Early Law and Civilization

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1. *Introduction*

It is a recognized fact that priceless records of pre-classical law have been neglected on the whole "by legal historians and students of jurisprudence".[1] This is both puzzling and regrettable: puzzling because the history of a given discipline cannot fulfil its proper function until it has been carried as far back as the available sources permit; and regrettable because a deeper understanding of the neglected material could lend the whole subject added importance and dignity. Yet the legal historian has seldom had much time for anything earlier than Roman law.[2] To be sure, he cannot ignore Greek law altogether; for the past fifty years, moreover, he has been obliged to make dutiful mention of Hammurabi.[3] Yet to all intents and purposes he seems content to subscribe to this dictum of Sir Thomas Erskine Holland: "For the beginnings of the science which reduces legal phenomena to order and coherence the world is indebted to the Romans".[4]

I wish to make it clear at the outset that this paper is in no way an apology for the romantic approach to antiquity. A venerable pedigree is not of itself a guarantee of intrinsic virtues. On the other hand, not to make adequate use of the contributions of the

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[1] Sir John C. Miles, in G. R. Driver and John C. Miles: The Babylonian Laws (Vol. I, Legal Commentary, Oxford, 1952) p. 54.

[2] There have been exceptions, of course. See, *e.g.*, the comprehensive study by Edouard Cuq: Etudes sur le droit babylonien (Paris, 1929); also M. David: Der Rechtshistoriker und seine Aufgabe (Leiden, 1937). In particular, note Paul Koschaker: Keilschriftrecht (1935), Zeitschrift der deutschen morgenländischen Gesellschaft 89.

[3] I use this conventional spelling for the sake of convenience, although "Hammurapi" is preferable on linguistic grounds.

[4] Elements of Jurisprudence (13th ed., Oxford, 1924) p. 2.

past is to squander valuable assets. We know now that the view of absolute Roman priority in the field of jurisprudence can no longer be upheld with any degree of confidence. The question has been posed more than once whether the high level of Roman law was not due in part to the pioneering efforts of other and earlier civilizations.[5] At all events, the prevailing view of Roman priority suffers from a palpable fault of perspective. Roman law, at a maximum, cannot be traced back much farther than about 400 B.C. But that date is no more than a half-way junction in the total of documented legal history. In other words, the student of jurisprudence who vaguely equates the Twelve Tables with his subject's Book of Genesis shuts off a whole half — the significant first half, at that — of his discipline. It is much like commencing the history of world civilization with the earliest testimony of the American Indians.

Nevertheless, correct perspective in the history of jurisprudence as such cannot be and is not the primary concern of the present account. No less important and constructive, and certainly more nearly within the competence of this writer, is the task of conveying some idea of the scope and sway of pre-classical law in a large part of the ancient Near East, where that law had come to enjoy supreme authority and had a prominent share in the advance of civilization. It is therefore to the rôle of law in the dynamics of early civilization that these remarks are directed in the main.

But before this task is attempted there are three further preliminary points that need to be clarified. First, my own approach to the subject is of necessity that of a humanist who has specialized in the experience of the ancient Near East. And my excuse for poaching on juridical preserves is that for over a quarter of a century I have had to deal with ancient legal records, among other things, partly because there are many such records among the texts unearthed in the Near East, records which must be screened by the philologist in the first instance; and partly because the student of the Near East must not ignore the legal component if he wishes to understand the total civilization.

Secondly, in addressing myself to a non-orientalist audience I shall be obliged to touch, in passing, on some details which are common knowledge among the specialists. Yet some of the conclusions of this paper are by no means routine even with Near Eastern scholars. The orientalist has been just as neglectful of his legal sources, in the reconstruction of the history and culture of

[5] Koschaker, *loc. cit.*, pp. 29-33. Cf. also the concluding paragraph of the present paper.

the region, as the jurist has been in tracing the background of his own discipline. In other words, what is here outlined is not in all details a consensus; rather it should be judged as a working hypothesis. A vast amount of work remains to be done, by orientalists and jurists in close co-operation, before the full import of the judicial legacy of the Near East can be confidently evaluated.

Thirdly, the reader who ventures past these caveats will soon discover that the discussion centers mostly about cuneiform legal matters and that very little is said about the other legal systems of the area. No undue favoritism is thereby implied. For it so happens that cuneiform legal sources turn up earlier and in vastly greater numbers than juridical records in other scripts. Furthermore, the impact of cuneiform law is pervasive to an exceptional degree and gives the pertinent civilization a highly distinctive cast. Lastly, the influence of Mesopotamia, the home of the cuneiform medium, spread to several neighbouring cultures. All in all, therefore, there are sound grounds for concentrating on cuneiform sources in an inquiry into pre-classical law.

II. *Nature of the Cuneiform Legal Material*

It was nearly ninety years ago that the subject of cuneiform law was first broached in modern times—in articles by the French savant Jules Oppert, who was not only one of the pioneers of cuneiform studies but also a man with prior training in jurisprudence.[6] On the whole, however, there was little interest in the matter until the discovery of the stela of Hammurabi, in the winter of 1901-02, by another French cuneiformist, Père Scheil. This find came from the ruins of Susa, the capital of ancient Elam, in southwestern Iran. Yet obviously it was not an Elamite relic, since the long inscription upon it had been composed in the language and name of a celebrated Babylonian ruler. The stela, then, had evidently been carried off to Susa as a trophy of war.[7] The fact of its transfer to Elam is suggestive in itself. For the laborious transport of a heavy block of diorite (2.25 m. in height and with a circumference of 1.90 m. at the base and 1.65 m. at the top) over hundreds of miles of difficult terrain is striking evidence of the high regard in which the object must have been held even by an alien conqueror. Today, at a remove of close to three millenniums, we are in a good position to realize that the stela of Hammurabi was

[6] Koschaker, *ibid.*, p. 1.
[7] Cf. J. C. Miles, *op. cit.*, pp. 27-30.

indeed an important milestone in the social history of mankind. The monument, in short, is priceless in more ways than one.

The text consists of a preamble, a body of laws, and an epilogue. Its archaic characters are beautifully engraved, and the composition—in the Old Babylonian dialect of Akkadian—is a model of grammar, precision of style, and inner logic.[8] The number of laws involved was originally about 300; an exact count is now impossible because several columns, with perhaps one-sixth of the legal portion, have been effaced. The rest, however, is more than sufficient to demonstrate the kind of legal thinking involved and the extent to which law had come to permeate the entire structure of the local society.

Of special significance, in terms of the underlying social philosophy, is the fact that the powerful head of the Babylonian Empire was not the master but merely the humble servant of the law and strictly accountable to the gods for its just enactment. All in all, it would be difficult to conceive of a more penetrating, comprehensive and dependable introduction to an intricate civilization than we have in this document.[9] A direct study of its contents can be far more revealing than scores of books *about* Hammurabi's Babylonia. And yet, this work, which we are fortunate to possess in the original rather than in some copy of much later date, was already utilized and revered about 1700 B.C. or approximately as many years before the age of Moses as separate the time of Columbus from our own day.

The term "code", it may have been noticed, has not been used at all in the preceding remarks. The omission is not accidental. The handful of jurists who have so far given their attention to this material seem agreed that what we have before us is not properly a code or digest, but "a series of amendments to the common law of Babylon".[10] It is advisable, therefore, to speak here only of the "Laws of Hammurabi". The responsible authorities, then, were drafters rather than codifiers. Nor is the end product a pioneering effort, as many would still seem to believe. As far back as 1917, the distinguished German legal historian, Paul Koschaker, was able to show on internal evidence that the Laws of Hammurabi contain various interpolations and duplications—convincing proof that the document had a considerable history behind it.[11] This de-

[8] See A. Goetze, Mesopotamian Laws and the Historian (1949), 69 Jour. Amer. Or. Soc. 115-117.
[9] Miles, *op. cit.*, p. 57.
[10] *Ibid.*, p. 41.
[11] See his Rechtsvergleichende Studien zur Gesetzgebung Hammurapis.

duction was supported by known fragments of laws which were the work of the Sumerians, who flourished in that area before the Babylonians and spoke a language that had no generic relationship with Semitic. On independent cultural grounds, moreover, some of us have long held that enactments comparable to the Old Babylonian laws must have been current back in the third millennium. For the legal structure was an integral phase of the historic civilization of Mesopotamia, and that civilization reaches in all its essentials well back into the third millennium.[12] Accordingly, in a popular article written in 1949 and published in January 1951 I ventured to lay a representative legal scene in the 21st century B.C.[13] We now have direct proof that such expectations were in no wise too sanguine.

As of this date we know of at least three collections of Mesopotamian laws which are anterior to Hammurabi's.[14] In 1947, F. R. Steele discovered in the University Museum of Philadelphia new fragments of Sumerian laws which in conjunction with previously published specimens add up to the "Laws of Lipit-Ishtar", featuring a preamble, a central legal portion and an epilogue, precisely as in the case of Hammurabi.[15] Lipit-Ishtar was a king of the South Mesopotamian city of Isin who ruled nearly two centuries before Hammurabi. Thus the famous Babylonian ruler had a solid precedent for his own legal project; not only is his arrangement the same as Lipit Ishtar's, but there is an intimate relationship in contents wherever the individual enactments can be compared. In 1948 there was brought to light a still older body of laws, thanks to the efforts of A. Goetze of Yale in association with the Iraq Department of Antiquities.[16] The place of origin was this time the city of Eshnunna, east of Baghdad. The language of the Laws of Eshnunna, however, is once more Akkadian rather than Sumerian, in spite of the antiquity of the text. Finally, S. N. Kramer of the University of Pennsylvania and its museum was able to announce in 1952 the discovery of a yet older body of laws, bearing

[12] Cf. my paper entitled, Some Sources of Intellectual and Social Progress in the Ancient Near East (1942), in Studies in the History of Culture (Menasha, Wisconsin) pp. 51-62.

[13] In the National Geographic Magazine issue of that date, pp. 78-79.

[14] For fragments of still another collection, the Old Assyrian, see G. R. Driver and J. C. Miles: The Assyrian Laws (Oxford, 1935) pp. 1-3.

[15] See his The Code of Lipit-Ishtar (University Museum, Philadelphia, 1948).

[16] Published in Sumer (Baghdad), Vol. 4, pp. 63-102. For recent translations of most of the collections here mentioned see Ancient Near Eastern Texts Relating to the Old Testament (ed. J. B. Pritchard, Princeton, 1950) pp: 159-198. The respective translators are S. N. Kramer, A. Goetze and Th. J. Meek.

the name of Ur-Nammu, the founder of the Third Dynasty of Ur.[17] This gives us a second Sumerian legal work, alongside the two in Semitic. And the date of this particular collection is the 21st century B.C., or exactly as some of us had anticipated.

Aside from these early juridical works, which date from the end of the third and the early second millennium, there are collections of cuneiform laws from later periods. Extensive portions of the Middle Assyrian laws have come down to us on several clay tablets dating from the last quarter of the second millennium,[18] and the following millennium is represented by a single clay tablet containing some of the Neo-Babylonian laws.[19] As their names indicate, both these collections were phrased in respective dialects of Akkadian, which is the collective name for the principal Semitic speech of Mesopotamia. But cuneiform "codes" were not restricted to Mesopotamia proper. The Hittites, who employed the same form of writing in recording their own language, which has unmistakable Indo-European affiliations, had an analogous collection of laws of which two extensive tablets are now extant.[20]

Legislative compilations, however, make up only a negligible part of the total cuneiform legal material that has been brought to light. Incomparably more numerous are the documents pertaining to the actual practice of law. Their total mounts up to countless thousands. They date all the way from the third millennium down through the first, and they cover a formidable array of legal types. Nor do they stem from Mesopotamia alone. Vast numbers of legal documents have come down to us from neighbouring areas representing all sorts of ethnic groups and languages. Yet even here the cuneiform script became standard equipment and Akkadian the normal legal language. Thus the Hurrians, who were linguistically and ethnically distinct from Sumerians, Semites and Hittites alike, resorted for official purposes to Akkadian, both in the region of modern Kirkuk and in their more wide-spread settlements in Syria. The Elamites—yet another distinct group—did likewise in their Iranian homeland. Thousands of cuneiform legal documents, written in Akkadian, have turned up in Cappadocia. Even Palestine has yielded material of the same kind.[21]

What we have thus before us is a picture of unprecedented cultural expansion, which is especially vivid in its legal details. In-

[17] Cf. provisionally The Scientific American 188 (1953) pp. 26 ff.
[18] Driver and Miles: The Assyrian Laws.
[19] Cf. Pritchard, *op. cit.*, pp. 197-198 (translation by Meek).
[20] *Ibid.*, pp. 188-197 (translation by Goetze).
[21] Cf. the brief survey in Koschaker, Keilschriftrecht, pp. 1-20.

variably prominent in this picture are the following three features: a common script, a common language, and the obligatory employment of the legal document. The external criterion of writing permits us to apply to this community of cultural interests the designation "cuneiform culture", however incongruous this phrase might be on other grounds.[22] The prevailing use of Akkadian, notably in the second millennium B.C., has more recent analogues in the use of Latin for legal purposes or of French in international diplomacy.

It would have been helpful to illustrate the main types of the extant cuneiform legal records, for no description can match the flavour and the impact of actual examples. But anything like a representative number of citations, together with the necessary minimum of explanatory notes, would carry us too far afield. Before we go on, however, to broader considerations, I may perhaps be allowed to adduce a single illustration in order to convey, to a very limited degree, something of the legal problems and procedures that these records reflect. The specimen which I have selected for translation (from the local dialect of Akkadian) has been taken from among the archives found in the area of Kirkuk, because these happen to reflect the spread of Mesopotamian concepts to adjoining regions and peoples. The document records a lawsuit. If it seems involved at first, it is mainly because many of the details were fully familiar to the parties concerned and required no elaboration. It will be noticed that the court was most careful in identifying the principals and in tracing the case, step by step, to its inception two generations earlier. The decisive bearing of the written record is brought out very pointedly. Incidentally, the tablet dates from the fourteenth century B.C., over a hundred years before the time of Moses. Yet it was not very long ago that critics doubted the possibility of complex legislation in the Mosaic age on the ground that those times were too primitive and that the knowledge of writing was as yet unequal to the task. Indeed, our perspective has changed radically within the past few decades.

Here is the translation of the first sixty-eight lines of the tablet:[23]

> Shurkitilla, the son of Tehiptilla, went to court before the judges with Taya, the son of Rimusharri. Thus Shurkitilla:
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> 'Kawinni, the son of Kunadu, and Ithapu, the son of Puhishenni, had adopted my father Tehiptilla for (the transfer of) two acres of land in the district of Shulmiya.[24] Now Taya has sued me by swearing

[22] *Ibid.*, pp. 26-29.

[23] The cuneiform text is given in E. Chiera: Proceedings in Court (Publ. of the Baghdad School, Texts, Vol. IV, Philadelphia, 1934), No. 333.

[24] Since land holdings were inalienable under the local law, the only means of selling real estate was through the legal fiction of adoption, for

out against me a royal warrant, and has had me evicted from that land.'

Thus Taya: 'I have no connection (with the land) either by inheritance or by lot or in any other manner. (But) Hanate, the wife of Shanhari delegated me with these instructions: "Go and sue Shurkitilla by swearing out against him a royal warrant, and evict him from that land". So in accordance with Hanate's instructions I swore out against him a royal warrant and had him evicted from that land.'

Then the judges questioned Hanate, saying: 'Did you delegate Taya to swear out against Shurkitilla a royal warrant?' Thus Hanate: 'I sent Taya to Shurkitilla with these instructions: "Sue Shurkitilla by swearing out against him a royal warrant, and have him evicted from that land" '.

Thereupon the judges dismissed Taya from the court proceedings. To Hanate the judges declared: 'Argue the case with Shurkitilla!'

Thus Hanate: 'When my husband Shanhari provided for me in his will, he deeded that land to me'. Then the judges examined Hanate's records of the will whereby Shanhari had deeded his land to his wife. But neither the name of Kawinni nor the name of Ithapu, who had adopted Tehiptilla, was inscribed in the records of Hanate.

Thereupon Hanate declared as follows: 'Kawinni died earlier; and later on Shanhari, in providing for me in his will, deeded that land to me'.[25]

Then the registrars [whose five names are officially recorded] deposed before the judges: 'That land used to belong to Kunadu. Now Kawinni was Kunadu's eldest son and Kani was a younger son.' Then Hanate made this statement: 'That land did belong to Kunadu. Kawinni was Kunadu's eldest son, and Kani, the father of my husband Shanhari, was indeed a younger son.'[26]

Whereas, therefore, Shanhari had deeded to his wife land that was not his, in that the names of Kawinni and Ithapu were not inscribed in his records, the judges ordered Hanate to surrender that land and assigned the land to Shurkitilla. And whereas she had a royal warrant sworn out against Shurkitilla, (evicting him) from his own land, the judges committed Hanate to Shurkitilla for the payment of one bullock as fine.

[The judges take certain additional steps to clear the title to the land under dispute. There follow the seals of the officials and the signature of the scribe.]

To get back to our main argument, how can one account for the unprecedented cultural influence of Mesopotamia, emanating as it did from a relatively small center in the South? It should be stressed that this expansion was by no means co-extensive with political authority. Even in Mesopotamia proper, the South and the North were traditional enemies. The Elamites and the Hurrians on the fringe pursued their own political ways. The Hittites rep-

a suitable consideration. The seller became the adoptive father, and the purchaser was recorded as the adoptee.

[25] Note the emphasis on alleged prior rights.

[26] The share of the firstborn was double and preferential.

resented an independent power; nor were the various states of Syria and Palestine ordered about by a Mesopotamian power until the emergence of Assyrian might, in the first millenium. Yet all these diverse elements, in spite of their underlying differences, were drawn into the orbit of a single civilization, notably in such essentials as the concept and practice of law. Is there a plausible explanation for this phenomenon?

III. *Law as the Touchstone of a Civilization*

Legal systems not only help to implement but also serve to reflect the underlying concepts of government. In the ancient Near East state and religion were inseparable. The two interfused. Between them they embodied the individual society's way of life. Hence the pertinent legal systems have to be viewed in conjunction with the over-all social philosophies which the respective societies had evolved.

The great impact of the legal thinking and practice of Mesopotamia on other parts of the Near East must be bound up, accordingly, with the kind of society that was characteristic of Mesopotamia. And, conversely, the failure of the other legal systems of the area to achieve similar prominence should be rooted in their respective socio-cultural backgrounds.

The pre-classical Near East has left evidence of only one major juridical structure that may be said to have competed with that of Mesopotamia, namely, the Egyptian. To be sure, the effect of Biblical law can hardly be overestimated; nor does Hittite law appear to have played a negligible rôle. These two systems, however, were not in competition with Mesopotamian law. On the contrary, they were related to it in several ways: the Biblical in its framework, spirit, as well as in many individual provisions; and the Hittite still more closely by reason of the use of the cuneiform script and the stress on the written document. There is thus no genuine cleavage until we come to Egypt. The civilization of Egypt is found to be in sharp contrast with the cultural complex of that portion of Western Asia which has conveniently been designated as the Fertile Crescent. The contrast stems not so much from material ways as from differences in the way of life. And these differences are brought into sharp relief by the respective legal systems.

Readers of John Henry Wigmore's *A Panorama of the World's Legal Systems* may be still under the impression that the Egyptian system is the oldest known to man and that it can be documented as far back as 4000 B.C.[27] The jurist repeated in this case an under-

[27] (Chicago, 1928) pp. 5-12.

standable error of earlier orientalists. Scholars have since been obliged to lower the date for the beginnings of recorded Egyptian history by about a thousand years. In the present context, however, the absolute antiquity of Egyptian law is not nearly as important as are its nature and place in the over-all scheme of things. It is on these counts that the differences from the Mesopotamian system are most clearly apparent.

One highly significant point of contrast is noticeable at first glance. Egypt has not left to posterity a formal body of laws comparable to the Laws of Lipit-Ishtar or Eshnunna or Hammurabi, the Old Assyrian or the Middle Assyrian or the Neo-Babylonian systems, or the Hittite and Hebrew analogues. What is more, alongside the countless thousands of records relating to the practice of law in Mesopotamia and affiliated areas, there is barely a trickle from Egypt before the Persian and Greek periods. This is no mere argument from silence. The soil and climate of Egypt were kind to materials far more perishable than those that were employed for writing. The negative evidence of many centuries has in these circumstances a substantial cumulative bearing. Then there is compelling internal evidence. The local society was so constituted that it set far less store by the written legal document than could possibly have been the case in Mesopotamia. Nor is the reason for this Egyptian attitude far to seek.

In a paper read in 1940, and subsequently published and reprinted several times, I sought to sum up the situation as it presented itself to an assyriologist.[28] We are on firmer ground today in that we can refer to a statement by one of our most distinguished egyptologists. In the lucid words of John A. Wilson's *The Burden of Egypt*,[29] the pharaoh was the essential nucleus of the state:

> He, as a god, *was* the state. . . . To be sure, it was necessary for a new state to have rules and regulations for administrative procedures and precedent, but our negative evidence suggests that there was no codification of law, impersonally conceived and referable by magistrates without consideration of the crown. Rather, the customary law of the land was conceived to be the word of the pharaoh. . . . In later times there was visible no impersonal and continuing body of law, like one of the Mesopotamian codes, until we come down into Persian and Greek days; the centralization of the state in the person of the king apparently forbade such impersonal law. The authority of codified law would have competed with the personal authority of the pharaoh.

In other words, since the pharaoh was regarded as a god, there could be no authority, personal or impersonal, superior to his own.

[28] Cf. *supra*, footnote 27, for the latest publication.
[29] (Chicago, 1951) pp. 49-50.

In sharp contrast to the authoritarian position of the pharaoh, the Mesopotamian ruler was viewed as an ordinary mortal who was accountable to the gods for his every move. His powers were further circumscribed, since the beginning of history, by the requirement that each major public undertaking must have the prior consent of the appropriate assembly, either of the elders or of the warriors. All this is intimately related to the Mesopotamian concept of the cosmos, that is to say, religion.[30] State and religion were the two normative aspects of the way of life, just as in Egypt and elsewhere in the ancient Near East. What made the real difference in each case was the kind of religion and government involved. In Egypt the result was authoritarianism. In Mesopotamia the trend was towards democracy. And the mechanism whereby that democratic orientation was controlled and safeguarded made up the Mesopotamian legal system.

How such fundamentally opposed ways of life had arisen in two contemporaneous and otherwise related civilizations is a question that is altogether beyond the scope of this paper. Some of the answers, incidentally, are as yet concealed from us by deep layers of pre-history. At any rate, the fact is that these far-reaching differences existed and that they profoundly affected the historic careers of the two great civilizations.[31] Although sundry details of these careers are still obscure, the principal features of the Mesopotamian experience fall into a clear pattern.

Since the kings of Mesopotamia lacked absolute authority—indeed even the Mesopotamian gods could not boast unlimited power—the position of the subjects was correspondingly enhanced. This shows itself with telling force in the ubiquitous recognition of private property and the prevailing respect for it. Nowhere is this last-named feature more sharply reflected than in § 7 of the Laws of Hammurabi:

> If a man has purchased or received for safekeeping either silver or gold or a male slave or a female slave or an ox or a sheep or an ass or anything whatsoever from the hand of a citizen or the slave of a citizen, without witnesses or a written contract, that man shall be put to death for he is a thief.

Time and practical considerations may eventually have modified this drastic provision. It is all too plain, however, that on more

[30] Cf. Thorkild Jacobsen in Franfort *et al.*: The Intellectual Adventure of Ancient Man (Chicago, 1946) pp. 125-222; H. Frankfort: Kingship and the Gods (Chicago, 1948) pp. 215-267.

[31] In this connection attention may be called to my paper on The Ancient Near East and Modern Philosophies of History (1951), 95 Proc. Amer. Philos. Soc. 583-588.

than one occasion possession of proper legal records was literally a matter of life or death. Small wonder, therefore, that the mounds which pockmark the landscape of Mesopotamia became repositories of hundreds of thousands of documents executed in strict conformity with the law of the land. The law rather than accidents of discovery and the use of a durable writing material account for the presence of all these tablets.

There is, furthermore, a strong probability that writing itself came to be invented in the first place in conjunction with age-old practices pertaining to temple and private economy. The cultivation of writing in turn—a highly intricate process before the introduction of the alphabet—has considerable bearing on the advance of other sciences. Progress was thus being registered on a broad front. But it was the law that remained the zealous guardian of the distinctive Mesopotamian way of life throughout the many centuries.

In passing, a few words may be in order concerning the Akkadian phrase which is used to express both the nature and the function of law. The reference in question is *kittum u mīshārum.* The first word means "that which is firm, established, true"; the third word (following the particle for "and") means "equity, justice". In other words, the whole phrase stands for something like "impersonal and immutable order tempered with equity and fairness". This is how Hammurabi describes his own legal effort. We could scarcely improve on it in seeking to characterize the whole legal philosophy of Mesopotamia.

IV. *The Dynamics of Mesopotamia Law*

In the discussion so far I have spoken repeatedly of Mesopotamia, although this term stands for no ethnic, linguistic or political unit. Quite the contrary; for on all these counts the Biblical tale of the Tower of Babel comes closer to the mark, in that it hints at a confusing variety of tongues and peoples. In the several millenniums of its pre-classical history various mutually antagonistic peoples pass in review and several unrelated linguistic stocks are encountered. There is, however, an underlying cultural unity which transcends the conventional boundaries and gradually embraces the entire valley, to spread thence to adjoining areas. The composite product cannot properly be ascribed to any one people or center. It was, in effect, Mesopotamian.

The question was broached earlier whether this spectacular cultural dynamism can be explained. We have seen that characteristic legal features were the normal witnesses of the advancing Meso-

potamian civilization: collections of laws and documents pertaining to legal practice. Those features had come in their native vessels, so to speak: the cuneiform script and the Sumerian language, which soon gave way to Akkadian. It may be added in passing that an itinerant language is not the same thing as an international scientific formula. The language may be said to carry with it an accumulation of cultural genes. Thus the Hittites of Anatolia, in acquainting themselves with Akkadian and rudiments of Sumerian, exposed themselves not only to the appertaining laws but to religion, literature and the sciences as well. And so they proceeded to translate Akkadian myths and epics. Indeed, some Babylonian tales which had reached the Hittites through Hurrian mediation turn up eventually in Greek mythology.

To get back, however, to the possible causes of this cultural expansion, it should be made clear that the problem is not capable as yet of a conclusive solution. In the nature of things, perhaps, some uncertainty will always attend any answer that may be attempted. The following remarks, which bring this paper to its conclusion, should be viewed therefore, as has already been indicated, as a working hypothesis. The test of such hypotheses has to be pragmatic. Let us see how this one works.

The outward signs of foreign dependence on Mesopotamian law are the script, the language and the document. Yet such formal indebtedness fails to reveal the secret of Mesopotamia's appeal. Magnetism on so large a scale would seem to suggest that content as well as form played here a substantial part. Nevertheless, the Hittites certainly did not simply adopt the laws of Hammurabi or the Old Assyrian laws. And the Hebrews remain even further apart; for they either never acknowledged the influence of the cuneiform script or they soon emancipated themselves from it in committing their own laws to writing. In content, then, there is nothing like a one-to-one correlation between the laws of Mesopotamia and Hittite or Hebrew law.

Yet too much store can be set, I believe, by this circumstance. Complete interdependence in details is not the only valid criterion of close substantive relationship. No less significant, I submit, would be an affinity in ideas and spirit if that could be demonstrated and shown to be sufficiently far-reaching. Now law, as was pointed out earlier, serves to reflect the fundamental spirit of the given civilization. Mesopotamian civilization, by restricting the authority of the ruler, did much to emphasize and to protect the rights of the individual in relation to society and the cosmos. In

this significant respect the social philosophies of the Hebrews and the Hittites had much in common with the Mesopotamian outlook on life. Their civilizations were related not only materially and intellectually but also, to a pronounced degree, spiritually. It is on this last count that the contrast between the Fertile Crescent and Egypt shows up in sharpest relief. And in each case the law is the key to the civilization.

It would appear, therefore, that the dynamism of Mesopotamian civilization was due in the last analysis to its distinctive way of life. We cannot tell at this time whether other civilizations found the Mesopotamian way appealing because it was similar to theirs, or whether they had first to be converted to that way under Mesopotamian influence. Be that as it may, we have now a better insight into what converted Mesopotamia itself into an integral cultural unit. We are no longer surprised by the fact that the stela of Hammurabi should have turned up at Susa. What is more, we have a clearer perspective on the characteristic Biblical term *torah*. That term does mean "law", as it is commonly rendered. But it means also a great deal more than such a rendering would generally suggest. *Torah* corresponds also to the Babylonian *kittum u mīshārum*, and beyond that, and more particularly, it stands also for a specific way of life. In addition, we are entitled to ask whether the remembrance of the bondage in Egypt, which runs through the Old Testament as a recurrent refrain, reflects no more than the experience of a small number of Hebrews during a relatively short period of their pre-history. In view of all that has been said so far, there is the inherent probability that the bondage in this instance was so exceptionally severe because it involved basic spiritual values and had resulted from a clash between fundamentally incompatible ways of life.

To be sure, we do not know, nor do I wish to assert, that the Biblical estimate of the law as the key to a vital civilization was due to direct influence from Mesopotamia. It is significant, however, that the peak in the study of Biblical law was reached, in later times, not in Palestine but in Babylonia, and was embodied in a major work which still bears the name of the Babylonian Talmud. Analogously, the most fruitful period in the development of Islamic law was witnessed when Baghdad was the capital of the Islamic world. The vitality of legal tradition in Mesopotamia survived thus by a number of centuries the end of the historic Mesopotamian civilization.

In conclusion, a word may be in order concerning the possi-

bility that classical law may have owed some inspiration to oriental prototypes. With the unexpected expansion of juridical horizons as a result of recent discoveries, it was but natural that some writers should turn against the traditional views and seek to derive the classical law from Mesopotamia. But the leading workers in the field have refused to be driven to such extremes.[32] Direct Roman borrowing from Mesopotamian legal sources is precluded, of course, by the fact that the civilization of Mesopotamia had come to the end of its independent course before Rome became an oriental power. That specific cultural elements may have filtered through, by one route or another, from the Fertile Crescent to the classical world is quite another matter. And that legal items were not left out in the process is suggested by certain Babylonian loanwords in the West. The really important thing is that Mesopotamia had experienced more than two millenniums of notable legal progress before classical civilization began. That experience could not have been without some effect on Europe. Finally, the kind of law which Mesopotamia evolved proved its capacity to serve as an aid to the democratic process. To the extent, therefore, that the Fertile Crescent as a whole contributed to the evolution of democracy, it placed under indebtedness not only ancient Greece but our modern western civilization as well.

A Professional Responsibility

In Dean Pound's words: 'Law must govern life, and the very essence of life is change'. While I suspect that every educated person, in every stage of history, has considered his own time a period of great events and profound changes in the social order, I do believe that we are now living through a period as dynamic as any that has gone before. For one thing, the threat of war has never been so awesome, and the need for international legal controls so great. For another, forms of energy have been discovered of such potential destructiveness as to challenge the ingenuity of man to devise the means of legal protection against their misuse. This *is* a dynamic age in which we live; and law, too, must partake of its dynamic quality. Lawyers are conservative people—it is true. But conservative only in the interest of a well-ordered society. Lawyers do not oppose change—they oppose only disorderly methods of transition. We need not surrender these principles in order to meet the challenge of our times. But as a profession we do need to devote greater effort than in the past to improve law, and the administration of justice, for the betterment, and the security, and the happiness, of mankind. (Robert G. Story, The Legal Profession and Criminal Justice (1953), 36 J. Am. Jud. Soc'y 166, at p. 173)

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[32] See Koschaker, Keilschriftrecht, pp. 29-32.