tried to provide a remedy, usually of provisional character, by means of a *mišarum* enactment.

The Akkadian enactments, starting with the laws of Ešnunna, found their culmination in the Hammurabi's legislation, remarkable in form and substance. As Koschaker in 1917 rightly supposed, Hammurabi took up many Sumerian provisions (and those of Ešnunna too) and supplements amending them by adding new legal sanctions or by differentiating new groups or cases, without repeating them.

The Hittite law collection contains provisions from various epochs,

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<sup>35</sup> See above the note 17.

someone derived from the ancient customary law, the other one introduced in various degrees by unknown legislators.

The deplorable state of preservation and the inconsistency of the Middleassyrian law collection render difficult any critical view on its growth and on its contribution to the Mesopotamian legal progress.

The law collections in question differ in many regards from the codifications of our time. The chief objections to their legislative character concern their incompleteness and their lack of system.

However, the same reproaches could be made against the official character of the Roman legislation of XII tables, against the various Greek legislations (of Solon etc.) and even against the medieval Serbian legislation in the Zar Dušan's code. Therefore I should not hesitate to consider the greater part of these law collections as official enactments.

Two presumptions of the two late great masters in the Mesopotamian legal research work of Koschaker and of Miles, proved thus to be true: the influence of the Sumerian laws on Hammurabi's work (Koschaker) and the existence of a Mesopotamian common law (Miles).

## ABBREVIATIONS

- ANET = *Ancient Near Eastern Texts Relating to the Old Testament*, edited by J. B. Pritchard, Princeton, 1950.
- AfO = *Archiv für Orientforschung*.
- ALC = *The Middleassyrian law collection, Discovered in Assur in 1903-14. Editio princeps in cuneiform characters by Otto Schroeder in his Keilschrifttexte aus Assur verschiedenen Inhalts (= KAV)*, Leipzig, 1920, Nr. 1-6, 143, 144, 193. Some further fragments published by E. F. WEIDNER in his AfO, XII, 1937-1939, 46 ss. Works of reference: G. R. DRIVER - JOHN C. MILES, *The Assyrian Laws*, Oxford, 1935; PAUL KOSCHAKER, *Quellenkritische Untersuchungen zu den 'altassyrischen Gesetzen'* (= *Mitteilungen der Vorderasiatisch-Ägyptischen Gesellschaft*, 26, 3, Leipzig, 1921). For the translation cfr. ANET, 180-188; R. HAASE, *Die keilschriftlichen Rechtssammlungen in deutscher Uebersetzung*, Wiesbaden, 1963, 95-119; G. FURLANI, *Leggi dell'Asia anteriore antica*, Roma, 1929, 94-113.
- CE = *The Laws of Ešnunna; editio princeps by A. Goetze, The Laws of Ešnunna* (Sumer, IV, 1948, New Haven, 1956); cfr. R. HAASE, *op. cit.*, 9 ss.; ANET, 161 ss.
- CH = *Code of Hammurabi. Discovered in 1902. Editio princeps by Vincent Scheil, Mémoires de la délégation en Perse*, IV, 1902, 11 ss. - Works of reference: G. R. DRIVER - JOHN C. MILES, *The Babylonian Laws*, vol. I: *Legal Commentary*, vol. II: *Transliterated Text, Translation, Philological Notes, Glossary*, Oxford, 1952, 1955. Translations: ANET, 163-180; HAASE, *op. cit.*, 23-55; G. FURLANI, *op. cit.*, 12-55.
- CL = *Code of Lipit-Ištar; editio princeps by Francis Rue Steele, The Code of Lipit Ishtar, The Journal of the Archaeological Institute of America*, Baltimore, VII, 1948, 425 ss. Translations: ANET, 159 ss.; HAASE, *op. cit.*, 17-20; cfr. G. FURLANI, *op. cit.*, 3 ss. - Supplements by MIGUEL CIVIL, *New Sumerian Law Fragments, Studies in Honor of B. Landsberger* (= *Assyriological Studies*, Nr. 16), Chicago, 1965, 1-12.
- FURLANI G. = *Leggi dell'Asia anteriore antica, Pubblicazioni dell'Istituto per l'Oriente*, Roma, 1929.

HAASE R. = *Die keilschriftlichen Rechtssammlungen in deutscher Uebersetzung*, Wiesbaden, 1963.

HLC = *The Hittite law collection, Editio princeps in cuneiform characters by Friedrich Hrozný, Keilschrifttexte aus Boghazköi*, Leipzig, 1921. Translations: FR. HROZNY, *Code Hittite*, Paris, 1922; JOHANNES FRIEDRICH, *Die hethitischen Gesetze, Documenta et Monumenta Orientis antiqui*, Leiden, 1959; HAASE, *op. cit.*, 61-94; FURLANI, *op. cit.*, 63-88.

*Keilschriftrecht* = V. KOROŠEC, *Keilschriftrecht, Handbuch der Orientalistik: Orientalisches Recht*, Leiden, 1964, 49-219.

KRAMER S. N., *The Sumerians* = S. N. KRAMER, *The Sumerians. Their History, Culture and Character*, Chicago, 1963.

SD = *Studia et documenta ad iura Orientis antiqui pertinentia*, Leiden.

THUREAU-DANGIN, SAK = F. THUREAU-DANGIN, *Die sumerischen und akkadischen Königsinschriften, Vorderasiatische Bibliothek*, I, 1, Leipzig, 1907.

*Ur law-fragments* = O. R. GURNEY and S. N. KRAMER, *Two Fragments of Sumerian Laws, Studies in honor of Benno Landsberger on his seventy-fifth birthday* (= *Assyriological Studies*, Nr. 16), Chicago, 1965, 13-19.







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