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LAW AND AUTHORITY IN ANCIENT MESOPOTAMIA

By

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Submitted in partial fulfillment for the
requirements of the Degree of Master of Arts
in the History Department of the
American University of Beirut.

Beirut, Lebanon
Summer 1965

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PREFACE

The writer got the idea for the topic of this thesis upon reading an article by E.A.Speiser on "Cuneiform law and the history of civilization" in the Proceedings of the American Philosophical Society, Vol. 107, No. 6 (1963) at the French Archaeological Institute in Beirut. Most of the work on the thesis was done at the Institute. The writer wishes therefore to thank Mr. Abdul-Nur of the Institute very much for allowing him to use the library books freely and without reserve.

Chapters I-III of this thesis deal with law-codes as the basic textual guide to the study of cuneiform law. Chapter IV deals with legal procedure in ancient Mesopotamia and establishes the foundations for the following chapters on the concepts of law and authority by showing that the judicial assembly in ancient Mesopotamia was "democratic."

Chapter V deals with the concept of law, demonstrating that "law" belonged to cosmic order, and thus was above the whims of a particular ruler, or even a particular god. Chapter VI on

the concept of authority continues the argument by demonstrating that authority did not reside in any one individual but in a corporate assembly, thus protecting the individual citizen from autocracy. The conclusion deals with the significance of Mesopotamian law and its influence on other societies in the ancient Near East. Appendix I tries to trace some effects of existing written law on the religious and moral suppositions of the ancient Mesopotamians, and Appendix II is a note on chronology, establishing the dates used throughout the thesis.

The writer wishes to extend his deep gratitude to Dr. W.A.Ward, his advisor, for his valuable advice in the preparation of this thesis; to Distinguished Professor Charles Malik and to Professor Joseph Malone for their help; to Mr. Wolfgang Priglinger of the University of Vienna for preparing a resume of an important German article which is quoted extensively in Chapter II; and to his wife Sofia who has typed this thesis.

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ABBREVIATIONS

- AASOR Annual of the American Schools of Oriental
Research.
- AJA American Journal of Archaeology.
- ANET J.Pritchard, Ancient Near Eastern Texts Relating
to the Old Testament. 2d ed., revised; Princeton:
Princeton University Press, 1955.
- Ass.Laws G.R.Driver and J.C.Miles, The Assyrian Laws.
Oxford: At the Clarendon Press, 1935.
- Bab.Laws G.R.Driver and J.C.Miles, The Babylonian Laws.
Vol.I; Oxford: At the Clarendon Press, 1952.
- CAD I.J.Gelb, Th.Jacobsen, B.Landsberger, A.Oppenheim,
The Assyrian Dictionary. Chicago: Oriental
Institute. Vol.H: 1956. Vol.D: 1959.

- CE Laws of Eshnunna.
- CH Laws of Hammurabi.
- CL Laws of Lipit-Ishtar.
- Hitt.L. The Hittite Laws.
- JAOS Journal of the American Oriental Society.
- JNES Journal of Near Eastern Studies.
- MAL Middle Assyrian Laws.
- "Mesopotamia" Th.Jacobsen, "Mesopotamia" in Before Philosophy.
Reprinted. Penguin Books: Harmondsworth,
Middlesex, 1961.
- P.A.P.S. Proceedings of the American Philosophical Society.
- RA Revue d'Assyriologie.
- ZA Zeitschrift für Assyriologie.

CHAPTER I

LAW COLLECTIONS ANTE-DATING HAMMURABI

Law and reform are concerned with justice in society. When the idea took form that justice is something to which man had a right, law-codes became possible. During the second millenium B.C. "justice as right rather than justice as favor became the general conception"¹ in Mesopotamia:

Let the oppressed man who has a cause go before my statue "king of Justice" (stele inscribed with the law-code) and then have the inscription on my monument read out and hear my precious words, that my monument may make clear (his)case to him, let him see the law which applies to him, (and) let his heart be set at ease . . ."²

¹"Mesopotamia", p.223.

²G.R.Driver and J.Miles, The Babylonian Laws II, (Oxford: Clarendon Press, 1955), p.97, from the epilogue to the code of Hammurabi (1792-1750 B.C.).

The main part of the activity of the early rulers of Mesopotamia in the field of legislation consisted of commands aimed at some particular situation like the building of a temple, or waging a war. "The main body of 'general law' which regulated Mesopotamian society was presumably unwritten common law."¹ The first intervention in this legal order for which we have written proof is that of Urukagina.

The study of law in Mesopotamia begins with the study of the reform of Urukagina, king of Lagash around 2400 B.C. The text² of this reformer says nothing concerning the causes which lead to the corrupt state of affairs at Lagash which necessitated the reform. It is possible that the city reached this

¹T.Jacobsen, JNES II(1943), 160.

²Three duplicate versions of Urukagina's text have been found at Lagash; Kramer published all three in an appendix to his recent book The Sumerians, (Chicago: The University of Chicago Press, 1963), pp.317-323. This discussion is based on Kramer's translation. M.Lambert's "Les réformes d'Urukagina," RA 50 (1956), pp.169-184 has also been consulted.

condition as a result of the wars which Ur-Nanshe (2450 B.C.) and the kings of the Dynasty he established, waged. As is both usual and necessary in a state of war, these kings must have taxed the citizens harshly. After some early victories, Lagash was reduced to its former boundaries in less than a hundred years. But the taxes proved to be profitable and the palace bureaucracy was very unwilling to relinquish them.¹ This was the state of affairs when Urukagina came to power. This is how the document describes the situation:

Formerly from days of yore, from (the day) the seed (of man) came forth, the man in charge of the boatmen seized the boats. The head shepherd seized the donkeys. . . . The oxen of the gods plowed the onion patches of the ensi (and) the onion (and) cucumber fields of the ensi were located in the gods' best fields The houses of the ensi (and) the fields of the ensi, the houses of the (palace) harem and the fields of the (palace) harem, the houses of the (palace) nursery and the fields of the (palace) nursery crowded each other side by side. From the borders of Ningirsu to the sea, there was the tax collector²

¹Kramer, The Sumerians, pp.79-80.

²Ibid., pp.317-318.

And these were not the only abuses. In case of debt or non-payment of taxes, the citizens were thrown in jail; and palace officials "confiscated" property belonging to the citizens. For a divorce, a man had to pay six shekels, five to the ensi and one to his vizier, and (significantly) the ensi used the temple and its property as if it were his own.¹

In case of burial, citizens had to pay death duties in bread, date-wine, barley, and various furnishings (a bed for

¹By this, the ensi, being a secular officer, must have offended the priests, and a struggle between the ensi and priests must have been the background for Urukagina's reform. I.M.Diakonoff, the foremost Russian authority on early Sumer thinks so:

"To me it seems most probable that the 'reforms' were the outcome of a struggle of the priests and aristocracy (standing for the economic and political autonomy of the temple estates) against the ruler, who sought to strengthen his economic estates. The ruler was supported by the state administration and by a part of the temple personnel opposed to the priests. Possibly the citizens of Lagas outside the temples had also a hand in the struggle. Lugal-banda and his wife administered the most important temple estates in person and must have met with considerable opposition from the sangas and the other priests, who formerly held the temple estates in their own hands . . . ; Urukagina, on the other hand, must have been a creature of the priests. As can be seen from the texts, the priests gained from the reforms."

example); and tax-collectors were to be found everywhere, making the palace prosperous and the citizens poorer. Blind men were forced to work in the fields, and the poor were made to sell their land at a low price and against their will. "The indigent, the poor, the orphan, and the widowed were mistreated and deprived in one way or another of what little they had by men of power and influence."¹

Urukagina did the following things:

He banned the man in charge of the boatmen from (seizing) the boats, he banned the head-shepherds from (seizing) the donkeys and sheep . . . He banned the bailiffs from the tax of the sanga's² which (used to be) carried to the palace.³

He also abolished the old practice of paying the ensi and his vizier in cases of divorce, and reduced the amount that had

¹Kramer, The Sumerians, p.81.

²A kind of priest. See Diakonoff, RA 52(1958), p.12.

³Kramer, The Sumerians, p.318.

to be paid in cases of burial. Urukagina, then, returned the temple property "to the gods" (that is, to the priests) and claims to have rid the city of all tax-collectors! Finally, he promulgated two ordinances to forbid officials of the palace from forcing other citizens to sell their property against their will.

Urukagina's reform text is the prototype of all the later prologues to written law-codes; those of Ur-Nammu, Lipit-Ishtar, and Hammurabi immediately remind us of it. We do not know if he himself promulgated his reforms in the form of laws. But it might be significant to note that, while in the prologues to be discussed later, the kings speak in the first person -- I, Ur-Nammu (did this or that); etc. -- Urukagina's text speaks of him in the third person: He, Urukagina (did so and so). It is possible that while we have official announcements in the law-codes of Ur-Nammu, Lipit-Ishtar and Hammurabi, the text of Urukagina is a secondary account of his reforms.

The Laws of Ur-Nammu.

The Ur-Nammu law-code, known only from a later copy, is

inscribed on a tablet excavated about sixty years ago by an expedition of the University of Pennsylvania, and is now in the Istanbul Museum. No strategraphic information regarding its find-spot is available. Judging from the writing, Kramer ascribed the copy to the early post-Sumerian period (around the time of Hammurabi) and regards it as a faithful rendering of an original going back to the days of Ur-Nammu himself (2113-2096 B.C.). He finds no reason to suspect its being a later composition.¹

The code consists of a prologue followed by laws. The prologue can be divided into three sections. The first is "theological," dealing with the choice of Ur as the seat of kingship over Sumer and Akkad and also introduces certain ritual practices. An and Enlil, the leading deities of the Sumerian pantheon, after creating the world and deciding the fate of Sumer and Ur, chose Nanna, the moon-god, as king of Ur. Nanna, in turn, chose Ur-Nammu as his representative on earth to rule over Sumer and Ur.

¹Kramer, Orientalia, 23(1954), 42.

The second section is "historical" and narrates Ur-Nammu's military deeds. In particular, it is concerned with his war against the city-state of Lagash which had been expanding at Ur's expense. He defeated and killed Namhani, the ishakku (priest-king) of Lagash,¹ and reestablished Ur's former boundaries.

The third and larger section deals with Ur-Nammu's reform. First it lists the abuses current at the time. Then it informs us that Ur-Nammu removed the "grabbers" of the citizens' oxen, sheep and donkeys. After this it narrates how he proceeded to regulate the weights and measures current throughout the country. Finally, he made sure that "the orphan did not fall a prey to the wealthy," "the widow did not fall prey to the powerful," and "the man of one shekel did not fall a prey to the man of one mina (sixty shekels)."²

¹This is important because this reference to Namhani who ruled Lagash before Gudea, settles a long argument. It proves that Gudea was not a predecessor of Ur-Nammu, but at least a contemporary since Gudea came to office some time after Namhani. Kramer, Orientalia 23(1954), 45.

²Ibid., pp.40-51.

Following the prologue, there are twenty-two laws preserved, only five of which can be translated with any degree of certainty. These five deal with witchcraft, the return of a runaway slave, and personal injury.¹ The Ur-Nammu code in all probability knows only two social classes: the freeman and the slave, and shares with the Lipit-Ishtar code the absence of the Hammurabi muškinum (villein)² class.

The prologue is a striking parallel to the reforms of Urukagina, pointing out the nature of Ur-Nammu's laws as a reform:

At that time there were the . . ., there were the duties (?) (and) the "big" sailors (?), there were those who forcefully seized the oxen, seized the sheep, seized the donkeys³ . . .

Then did Ur-Nammu, the mighty man, the king of Ur, the king of Sumer (and) Akkad, by the power of Nanna, the city's king, and by the . . ., establish justice in the land, (and) by force of arms, did he turn back evil (and) violence.⁴

He did away with (?) the duties, the "big" sailors⁵ (?), those who forcefully seized the oxen, seized the sheep, seized the donkeys, the . . . of Sumer (and) Akkad.⁶

¹Ibid., p.42.

²The muškinum is inferior in rank and circumstances to the ordinary free man but superior to the free man's slave. Driver and Miles, The Babylonian Laws I, p.92.

³Ll.97-103; ⁴Ll.104-116; ⁵Meaning obscure; ⁶Ll.117-123.

From this it seems that the reform involves primarily the injustices practiced by a corrupt bureaucracy on the citizenry.¹

There are parallels for laws in Ur-Nammu's code in the Eshnunna law-code, in the Hammurabi law-code, and in Hittite laws.²

The great interest of the Ur-Nammu laws is that they prove that already in Sumer, the lex talionis, or principle of "an eye for eye, and a tooth for a tooth" had already been superceeded, if it ever existed there:³ "If a man to a man, with a weapon, severed his bones, 1 silver mina he shall pay."⁴

The more barbaric principle, based on the theory that the punishment should fit the crime, and found in the later laws of

¹Kramer, Orientalia 23(1954), 46, note 1.

²Law 10 corresponds with CH par.2; law 15 with CH par.17. Law 16 with CE par.45 and law 11 of the Hittite laws (Goetze, A.N.E.T., pp.163-189). Law 17 with CE par.42 and law 13 of the Hittite laws. These laws have to do with witchcraft, a runaway slave, and injury.

³H.W.F.Saggs, The Greatness that was Babylon, (London: Sidgwick and Jackson, 1962), p.200.

⁴Kramer, Orientalia 23(1954), 48, law 17.

Hammurabi, Assyria, and the Old Testament reflects the unmodified practice of the Semites.¹

The law-code of Lipit-Ishtar.

The law-code of Lipit-Ishtar, king of Isin, (1934-1924 B.C.) who ruled half-way between Ur-Nammu and Hammurabi, is the most complete law-collection that has been preserved in Sumerian. It is inscribed on four fragments (originally part of one tablet) which were recovered from the mound of the ancient city of Nippur by the University of Pennsylvania's expedition at that site in the years 1889-1900. The fragments are now in the University Museum of the University of Pennsylvania. The significance of these fragments was not recognized until Steele studied and published them in 1948.

The Lipit-Ishtar code begins with a prologue of almost a hundred lines. The opening paragraphs are badly damaged, but the content can be reasonably restored from similar passages in the

¹"Your eye shall not pity; it shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot."
Deut. 19:21.

contemporary literature of Lipit-Ishtar himself.¹

After recounting the selection of the goddess Ninisinna as the tutelary deity of Isin, the prologue records the selection of king Lipit-Ishtar by Anu and Enlil as the one "to establish justice in the land" and "bring forth well-being to the Sumerians and Akkadians." The text breaks off after two paragraphs which relate that the king emancipated the enslaved peoples of Nippur, Ur and Isin. Then follows the body of the legal text.

We have no idea what type of legislation the first half of the code contained because only a few traces of laws remain from the obverse of the tablet. However, about two-thirds of the reverse can be restored from the extant fragments, furnishing a fairly clear picture of the content and arrangement of this section.

The tablet is divided into columns. Two fragmentary laws regarding the hire of boats are all that remain of column XI. Columns XII and over half of column XIII were apparently concerned with legislation regarding real estate, dealing largely with

¹F.R.Steele, "The code of Lipit-Ishtar," AJA 52(1948), 427.

regulations for orchards. Line 35 of column XIII introduces a section of six laws concerning various degrees of servitude. There follow two paragraphs - largely destroyed - bearing on the royal fief. A series of laws regarding the rights of inheritance and marriage begins at the end of column XIV and continues through the beginning of column XVIII. The final intelligible laws cover damage penalties arising from accidents to rented oxen. In all, there are just under forty laws, of which nearly half are to some extent damaged and difficult to understand.

An epilogue of over a hundred lines concludes the code, but the damaged condition of the last column and the gaps in the preceding column render about two-thirds of the text unintelligible. The extant text explains that Lipit-Ishtar, having received the law from Utu¹ through the mediation of Enlil, "caused righteousness

¹The prologue seems to imply that Enlil gave the law to Lipit-Ishtar (col. I, 1.2). In the stele of Hammurabi, Shamash is represented as "giving" the law to Hammurabi, and the prologue refers also to Marduk in this connection. The explanation could be that Enlil and Marduk are referred to because they are the supreme deities of the two respective pantheons, the Sumerian and Akkadian; and Utu and Shamash are referred to because they are the gods of justice.

and truth to shine forth." After a break of twenty lines we find the customary pattern of blessings on those who will respect, and curses on those who might desecrate the stele.¹ The list of gods whose power is invoked in curses is largely destroyed. Steele, the major editor of this text, suggests 1860 B.C. as the date of compilation of this law-code.²

More than twenty of the Lipit-Ishtar laws correspond closely to laws in the later code of Hammurabi. CL pars. 4-5 (hire of boats) suggests CH pars. 236-240. CL pars. 7-10 deal with orchards and their general legal background very much like CH pars. 59-65. CL pars. 18-19 (tax obligations) correspond to CH 30-31. The parallel consists primarily in that a period of three years' grace is extended before the confiscation of the property for a tax debt.

¹Col.XIX, ll.36-37 "Verily when I had established the wealth of Sumer and Akkad, I erected this stele." So it seems Lipit-Ishtar erected a stele of which the fragments we have are a copy. Also, CH concludes by devoting 290 lines of curses which follow 16 lines of blessings . . . In steles containing other than law-codes where the customary abundance of curses is noticeable: The Stele of Vultures of Eannatum, and Statue B of Gudea of Lagash. Such curses are very frequent in antiquity.

²The date 1934-1924 B.C. given by the writer for Lipit-Ishtar is according to the Middle Chronology. Steele's date is according to the Low Chronology. Steele, AJA 52(1948), p.430. See below, Appendix II.

CL pars. 20-33 treat family laws generally. CL 24 parallels CH par. 167 and CL par. 25 parallels CH par. 171. The latter have to do with children of a slave mother who, in both cases, have no right in the division of their free father's estate.¹ CL par. 27, which has to do with children of a harlot, parallels CH pars. 144-147 (regulations regarding betrothal). CL par. 29 parallels CH pars. 159-161 in that the betrothal is broken off by the parents of the girl on account of the interference of a companion of the prospective groom. CL par. 32 parallels CH par. 166 in its general import that an elder son should get married before a younger. Many laws have no parallel whatsoever in the code of Hammurabi.²

The prologues of the Lipit-Ishtar and the Hammurabi law-codes bear a strong resemblance to each other, their structure and general content are similar. The difference arises from the many additional references to cities and gods found in the code of the Babylonian king.

¹For a discussion of social classes in the CL see E. Szlechter, RA 51(1957), 180-189.

²For example, CL pars. 14, 26, 28, 30.

The law-code of Eshnunna.

There remains to be discussed only one pre-Hammurabi law-collection, that of Eshnunna. Unlike those of Ur-Nammu and Lipit-Ishtar, it is written in Akkadian. It is for this reason that this code has been left to the end even though it antedates the code of Lipit-Ishtar by approximately a hundred years.¹

The laws of Eshnunna are inscribed on two tablets which were discovered between 1945 and 1949 during the excavations by the Directorate General of Antiquities of Iraq at Abu Harmal, a small mound near Baghdad. Taha Baqir was the first to recognize the nature of the two tablets.² Abu Harmal was a small outpost of the kingdom of Eshnunna during the Old Babylonian period (between the end of the Third Dynasty of Ur and the reign of Hammurabi, king of Babylon).

The two tablets under discussion (referred to as A and B) are now in the Iraq Museum. Tablet A is the larger of the two and is almost complete, but it is very difficult to understand because

¹No exact date is possible. For the reasons see AASOR XXXI(1956), 4-5.

²T.Baqir, Sumer IV(1948), 52-54.

of the crowded manner in which it was inscribed and because the surface has been considerably damaged. Tablet B is the lower half of a tablet in a good state of preservation. Goetze made a full study of the tablets,¹ and came to the conclusion that they were private copies, perhaps the product of a scribal school in which the laws were copied and recopied for the instruction of scribes.²

Instead of a prologue the CE contains a list of prices for ordinary commodities (barley, "light oil," sesame oil, lard, "river oil," wool, salt, cardamun, copper, refined copper); the price is given in shekels of silver.³ In comparison with other lists of prices (those of Samsi-Adad I of Assyria and Sin-Kasid of Uruk - Old Babylonian Period⁴ - the Eshnunna list is found to be highly accurate and probable.⁵

¹A.Goetze, "The Laws of Eshnunna," AASOR XXXI(1956).

²Ibid., p.14.

³Ibid., pp.24-25.

⁴These prices are suspect of being highly fictitious because the kings in question liked to boast how great prosperity was during their reigns; consequently how inexpensive life was. Ibid., pp. 28-30.

⁵Ibid.

CE pars. 1-11 contain the list of prices, CE pars. 12-13 have to do with penalties for trespass and unlawful entry (by day a fine, by night death). There is a parallel to this in the Hittite laws, but the Hittite attitude is milder, the punishment being merely a fine.¹

CE pars. 14-21 deal with various business transactions. They include fees for the carriage of money by an agent, and different business regulations. For example, brokers are not permitted to accept basic commodities or silver from slaves for the purpose of speculation, nor are they permitted to make loans to slaves or minors. The bride-money handed to a girl's father remains the property of the suitor until the girl enters the latter's house. If the bride dies childless after the consummation of the marriage, the husband keeps the dowry but cannot recover his bride-money.

CE pars. 22-24 deal with unlawful distraint upon a slave-girl or a wife. The code of Hammurabi discusses the same in par. 114, but with slightly different results,² that is, instead of

¹Ibid., p.54. Hittite laws, pars. 93-95.

²Ibid., p.81.

full compensation for the slave-girl as in the CE, a fixed sum - 1/3 mina of silver - has to be paid in the CH.

Engagement and marriage are dealt with in CE pars. 25-28. The suitor who serves the girl's father in lieu of the bride-money and is then defrauded of the girl receives a two-fold compensation. The penalty for the rape of a betrothed girl is death; and cohabitation without a contract does not give a woman marital status.

CE par. 25 corresponds to CH par. 29,¹ CE par. 26 both to CH par. 130 and Deut. 22:25-7.² CE pars. 29-30 state that a husband loses his right over his wife by voluntary desertion but not by absence from force majeure. This corresponds to CH pars. 134-136.³ In CE par. 31 a fine is imposed for deflowering another man's slave girl. CE pars. 32-35 are regulations governing foster-

¹ Ibid., p.81.

² Ibid., p.82. Deut. 22:25-27:

"If a damsel that is a virgin be betrothed unto a husband, and a man find her in the city, and lie with her; then ye shall bring them both out unto the gate of that city, and ye shall stone them with stones that they die."

³ Ibid., p.86.

parents and the ownership of the children of slave women. CE pars. 36-37 deal with liability in the event of the loss of property deposited for safe-keeping, and CE pars. 38-41 with regulations concerning certain sales and purchases. The former correspond to CH par. 125,¹ and the latter to Lev. 25:29ff.²

CE pars. 42-48 list the fines for assaults and injuries. In more serious cases the culprit must be tried before the king in the event of the death of the injured. CE pars. 49-52 deal with theft and the flight of slaves. The former compare both to CH par. 7 and 196 and to the Hebrew laws (Ex. 21:23ff, and Deut. 1:9-21),³ and there is also a very close parallel to them in CL (Lipit-Ishtar) par. 12.⁴ CE pars. 53-58 deal with the responsibility for the damage caused by an ox, dog, or collapsing wall, and is paralleled by Ex. 21:35 and CH par. 251.⁵ The last

¹Ibid., p.102; ²Ibid.; p.113; ³Ibid., p.121.

⁴Ibid., p.130; ⁵Ibid., pp.138-139.

intelligible law is CE par. 59 and it deals with a husband who illegally divorces his wife who has borne him sons; in such a case the husband has to forfeit his house and property.¹

These cross-references, especially to the code of Hammurabi, emphasize the common legal background of Mesopotamian laws. We turn now to the most famous collection of these, that of Hammurabi.

¹
Ibid., p.145.

CHAPTER II

LAWS OF HAMMURABI

Discovery of the laws

In 1902, while excavating the ancient mound of Susa, the ancient capital of Elam, Scheil found a cone-shaped monument 2.25 meters high. It was broken into three pieces, and when these were assembled, the monument showed the sun-god of Babylon (Shamash) receiving the tribute of Hammurabi, king of Babylon (1792-1750).¹

The text of the code of Hammurabi was engraved below this scene, and its discovery was not entirely a surprise, for both Pieser and Meissner had published tablets containing some laws which the latter assigned to the time of Hammurabi.² And Delitzch in 1902, before the publication of the text of the

¹Fixing Hammurabi's exact date is still one of the problems of ancient Near Eastern chronology. See Appendix III "A note on chronology".

²Bab.Laws, p;27. (Original source: Meissner, Beitrage zur Assyriology und Vergleichendehn Semitischen Sparachewissenschaft III (abb. BASS), pp. 492-523.

laws, had already conjectured that Hammurabi had issued a unified code of laws.¹

Nobody knows for sure how the stele was carried off to Susa, or when this was done. Scheil suggests that Sutruknahtunte, king of Elam² (1150 B.C.) transported it after a raid on Babylon.³ No other text of the laws has been found which is as complete as the one inscribed on this stele. It stands now in the Louvre.

But a number of fragments of the laws have been found, although badly damaged. Scheil found three small fragments of diorite when he uncovered the stele which seem to have been part of another stele engraved with the law-collection. In addition to these there are some fragments of clay-tablets which contain laws of Hammurabi: four are Old Babylonian, three Middle-Assyrian, two Neo-Assyrian, and three Neo-Babylonian.⁴

¹Ibid., p.28 (original source BASS IV, p.80).

²The Elamites were a non-Semitic people whose country was the highland in the mountains, east of the Mesopotamian plain and whose capital city was Susa.

³Bab.Laws, pp.28-29.

⁴Ibid., pp.29-30.

The law-collection begins with a prologue and ends with an epilogue. Both take up nearly ten columns; and the remaining columns, of which a number have been erased,¹ include the laws themselves. The different fragments referred to above give an additional 215 lines of text which originally stood in the erased portion of the stele. Something which amounts to half of the erased text is still lost since the erased part amounts to approximately 375 lines (or 518, depending on whether you count 5 or 7 lost columns).²

Date of the laws.

Hammurabi ruled for forty-three years, and spent most of his reign in the battle-fields acquiring his empire. The text of the laws has nothing definite to say about exactly when during his reign he promulgated the law-code. The date formula of his

¹Five according to Scheil; seven according to Ungnad.
Ibid., p.28.

²Ibid., p.34.

second year: "He established justice in the land," and again that of his twenty-second year: "The statue of Hammurabi (as king of justice"¹ do not offer much hope. Not only because they seem to cancel each other in this respect, but also because he refers in the prologue to events subsequent to his twenty-second year. For example, the mention of the foundation of a wall at Sippar² and the restoration of a temple and a tower at Kish.³ He also mentions places belonging to his dominion which he conquered after his twenty-second year, like Malgum,⁴ Larsa,⁵ and Mari.⁶ He also refers to the defeat of the Subareans.⁷ The

¹For the date-formulae of Hammurabi see A.N.E.T., pp. 269ff.

²23d, 25th and 43d years. (CH tab.iiia, ll.24-25).

³36th year. (CH col.iiia, ll.56-65).

⁴27th year. (CH col.iva, ll.11-16).

⁵31st year. (CH col.iiia, ll.32-33).

⁶33d year. (CH col.iva, ll.29-30).

⁷37th and 39th years. (CH col.iva, ll.11-16, 29-30).

titles of Hammurabi's second and twenty-second years could be a mere announcement that he intends to govern his subjects with justice.¹

Theoretically it is more probable that he promulgated his laws after the conquest of the whole country, for he would then be in a better position to enforce them. The reference to campaigns in the prologue up to his 39th year also point to his fourtieth year as the earliest possible date for the promulgation of the laws in their present form.²

The prologue to the laws.

The prologue is written in verse, and is thoroughly religious in content. It begins by saying that the father of the gods and the god of heaven had given hegemony over all

¹Bab.Laws, p.36.

²That is, the code-stele at the Louvre, because these references to deeds in later years prove only that the stele was not inscribed earlier, but not the law-collection as such. T.J. Meek believes that the date-formula for Hammurabi's second year "indicates that he promulgated his famous law-code at the very beginning of his reign." A.N.E.T., p.163.

creation to Marduk, the tutelary god of Babylon and named this city Babili. Finally they called Hammurabi "to make justice appear in the land, to destroy the evil and the wicked, (in order) that the strong might not oppress the weak."¹

A list of the events of Hammurabi's reign then follows. It contains the cities he conquered, or "liberated". He brings prosperity to them and restores their temples. The prologue ends with Hammurabi's statement that "when Marduk commanded me to give justice to the people and grant them good governance, I set forth truth and justice within the land and prospered the people."² The text of the laws then follows.

The importance of the prologue is that a study of the historical events to which it refers, permits us to date approximately the year of its promulgation (discussed above). It also is important as a "literary composition of high order."³

¹CH col.ia, ll.32-39. If not otherwise indicated all quotations from the CH are from Driver and Miles translation in Bab.Laws II.

²CH col.va, ll.14-24.

³Bab.Laws, p.37.

It is to be noticed that both Shamash, the god of justice, and Marduk are said to have ordered Hammurabi "to set forth justice in the land."¹ Shamash is also referred to as the sun-god and as having his temple at Sippar restored.²

The epilogue to the laws.

Hammurabi begins by stating in the epilogue that these are the "just laws" (dinat mišarim)³ which he has established. He continues then:

(In order) that the strong may not oppress the weak, to give justice to the orphan and widow, in Babylon the city whose top Anum and Illil have raised on high, in Esagil, the house whose foundations are established like heaven and earth, to judge the judgements of the land, to decide the decisions of the land (and) to give justice to the oppressed, I have written my precious words on my monument and established them before my statue called "king of Justice."⁴

¹ Ibid., p.28. See Supra p.13, footnote 1.

² CH col.ia, ll.40-42; col.ia, ll.23-25, 34-36.

³ CH col.xxivb, ll.1-2.

⁴ CH col.xxivb, ll.59-78.

It seems from this and other references¹ that Hammurabi had placed a copy of his law-code in Esagil, the temple of Marduk in Babylon, and this copy could possibly be the stele that was found at Susa or a stele very similar to it.

Finally, Hammurabi asks those who are to come after him to maintain his laws and not to desecrate his reliefs. He promises them that if they do as he wishes they will enjoy prosperity in their own days. He then concludes by devoting 290 lines of curse upon any of them who disregard his wishes.

One point should now be stressed, and it is that the general character of the laws is completely secular: ". . . In this respect they are strongly to be contrasted with the Hebrew laws; they are not a divine pronouncement nor in any sense a religious document."²

The prologue and the epilogue are written in verse, and are marked by a number of signs and grammatical forms which are unusual and archaic.³ The laws themselves are written in the

¹CH col.xxivb, l.87; xxvb, l.2.

²Bab.Laws, p.39.

³Ibid., p.40. Examples of these irregularities and archaisms are found in the footnote of page 34.

colloquial dialect (in prose) of Hammurabi's time which came later to be known as "Classical Babylonian."¹

The laws.

There are two-hundred and eighty-two laws inscribed on the stele between the prologue and the epilogue. These are the royal regulations by which Hammurabi intended to reform and unite the legal structure of the empire he had acquired in Mesopotamia.

This collection of laws must, however, not be considered a "code", in the sense of a "complete system of law," but "as amendments to the common law of Babylon, and it is therefore unfair to criticize (it) as such (i.e. as a code)."² That there is an order underlying the arrangement of the laws will be seen from the following synopsis of the laws:³

- I. Offences against the administration of justice
 - A. False charges (pars. 1-2).
 - B. False testimony (pars. 3-4).
 - C. Falsification of judgement (par. 5).

¹Ibid., p.39.

²Ibid., p.41.

³Ibid., pp.43-45.

II. Offences against property.

- A. Stealing and receiving stolen property. (pars. 6-13).
- B. Kidnapping (par. 14).
- C. Harboursing fugitive slaves (pars. 15-20).
- D. Housebreaking and robbery (pars. 21-24).
- E. Looting a burning house (par. 25).

III. Land and houses.

- A. Tenure of fiefs (pars. 26-41).
- B. Duties of farmers (pars. 42-48).
- C. Debts of farmers (pars. 49-52).
- D. Offences connected with irrigation (pars. 53-56).
- E. Cattle-trespass (pars. 57-58).
- F. Cutting down trees (par. 59).
- G. Care of palm groves (pars. 60-A)¹.
- H. Offences connected with houses (pars. B-K).

IV. Trade and commerce

- A. Loans from merchants (pars. L-T).
- B. Commercial agency (pars. V-107).
- C. Inn-keeping (pars. 108-111).
- D. Fraud by a carrier (par. 112).
- E. Distraint and pledge of persons for debt (pars. 113-119).
- F. Safe custody or deposit (pars. 120-126).

V. Marriage, family and property.

- A. Slander of chief-priestess or married lady (par. 127).
- B. Definition of married lady (par. 128).
- C. Adultery (pars. 129-132).
- D. Remarriage in husband's absence (pars. 133-136).
- E. Divorce (pars. 137-143).
- F. Concubinage with slave-girls (pars. 144-147).
- G. Maintenance of diseased wife (pars. 148-149).
- H. Gifts from husband to wife (par. 150).
- I. Liability of spouses for debt (pars. 151-152).

¹ Letters refer to sections lost from the stele, but found on fragments. Supra pp. 23-24.

- J. Murder of husband (par. 153).
 - K. Incest (pars. 154-158).
 - L. Inchoate marriage (pars. 159-161).
 - M. Devolution of marriage-gifts after wife's death (pars. 162-164).
 - N. Gift to son inter vivos (par. 165).
 - O. Succession amongst sons (pars. 166-167).
 - P. Dishersion of sons (pars. 168-169).
 - Q. Legitimation (par. 170).
 - R. Widow's property (pars. 171-174).
 - S. Marriage of free women to slaves (pars. 175-176).
 - T. Remarriage of widow (par. 177).
 - U. Sacral women (pars. 178-184).
 - V. Adoption and nursing of infants (pars. 185-194).
- VI. Assaults and talion.
- A. Assault on father (par. 195).
 - B. Assaults on men (pars. 196-208).
 - C. Assaults causing miscarriage (pars. 209-214).
- VII. Professional men.
- A. Surgeon (pars. 215-223).
 - B. Veterinary surgeon (pars. 224-225).
 - C. Barber or brander (pars. 226-227).
 - D. Master-builder (pars. 228-233).
 - E. Boat-builder and shipman (pars. 234-240).
- VIII. Agriculture.
- A. Oxen (pars. 241-252).
 - B. Wrongful conversion of fodder by bailiff (pars. 253-256).
 - C. Hire of husbandmen (pars. 257-258).
 - D. Wrongful conversion of agricultural implements (pars. 259-260).
 - E. Hire of grazier (par. 261).
 - F. Duties of shepherds (pars. 262-267).
 - G. Hire of beast and wagon (pars. 268-272).
 - H. Hire of seasonal workers (par. 273).
- IX. Wages and rates of hire.
- A. Wages of craftsmen (par. 274).
 - B. Hire of boats (pars. 275-277).
- X. Slaves.
- A. Warranties on sale of slaves (pars. 278-279).
 - B. Purchase of slaves abroad (pars. 280-282).

Hammurabi was a reformer and legislator, but he did not claim that he had republished the whole existing law in an improved form.¹ The subjects which the laws have reference to must have been chosen simply because in the king's opinion they call for amendment or need to be emphasized again by republication. Therefore they do not wholly take the place of existing common law but only amend it.² The difficulty which arises here is that we are ignorant of this common or pre-existing law. But that our ignorance is not absolute and that sometimes the common underlying law can be inferred with some degree of certainty we owe to the thousands of documents (legal transaction and court cases)

¹Bab.Laws, p.45; cf. also Sidney Smith, Early History of Assyria, (London: Chatto and Windus, 1928), pp.318-319, and Ass. Laws, pp.12-15.

²It will be seen from CH par. 51 that existing law will continue to be in force where unaltered by the CH. In CH par. 51, Hammurabi refers to "the king's ordinances" (Bab. simdat Sarrim) which must have been existing law. Simdat Sarrim "are ordinances issued from time to time by a ruler to deal with some special matter, for example, to fix or vary the rates of exchange. (Bab.Laws, p.20). The CAD gives as meaning of Simdatu: 1. royal decree. 2. (specific) royal regulation. 3. temple regulation. It is used both in the sense of a promulgation of a decree and actions taken as a result of its promulgation. In specific royal regulation it refers to tariffs only in the CH. It refers also to court proceedings (LE par. 58:28) and also to transactions between private individuals, to sales contracts, and to animals. Its use in temple regulation is a later usage which appears only in the Neo-Babylonian period. CAD Vol.S, pp.194-196.

which have been preserved from ancient Mesopotamia; and of course to the preceding law-collections. It is to press this point that the detailed cross references between the different law-collections are noted.

That the CH is limited in scope will become apparent if we consider the subjects which Hammurabi omitted. Records of cases heard in court at Nuzi,¹ for example, suggest offences with which it is natural to expect the CH to deal with.² But the CH does not mention them. For example, CH par. 195 deals with striking one's father, but not with patricide, and pars. 253-255 with stealing grain advanced for sowing or feeding the plough-oxen but not with taking the straw and manure with it.³

It is true that these are omissions in detail, but the case becomes more important when a study of the CH itself shows "startling omissions, often of great importance."⁴ The CH deals for example with

¹E.Chiera, Excavations at Nuzi, (Cambridge: Harvard University Press, 1929).

²For various offences at Nuzi not mentioned in the CH, see C.Gordon, "Nuzi tablets relating to theft," Orientalia V(1936), 305-330, and Pfeiffer and Speiser in AASOR XVI(1936), 59-64.

³As at Nuzi. AASOR XVI(1936), 14-15, 23-31.

⁴Bab.Laws, p.47.

defaming a married woman or priestess but not with defaming a man. It deals with fiefs but contains no general law for such property, and the most important of contracts in ancient Mesopotamia, the contract of sale, is dealt with only incidentally and in connection with slaves.¹

This is sufficient to show that the "Code of Hammurabi" is not a code in the modern sense of the term. That it used existing material and did not invent the laws out of nothing will be seen from a detailed discussion of a specific subject, e.g. engagement and marriage, which occurs in the Lipit-Ishtar, Eshnunna, and Hammurabi "codes." This discussion will serve to point out the already existing common law of Mesopotamia which must have formed the background to all these law-collections. The three texts are as follows:

Lipit-Ishtar par.29:²

If a son-in-law has entered the house of his (prospective) father-in-law (and) he made his betrothal (but) afterwards they made him go out (of the house) and gave his wife to his companion, they shall present to him the betrothal-gifts which he bought (and) that wife may not marry his companion.

¹ Ibid.

² A.N.E.T., p.160.

Laws of Eshnunna:¹

If a man calls at the house of his father-in-law, and his father-in-law accepts him in servitude, but (nevertheless) gives his daughter to another man, the father of the girl shall refund the bride-money which he received two-fold.

Hammurabi par. 160:²

If a seignor had the betrothal gift brought to the house of the (prospective) father-in-law (and) paid the marriage-price, and the father of the daughter has then said, "I will not give my daughter to you," he shall pay back double the full amount that was brought to him.

In the two Akkadian versions (CH and CE) the girl, when her father has rejected her first suitor and repaid double the bride-money, is free to marry whomever her father chooses. This sounds very much like engagement for marriage in modern times, in the sense that it could be broken off. In the Sumerian version this "engagement" seems to be as strong a bond as marriage, in the sense that the girl is not allowed to get otherwise married (if we are to understand by "his companion" in the text "any other man" or "any man", and not take it literally to mean "his friend" or the man "who is with him").

¹A.N.E.T., p.162.

²A.N.E.T., p.173.

The two earlier collections (CE and CL) seem to point out a situation very much like that of Jacob serving in the house of Laban - that is, the son-in-law serves in his father-in-law's house for the bride-money. Nothing of the kind is found in the code of Hammurabi, and a "betrothal gift (biblum) appears instead.¹ In Goetze's opinion the transaction has become more business-like; it seems that in this instance "the patriarchal conditions which are still discernible in the earlier versions have been eliminated. They probably had become outmoded with the advance in the social and the economic structure which the country experimented in the Old Babylonian period."²

. . .

A recent and most important article on the law-collection of Hammurabi by F.R.Kraus sums up the present condition of research on the CH in Germany.³ In this article he studies the CH from the points of

¹For a discussion of betrothal gifts, see chapter III.

²A.Goetze, "Mesopotamian laws and the historian," JAOS 69(1949), p.118.

³F.R.Kraus, "Ein zentrales Problem des alt-mesopotamischen Rechtes: Was ist der Codex Hammu-rabi?" Genava VII(1960), 283-296. A long and detailed resume of the article was prepared for the writer by Mr.Wolfgang Priglinger, Ph.D. candidate at the University of Vienna.

view of content, form and final purpose.

The laws in general were understood as particular decisions; the difference, nevertheless, between the CH and the usual decisions of trials is that Hammurabi calls them "din Matim," meaning that each decision has some validity for every similar case in the whole country.¹

That the "laws" were actually particular judicial decisions explains the absence, among the many titles of Hammurabi, of that of "law-giver". The Old Babylonian king seems to have been a judge ex officio. He started trials, took part in a trial like any other judge, exercised his judicial authority in the last instance (after an appeal), and, in his name, the "judges of the king" made their decisions. Perhaps the Old Babylonian king was the judge in his country and all other judges have originally got their judicial authority from the king.

The king also had a duty to interfere in the present juridical condition in order to maintain or reconstitute an economical and social agreeable condition.² The word used here is misarum (justice, in the sense of an ideal and the official ethics of the judge).³

¹ Ibid., p.286.

² Ibid., p.287. See also Jacobsen, JNES II(1943), p.160.

³ For a discussion of misarum see chapter VI, "The concept of authority."

The form and style of the laws and their collection allows us to define them as literature. In relation to other Mesopotamian literature they belong to the so-called "scientific literature," by virtue of their form and characteristic style. This Old Mesopotamian scientific literature may be characterized in general as a systematic listing of subjects of interest in non-poetical form (i.e. without verse). According to the observations of Landsberger it depends only on the subject itself.¹

Hammurabi speaks of himself as both just and wise. While justice is the usual attribute of a judge, wisdom is never attributed to an Old Babylonian judge, emqum, "wise," is the typical attribute of a man of writing (scribe). Being a man of writing and literature, then, is the quality by which Hammurabi differentiates himself from the other kings.² Only Hammurabi combines both. His reason for writing the code was the enlightening of the common people (col.xxv, ll. 3-27) and providing a kind of hand-book for future kings (col.xxv, ll. 75-94). His work is supposed to have an effect by its quality: "My words are choice, my deeds have no rival; only for the unwise are they vain, for the profoundly wise they are worthy of all praise." (col.xxvb, ll. 100-105, xxvib, l.1). By these words

¹ Genava VII(1960), p.288.

² Ibid., p.290.

Hammurabi classifies the CH as a work of Babylonian science.¹

According to Landsberger² there are two heretofore unrecognized Old Babylonian texts which refer to particular passages of the CH. The first is a letter, therefore not dated, which refers to the tariff-regulation, in CH par. 274, 2.³ However, it refers to triple the amount of silver recorded on our copy of the CH. The second is a contract from Ur in which sanctions are provided for "according to the words of the stele."⁴ This case is not found in the incomplete text of the CH that we possess.⁵

Kraus thinks that it is possible, but undemonstrable, that Hammurabi wanted to create a unifying law for the empire he conquered.⁶

¹Ibid., p. 290-292.

²By oral communication to Kraus.

³Tablet in the Oriental Institute of the University of Chicago No. A35 29, ll.12ff, and ll. 6-10. It is unpublished.

⁴Ur Excavation Texts V, (1953) No.420, ll.13-15.

⁵Genava VII(1960), 292.

⁶Ibid., p.292.

The laws of Hammurabi are, then, a unique source for the history of civilization. They tell how the Babylonians married and divorced, and how they settled property. They give a picture of the kind of work of an ancient shepherd, and regulate the wages of agricultural labourers and craftsmen and fees of the doctor and surgeon. They treat of loans, of foreign trade, and the purchase of slaves. They show the care taken by the king of the weak and helpless, of the widow and priestess, and they do what they can to prevent injustice and corruption, oppression and extortion. And they still form the most complete, most important single legal document of Ancient Mesopotamia.

CHAPTER III

1

THE MIDDLE ASSYRIAN LAWS

While excavating Qal'at Sarqat, the ancient Assur, the Deutsche Orientgesellschaft recovered, in the years 1903-1914, three tablets and six fragments containing what are now known as the "Middle Assyrian Laws." The tablets are referred to alphabetically (A, B, C, ...).

These tablets are known to have been written down by different hands and at different dates. The date of their composition is probably between the reigns of Asur-Nirari II and Tukulti-Ninurta I (between 1450 and 1250 B.C.). Tablets C and G seem to be earlier than A and B,

¹The so-called "Old Assyrian laws" are contained on three fragmentary tablets acquired as a result of secret digging and therefore their archaeological source is unknown. But they definitely come from the Assyrian Karums (merchant colonies) in Anatolia during the Old Assyrian period (2100-1800 B.C.). Owing to the imperfect condition of these three tablets "any analysis of the text is in the highest degree precarious." Their contents have been described as "rules of court," or "the organization of a court," that is, it has to do with legal procedure, "the information, however, which can be gleaned from them in their present state is all too meagre." See Driver and Miles, The Assyrian Laws, p.3; pp.1-3; 375-379. However, they have bearing on the problem of the "Assembly," and will be referred to in chapter IV.

and the other fragments fall in-between those two groups.¹

The first thing which distinguishes these Assyrian laws from the laws of Hammurabi is that they do not form parts of one single document like the CH, and thus cannot possibly contain the whole corpus of Assyrian laws.² An analysis of tablet A will demonstrate for us the fact that the Assyrian laws were not sections of one "code." Tablet A's arrangement is such that it could never have been part of a "code." It is a collection of laws which concern only women: offences by or against them, and their right to property. Now, these subjects would have to be treated again in respect to other persons (nobles, freemen, slaves) in other parts of a supposed "code." It thus appears to be the work of a legislator who wanted, for one reason or another, to amend or republish the laws which pertain to women.³ As a matter of fact, all the Assyrian written laws are seen to be "a series of amendments of the existing laws which were either the Babylonian code itself or a body of laws of a closely related character."⁴

¹ Ass.Laws, pp.4+12.

² Ibid., p.12.

³ Ibid., p.14.

⁴ Ibid., p.15.

A detailed discussion of MAL par. 27 will serve to give us an idea of this situation:

If a woman is still dwelling in her father's house (and her husband has been visiting her), any settled property which her husband has given her, he may take (back) as his own; he may not claim what comes from her father's house.

In referring to gifts made on marriage and to married women's property the MAL makes use of several different technical terms. These are: the "gift" (Ass. biblum) and the "present" (Ass. zubullu);¹ the wedding gifts (Ass. huruppate);² the "bridal gift" (Ass. tirhatu);³ the "ornaments" (Ass. dumagi);⁴ the "dowry" (Ass. sirku);⁵ and the "settled property" or "settlement" (Ass. nudunnu) in MAL par. 27, the law under discussion. The compiler of these Assyrian laws does not deal exhaustively with the subject of these different gifts. There seems to be an assumption in the law-codes that the different nature

¹In MAL pars. 30-31.

²In MAL pars. 42-43.

³In MAL par. 38.

⁴In MAL pars. 25-26, and par. 38.

⁵In MAL par. 29

of these gifts is well known. Thus specific directions concerning them appear only in particular cases: when dispute is likely to arise concerning their disposal in the event of divorce or death.

The cause of such a dispute is to be found in the woman's place of residence. If she is dwelling in her father's house, her family might claim property belonging to her husband; if she was living with her husband, he might claim property belonging to her father's family. The general rule in Assyria was that property goes back to its original source if there are no sons to inherit it, since daughters do not inherit.¹ Thus, legislation is required only when there is risk that the original rule will be neglected, or when the law-giver wishes to introduce some exceptions to it.

This, then, explains why the "settlement" (nudunnu) in par. 27 is mentioned only when the wife is dwelling with her father, and the "dowry" (sirku) only when she has gone to her husband's house.² The opposite cases do not call for legislation. Since property goes back to its original source, the wife's family will retain what has come originally from the (the dowry) if the woman is living with them,

¹MAL, pars. 1-4.

²MAL, par. 29

and the husband will retain what has come from him, if the wife is living with him.

It seems that the Assyrian law-giver deals here with the "settlement" (nudunnu), only when the wife is living in her father's house (MAL par. 27). He wishes to supplement the law previously in force, which is possibly the CH or something very similar to it. For in the CH a wife who is dwelling in her husband's house retains, after his death, a life-interest in the "settlement" as well as the "dowry":

. . . The first wife shall take her dowry and settlement which her husband made her and assigned in writing to her on a tablet and may dwell in the dwelling-place of her husband; so long as she¹ lives she shall have the usufruct (of this property) . . .

This being the case new provisions in the MAL are made only in the case where the wife is living in her father's house, especially since the CH does not deal with such a case. That the MAL is a series of amendments to existing laws can also be seen in a study of other laws it contains, especially MAL pars. 29, 30, 38, 45, 46, 50, B1, C9. All show a situation like that which we found in our discussion of MAL par. 27.

¹CH par. 171.

CHAPTER IV

JUDICIAL AND LEGAL PROCEDURE IN ANCIENT MESOPOTAMIA

We can give no simple generalizations as to the manner in which justice was administered in practice to the citizen, for details of procedure differed widely in the course of the two millenia (3000-1000 B.C.) of legal history with which we are concerned. There is reason to believe that from early times decisions in private matters were made in the Assembly.

In the Assyrian merchant colonies in Asia Minor (Isin-Larsa period 2100-1800 B.C.) highest judicial authority resided in an assembly of all citizens:¹ "the colony, young and old." This general assembly was asked to meet by a clerk at the request of a majority of the senior members. He (the clerk) was not authorized to call for a meeting if he was asked by only one person, and was duly punished if he did so:

¹I.J.Gelb, Inscriptions from Alishar and Vicinity, (Chicago: The Chicago Univeristy Press, 1935), pp.1-18.

The clerk shall divide the burghers into three [and] they shall [give] judgement. Whether (it is) the board (?) or the officer(s) holding office for a fifth part of the year, the chief man [of the city] shall be present;

. they shall take their places . . . the clerk shall divide them into [three] and they shall settle [the affair]. Where they do not settle [the affair], on assembling (both) small (and) great [they shall settle the affair] of their (?) neighbours [at the mouth] of the majority, and . . ., [what-ever] his name is (who) is present, [at₁ the mouth] of the majority they shall settle the affair.

. . . They shall enjoin (the duty) of assembling (both) great (and) small upon the clerk in their assembly, and the clerk shall assemble (both) small (and) great; without the (permission of) the great men, (namely) the corporation (of free merchants), no one shall declare (the names of) the men (in charge) of the bank to the clerk and he shall not assemble (both) great (and) small. If the clerk without (the permission of) the great men has assembled (both) great (and) small at the command of₂ (any) one (person), the clerk shall pay 10 shekels of silver.

This general assembly was the highest legal authority in the colony, even representatives of the legal authorities of Assur (the mother-city) were under its authority for cases which involve a resident colonist.³ In these Old Assyrian texts the puhrum (assembly) and the

¹ Old Assyrian laws, Tablet I.

² Old Assyrian laws, Tablet II.

³ Jacobsen, JNES II(1943), p.163.

Karum (colony) are explicitly distinguished in the same text. The Karum refers to the whole trading colony while the puhrum refers to the Assembly of all the free men of the colony.¹

A cuneiform account of a murder trial in the Isin period (19th century B.C.) demonstrates clearly the part played by the king and the part played by the Assembly in judicial procedure. The case is first brought to the attention of the king, who in turn refers the case to the Assembly of Nippur. The latter directs the trial, hears the evidence, and finally pronounces the verdict. The text reads:²

Nanna-sig, the son of Lu-Sin, Ku-Enlil, the son of Ku-Nanna, the barber, and Enlil-ennam, the slave of Adda-kalla, the gardener, killed Lu-Inanna, the son of Lugal-apindu, the nishakku-official.

After Lu-Inanna, the son of Lugal-apindu, had been put to death, they told Nin-dada, the daughter of Lu-Ninurta, the wife of Lu-Inanna, that her husband Lu-Inanna had been killed.

Nin-dada, the daughter of Lu-Ninurta, opened not her mouth, (her) lips remained sealed.

Their case was (then) brought to (the city) Isin before the king, (and) the king Ur-Ninurta ordered their case to be taken up in the Assembly of Nippur.

¹Ass.Laws, pp.2-3.

²Kramer, History Begins at Sumer, pp.57-58, and Jacobsen in Studia Biblica et Orientalia, volumen III,; Oriens Antiquus (Rome: 1959), pp.136-138.

(There) Ur-gula, son of Lugal-..., Dudu, the bird-hunter, Ali-ellati, the dependent, Buzu, the son of Lu-Sin, Eluli, the son of ...-Ea, Shesh-Kalla, the porter (?) Lugal-Kan, the gardener, Lugal-azida, the son of Sin-andul (and) Shesh-Kalla, the son of Shara-..., faced (the Assembly) and said:

"They who have killed a man are not (worthy) of life. Those three males and that woman should be killed in front of the chair of Lu-Inanna, the son of Lugal-apindu, the nishakku-official."

(Then) Shu...-Lilum, the ...-official of Ninurta, (and) Ubar-Sin, the gardener, faced (the Assembly) and said:

"Granted that the husband of Nin-dada, the daughter of Lu-Ninurta, had been killed, (but) what had (?) the woman done (?) that she should be killed?"

(Then) the (members of the) Assembly of Nippur faced (them) and said:

"A woman whose husband did not support (?) her - granted that she knew her husband's enemies, and that (after) her husband had been killed she heard that her husband had been killed - Why should she not remain silent (?) about (?) him? Is it she (?) who killed her husband? The punishment of those (?) who (actually) killed should suffice."

In accordance with the decision (?) of the Assembly of Nippur, Nanna-sig, the son of Lu-Sin, Ku-Enlil, the son of Ku-Nanna, the barber, and Enlil-ennam, the slave of Adda-kalla, the gardener, were handed over (to the executioner) to be killed.

(This is) a case taken up by the Assembly of Nippur.

In brief, a temple official was murdered by three men, who later, for some reason, told the victim's wife of the murder. The wife kept it a secret. Somehow the king of Isin was notified of the

case, and he referred it to the Assembly of Nippur. In the Assembly nine men (the prosecution) asked that the three murderers and the victim's wife be executed, probably because she did not notify the authorities although she knew that her husband was murdered.

The defence (two men in this case) asked that the wife should be acquitted because she had no hand in the murder itself. The members of the Assembly agreed with the defence adding that "a woman whose husband did not support (?) her . . . why should she not remain silent . . ." The verdict concluded with the statement that "the punishment of those who actually killed should suffice."¹

This document mentions no judges, although these begin to appear from the time of Sargon (ca. 2370 B.C.) and before.² CH par. 5 speaks of judges as sitting with the Assembly:

If a judge has tried a suit, given a decision, caused a sealed tablet to be executed, (and) thereafter varies his judgement, they shall convict that judge of varying (his) judgement and he shall pay twelve-fold the claim in that suit; then they shall remove him from his place on the bench of judges in the assembly, and he shall not (again) sit in judgement with the judges.

¹It is interesting to note the opinion of O.J.Roberts (Associate Justice of the United States Supreme Court 1930-1945):

"The wife would not be guilty as an accessory after the fact under our law. An accessory after the fact must not only know that the felony was committed, but must also receive, relieve, comfort, or assist the felon."

It seems that in this legal case modern judges would have agreed with the Sumerian judges. Kramer, History Begins at Sumer, p.58.

²See CAB Vol.D, pp.28ff.

The judges seem to have sat in groups of three or four. The documents rarely mention a single judge, and in one case only is there a judge acting alone - possibly in this case he is president of the court.¹

Trials were usually held in the temples. There are references to trials held "in the temple of Samas."² One passage refers to "the house of judgement"³ which might be the temple, or possible an independent "courtroom." The latter speculation is rather far-fetched. As for the Hebrew practice of holding trials at the city gates,⁴ although there is no direct evidence, one document mentions "the gate of the judges" (Bab. bab daiyani)⁵ suggesting that trials may have occasionally been held at the city gate.

¹Babylonian Laws, pp.77, 490-491.

²(Bab. ina bit Samas), Babylonian Laws, p.492. Original source, A.Walther, Das altbabylonische Gerichtswesen, pp.210-212.

³(Bab. bit dinum), Ibid. Original source J.Kohler, P. Koschaker, A.Ungnad, Hammurabi's Gesetz III, 685 10.

⁴Deut. xxi:19 and xxii:15.

⁵Babylonian Laws, p.492. Original source C.Frank, Strassburger Keilschrifttexten in sumerischer und babylonischer Sprache, pp.32-33.

The Assembly was an organized body. This is shown by the mention of such officers as "the chief of the Assembly" (Bab. rab puhri).¹ The Assembly is mentioned in several places (i.e. Dilbat, Nippur, and Isin), and always appears in legal documents which have to do with judicial proceedings - acting as a court of law.² From the use of "town" and "assembly" as alternatives in the documents it seems that the Old Babylonian Assembly comprised all the free citizens of the town.³

¹Ibid., pp.78-79.

²Ibid., p.79.

³T.Jacobsen, JNES II(1943), 162-163. For example "In the assembly of Dilbat did Apil-ilishu and Eribam speak thus: 'None of the property that had disappeared turned up before (the god) Iptebitam. Now the property has turned up! As Dilbat commanded, the property was put (lit. "took (its) stand") at the disposition of Ninurta-mansi the kalu priest, but so that Nur-Shamash, Sin-erish the rakbu, Sin-Magir the son of Kamanu, Imgur-Sin the mayor, Ishmatum the son of Silli-Enlil, and Apel-ilishu the shangu are the ones who will have it counted. Eribam the son of Habit-Sin, who was made commissary for it, will take it back (namely to Ninurta-mansi after it has been counted)." After a report has been made "in the assembly of (the town) Dilbat", legal action is carried out as "Dilbat commanded." The Assembly of Dilbat is therefore spoken of as equivalent to the town itself.

That attendance in the Assembly was open to all free male citizens is also proven by a proverb which says:

"Do not go stand in the Assembly: do not wander to the place of strife. It is in strife that fate may overtake you, and you may be made a witness for them, . . . to testify in a lawsuit not your own."¹

This proverb presupposes that anybody who wanted to, could participate in the Assembly. This judiciary organization is "democratic in essence. Judicial powers are vested in the community as a whole, in an assembly open to all citizens . . ."² The evidence of the Old Assyrian colonies mentioned above has also led Koschaker to maintain that the Old Assyrian colonies in Asia Minor had a republican form of government.³

The Assembly had the authority, in case there was no agreement as to the facts between witnesses or between plaintiff and defendant, to ask for an oath at the temple.⁴ A refusal to take the oath is an

¹Ibid., p.163.

²Ibid., p.165.

³Paul Koschaker, "Cuneiform law, " in Encyclopaedia of the Social Sciences, vol.IX, (Eds. E.R.A.Seligman and A.Johnson, 1933), the Macmillan Co. New York, p.214.

⁴Saggs, The Greatness that was Babylon, p.218.

admittance of guilt. If neither parties admit guilt the Assembly subjects them to the Ordeal - that is, it will be left to the gods themselves to make the decision.¹ The procedure of the Ordeal is mentioned in CH par. 2:

If a man has charged a man with sorcery and then has not proved (it against) him, he who is charged with the sorcery shall go to the holy river; he shall leap into the holy river and, if the holy river overwhelms him, his accuser shall take and keep his house; if the holy river proves that man clear (of the offence) and he comes back safe, he who has charged him with sorcery shall be put to death; he who leapt into the holy river shall take and keep the house of his accuser.

When judgement was passed the Assembly made the two parties agree not to reopen the case again. The rationale behind this being that if both plaintiff and defendant accept the decision, then it is a just decision:

In the matter of the orchard of Sin-magir which Mar-Amurim bought for silver.

Anum-bani made a claim in accordance with a royal ordinance and they went to the judges and the judges sent them to the

¹Ibid., p.219. The procedure of this ordeal was that the guilty sinks and the innocent floats; a procedure which is contrary to the practice of the rest of the Semitic world. Bab.Laws, pp.63-65.

Bab-Ninmar shrine before the judges of the Bab-Ninmar shrine. Thus he said: "I am the son of Sin-magir. He took me for sonship and my official document (of adoption) was never cancelled." Thus he took the oath, and they [the judges] in pursuance of (the ordinance of king) Rim-Sin established the orchard and house as belonging to Anum-bani.

Sin-muballit [presumably heir of Mar-Amurim] returned [i.e. re-opened the case]. He claimed the orchard of Anum-bani, and they went to the judges. The judges sent them to the City [i.e. the city Assembly], and the witnesses. They stood in the gate of Marduk (near) the divine Shurinnu - emblem of Nanna, the divine Bird of Ninmar, the divine Spade of Marduk, and the Stone Weapon. When the former witnesses of Mar-Amurim said "At the Bab-Ninmar shrine they administered to Anum-bani the oath "I am indeed the son", they established the orchard and house (as belonging) to Anum-bani!"

Sin-muballit has (now) sworn by Nanna, Shamash, Marduk and King Hammurabi that he will not return and make a (nother) claim.

Before A the mayor, B, C, D, E, F, G, H, J son of K, L, M the Redu-officer, (and) N.¹
The seals of witnesses.

The royal ordinance of Rim-Sin which the document refers to is not known.² The reference, however, to a royal ordinance of Rim-Sin, the king of Larsa defeated by Hammurabi in his thirtieth year, in a text where it is sworn in the name of Hammurabi and different gods points to legal continuity and unity in ancient Mesopotamia as opposed to political disunity and discontinuity.

...

¹Saggs, The Greatness that was Babylon, pp.220-221.

²Ibid., p.221.

The legal documents from Mari,¹ which are contemporary to the first Dynasty of Babylon and which have some bearing on legal procedure are very few and in bad condition. Our knowledge is therefore only fragmentary. As far as we are able to judge, these texts do not present any fundamental difference from the judicial procedure of the first Dynasty of Babylon.²

In No.85,³ for example, the king himself (Zimri-Lim) exercises his judicial authority and passes judgement. It is probable that the king intervened in this case because it involved more than forty persons and because the piece of land disputed belonged to the palace.

In the texts, justice is rendered either by one (83, 84) or many (87) judges called either daiia-num⁴ (83, 87) or sapitum (84). We do not know whether the functions of these judges differed because of the difference in the names. That the judges were royal

¹ Georges Boyer, "Textes juridiques," Archives Royales de Mari, (Paris: Imprimerie Nationale: 1958).

² Ibid., p.238.

³ Ibid., pp.127-129.

⁴ Appears in Lipit-Ishtar par. 30, and CH pars. 5, 9, 13, 14, 168 and 172. The CAD vol.D, pp.28ff, gives meaning as "judge". They appear at Babylon, Sippar, Dilbat, Larsa, Kish, Nippur, Ur, and Adab.

judges seems to be a very possible supposition because the texts were found in the royal palace.¹

Women have full right to represent themselves in court (84).² Representation by somebody else is also possible. In 85, where forty men are involved two of the names are repeated in such a way as to suggest that they represent someone else in addition to themselves.

As to the legal issues, "la brièveté des textes et leur mauvais état ne permettent pas de se faire une idée bien précise de l'objet des litiges."³ 83 seems to deal with a personal case involving a sum of money and maybe cattle. 84, which is better preserved, concerns a judicial intervention between a woman by the name of Naramtum and a man by the name of Dada. The expressions used, especially the fact that they had already divided all goods found in their houses, suggest that they had a special relationship between them (?) but we cannot see what could be the origin of such a relationship.

¹Boyer, "Textes juridiques," p.238.

²Ibid., pp.126-127.

³Ibid., p.239.

No.86,¹ concerns a deposit of a large sum of money, a small quantity of gold, and some clothes. The gap in the text does not allow any definite conclusion on the case.

Of the means of proof used at Mari, only the oath of the god is mentioned (85).² The oath occurs without the name of the person involved.

Despite their fragmentary condition the texts at Mari, like those from Babylon, include a clause of irrevocability. Both parties accept the judgement as giving them satisfaction, promising not to break it and start the legal process all over again (No.84).³ Sometimes the imitation of the Babylonian model goes so far as to become a literal copy.⁴

The person who reopens a settled case would have to pay a heavy indemnity,⁵ in most of the texts 10 minas of silver. Three texts (12, 19, 53) seem to suggest another punishment without being precise about the nature of such a punishment. One is tempted to see

¹Ibid., pp.130-1;

²Ibid., No.85, l.49; ³Ibid., p.127.

⁴Ibid., p.165;

⁵Ibid., Nos. 1, 4, 8, 11, 12, 16, 17, 19.

a corporeal punishment as was the case at Alalakh.¹ All this is an attempt to assure the finality of the case and to forbid any attempt to question the judges' dispositions.

. . .

It is from a period a little later that we find numerous examples of legal proceedings. These documents come from fourteenth century Nuzi (a site near the modern town of Kirkuk). The population of Nuzi at the time was predominantly of Hurrian origin, but Nuzi, nevertheless, was within the sphere of Mesopotamian civilization; and "in law, especially, generic relationship is assured by the prevailing use of the Akkadian language, the cuneiform script, and the legal document, three outstanding features common to what has come to be called cuneiform law."²

We can establish no rule as to the number of judges necessary to conduct a case, but like other Mesopotamian legal systems there was more than one judge. The usual number was above three.³

¹Wiseman, Alalakh Tablets, (London: British Institute of Archaeology at Ankara, 1953), Nos. 56, 57, 78.

²E.A. Speiser, JAOS, Supplement No. 17 (1954), p. 15.

³H. Liebseney, JAOS 63 (1943), 128-129.

An official who appears often in our documents in relation to judicial administration is the halzuhlu. Part of his responsibilities seems to have been fixing the boundaries of real estates,¹ but mostly he appears in connection with legal cases. In the Amarna letters halzuhlu refers to administrative officials.² The exact meaning seems to have been a commandant of a fortress or district.³ All documents in which this official appears have to do with real estate, and involve only one party: "the tongue of A before the halzuhlu and the judges spoke as follows."⁴ It seems, then, that the specific legal function of the halzuhlu related to real estate.⁵

When the king acted in legal cases at Nuzi, he seems to have acted alone, because no judges are mentioned with him. Evidence from elsewhere points to this as being normal Hurrian practice.⁶

¹E.A.Speiser, JAOS 49(1929), pp.269ff.

²In two instances EA 30, l.10, and 67, l.15. S.A.B.Mercer, The Amarna Letters, I (Toronto: The Macmillan Co. of Canada Ltd., 1939).

³Derived from Akkadian root but with Hurrian suffix -(u)hlu. Appears also at Alalakh (Wiseman, Alalakh Tablets, No.101) meaning commandant of a fortress, fortification or district. CAD, Vol.H, pp.51-7).

⁴H.Liebseney, JAOS 63(1943), p.130.

⁵Ibid., p.131.

⁶As in a lawsuit conducted before Shaushatar, king of Mitanni. S.Smith, Alalakh and Chronology, (London: Luzac and Co., 1940), p.40.

The case could be brought before the king after it had been conducted by the judges if either the plaintiff or defendant wished to do so. In one case the defendant asked that the case be transferred to the king by swearing a niš Šarri or "oath of the king."¹ It is interesting to point out in this connection that in the Middle Assyrian laws a case could be brought either before the king or before the judges.²

In all this the king was assisted by his viziers, they prepared the lawsuits and ordered persons to be present at hearings as delegates of the king.³

In the business life of Nuzi, women were as free as men; accordingly there were no legal restrictions whatsoever imposed upon

¹The niš Šarri appears as part of a formal procedure by which a person was able to obtain at least temporary control of real estate. It also appears as the means of retaining (or gaining) control over a field and its produce. The abuse of the oath was punished by a fine of one ox. See Liebesney, "The oath of the king in the legal procedure of Nuzi," JAOS 61(1941), 62-63.

²Ass.Laws, A par. 15, C par. 8 and pp.336ff.

³H.Liebesney, JAOS 63(1943), p.132.

them. They could represent themselves in court and stand trial as plaintiffs or as defendants.¹ Also, slaves were perfectly free to represent themselves in their own lawsuits. However, the position of defendants whose residence was outside the territory of the city differs. They could be sued in the city but could not be forced to pay damages.²

There are legal cases at Nuzi where action is brought by more than one plaintiff or charges made against more than one defendant.³ These cases mostly concern joint property, or joint contracts, or a crime committed by two. The decision of the trial is usually passed upon the defendants as a unit and both bear the penalties jointly.⁴

Even the citizens of a town could be sued as a group. In one case Gelteshub made action against the town of Purulli because his house in the town was robbed. The citizens denied the accusation,

¹Cyrus Gordon, ZA 43(1936), p.166.

²H.Liebseney, JAOS 63(1943), p.133.

³E.A.Speiser and R.H.Pfeiffer, AASOR XVI(1936), No.33, 43, 56.

⁴H.Liebseney, JAOS 63(1943), p.143.

and Gelteshub was finally ordered by the court to take the ordeal.¹

There are instances where a lawsuit is taken over by another person during the trial. For example, Taya was the defendant against Shrititilla in a lawsuit concerning real estate. He declared in court that he had no claim or interest in the fields disputed, but had acted as representative of one Hanate. After establishing this fact Taya was released by the judges and Hanate was ordered to take over Taya's place, as defendant in the lawsuit.²

If a plaintiff, for some reason, could not appear in court himself, he could delegate a representative who acted for him.³ In most cases both the plaintiff and defendant appear together before the court. The documents express this in the introductory phrase: "A appeared with B in a lawsuit before the judges."⁴ The party mentioned first in the documents is usually the plaintiff.

¹C.Gordon, RA 33(1936), p.2ff.

²Chiera and Speiser, JAOS 47(1927), pp.50ff.

³"A appeared as representative (pūhu) of B with C (defendant) in a lawsuit." Liebseney, JAOS 63(1943), p.136.

⁴Ibid., p.138.

In the trial itself both plaintiff and defendant presented their respective arguments. The judges then, if necessary, asked either the plaintiff or the defendant, or both to furnish proof. Only the judges questioned the two parties and the witnesses, the latter were not allowed to question each other. On the basis of their questioning and whatever evidence they asked for, the judges pass the sentence.¹ In case there was no sentence the tablets were marked as tuppi tahsilti or "memorandum tablets."²

The decision follows a regular form in Nuzi:

- A. Reasons for the decision, introduced by kime or ki "according to."
- B. The settlement that "A won the suit."
- C. Text of the decision.³

An agreement between the two parties not to reopen the case and to accept the decision was not necessary at Nuzi. The court-decision in itself was the legal basis for the enforcement of the judgement. Therefore the decision of the court put a definite end

¹Liebseney, JAOS 63(1943), p.139.

²Speiser, AASOR X(1930), p.29.

³Liebseney, JAOS 63(1943), pp.140-143.

to the case and an agreement of all parties, unlike Babylon and Mari and Alalakh, was not necessary.¹

We do not have enough evidence to gain a clear idea of how the decision was enforced, but there is evidence to the effect that the sentence of the court was enforced by execution against the person of the defendant as well as against his property. For example,² Eatubki complained that his adversary, Abukka, had caused him to be confined in the latter's house. Abukka merely proved that Eatubki had been committed to him for a fine, and he won the suit. This shows that Eatubki had lost a trial against Abukka and could not pay the fine imposed by the court. So, he had to pay it by working in the house of Abukka. Then, for some reason, he brought suit against Abukka trying to get out of the service he had been required to give. The case also shows that the enforcement of the debtor in the creditor's house was a legal means of enforcing a decision.

We can summarize our discussion of Nuzi legal procedure by noting that the law at Nuzi was predominantly Mesopotamian (Babylonian and Assyrian) with Hurrian elements.

¹Ibid., p.142; Wiseman, Alalakh Tablets, No.8, p.37.

²Speiser and Pfeiffer, AASOR XVI(1936), No.71.

CHAPTER V

LAW AND COSMIC ORDER

The means by which civilization attempts to solve the problem of the individual's relation to society are law and government.¹ In the words of E.A. Speiser the Mesopotamian solution to the problem was as follows:

Law is an aspect of the cosmic order and hence ultimately the gift of the forces of the universe. The human ruler is but a temporary trustee who is responsible to the gods for the implementation of the cosmic design. Because the king is thus answerable to powers outside himself, his subjects are automatically protected against autocracy, and the individual has the comfort and assurance of certain inalienable rights.²

This is a general statement of the essential idea, but it requires some definition. What do we mean by "cosmic order?" In

¹Speiser, JAOS, Supplement No.17(1954), p.14.

²Speiser, P.A.P.S., Vol.197, No.6(1963), p.537.

what sense was the ruler a "trustee", and what are these powers outside himself to whom he must answer? What support do we have for the statement that the individual has certain "inalienable rights"; other than the support that is already manifest in the law-collections and court proceedings we described in the first section of this thesis?

The concept of cosmic order is linked intimately with the Mesopotamian world-view. The Mesopotamians speculated on the origin and nature of the world and evolved a cosmology and theology "carrying such high intellectual conviction that their doctrines became the basic creed and dogma of much of the ancient Near East."¹ Our knowledge of the Mesopotamian world-view has to be brought out and joined together from Mesopotamian literary works, particularly myths. Mesopotamian mythology is rich and varied in content.²

¹Kramer, History Begins at Sumer, p.76.

²It includes: The Creation, A Paradise Myth (the Tilmun Myth), the Creation of Man, Suffering and Submission (the first Job), Enlil and Ninlil, the Journey of Nanna to Nippur, Emesh and Enten, the Creation of the Pickax, Cattle and Grain, Enki and Ninhursag, Enki and Sumer, Enki and Eridu, Dumuzi and Enkidu, Gilgamish and Agga, Gilgamish and the land of the living, the Death of Gilgamish, Inanna's Descent to the Nether World, the Enuma Elish, the Epic of Gilgamish, Creation of Man by the Mother Goddess, Adapa, Nergal and Erishkigal, Atrahsis, Descent of Ishtar to the Nether World, the Myth of Zu, Etana, the Legend of Sargon, etc. All of these can be found either in A.N.E.T.; Mendelsohn, Religions of the Ancient Near East, (New York: The Liberal Arts Press, 1955), or Kramer, Sumerian Mythology.

The Mesopotamian view was formed, in Jacobsen's opinion, towards the end of the fourth millenium B.C.:

Overnight, as it were, Mesopotamian civilization crystalizes. The fundamental pattern, the controlling framework within which Mesopotamia is to live its life, formulate its deepest questions, evaluate itself and evaluate the universe, for ages to come, flashes into being, complete in all its main features.¹

In general, we may divide this mythology into early (i.e. Sumerian) and later (i.e. Akkadian) myths. The difference being that the early myths are concerned with "details of origins and world order," while the later with "fundamentals of origins and world order."² The early myths are not primarily interested in the speculative basis of Mesopotamian civilization "just as the science of mathematics is very little concerned with its axioms because they are not problems but the patent."³ Instead, this basis forms the well-known background

¹T.Jacobsen, "Mesopotamia," p.140. E.A.Speiser has a similar view, "The idea of history in Ancient Mesopotamia," in The Idea of History in the Ancient Near East, (New Haven: Yale University Press, ed. R.Dentan, 1955), pp.41-42.

²This division after Jacobsen in "Mesopotamia," pp.164-199.

³Ibid., p.164. To elucidate this point: We have, for example, no Sumerian myth which deals totally with the creation of the Universe. The Sumerians of course, had a creation story, everybody knew it and it is referred to in many other epics and myths and hymns, but it is not itself the subject of one myth or epic.

of the early myths, their theme being some detail of origin or world order.

A proper "cosmogony"¹ which deals with the fundamental problems of the universe and the origins of cosmic order appears in the later myths, in particular the Enuma Elish, possibly because by the second half of the second millenium B.C. the Mesopotamian world-view is no more quite as self-evident as in the early period.

We shall proceed to discuss briefly three early myths which contain details of cosmic order. The first² has as its theme the organization of the natural economy of Mesopotamia (order in nature) and the second³ with the useful place in society of different human beings, even those persons with bodily defects (order in society). The third myth⁴ is the most important because in it are listed the

¹"Cosmogony" is here used in the sense of literary work which deals primarily with the origin of the world and its methods of operation.

²Enki and Sumer in Kramer, Sumerian Mythology, pp.59-62, also "Mesopotamia," pp.174-175, under the title "Enki Organizes the World Manor."

³The Creation of Man in Sumerian Mythology, pp.68-72, also in "Mesopotamia," pp.175-179, under the title "Enki and Ninmah."

⁴Inanna and Enki: The Transfer of the Arts of Civilization from Eridu to Erech, in Sumerian Mythology, pp.64-68, also in History Begins at Sumer, pp.99-103.

me's, the divine rules and regulations, which according to the Mesopotamians, governed the universe from the days of its creation and kept it operating.

The first hundred lines of Enki and Sumer are not readable. When the text becomes intelligible, Enki is stopping at Sumer and blessing it, "and by his blessing endows it with prosperity and affirms its special functions":¹

O Sumer, great land, of the lands of the universe,
Filled with steadfast brightness, the people from sunrise
to sunset obedient to the divine decrees,
Thy decrees are exalted decrees, unbreakable,
Thy heart is profound, unfathomable,
Thy . . . is like heaven, untouchable.

.
The Annunaki, the great gods,
In thy midst have taken up their dwelling place,
In thy large groves they consume (their) food.

O house of Sumer, may thy stables be many, may thy cows multiply,
May thy sheepfolds be many, may thy sheep be myriad, . . .
May thy steadfast . . . lift hand to heaven, ²
May the Annunaki decree the fates in thy midst.

Enki then proceeds to Ur, and decrees its fate:

¹Jacobsen, "Mesopotamia," p.174.

²Kramer, Sumerian Mythology, pp.59-60.

To Ur he came,
Enki, king of the abyss, decrees the fate:
"O city, well-supplied, washed by much water,
firm standing ox,
Shrine of abundance of the land, knees opened, green
like the "mountain," . . .
..Thy perfected decrees he has directed,
The Great Mountain, Enlil, in the universe has
altered thy exalted name;
O thou city whose fates have been decreed by Enki,¹
O thou shrine Ur, neck to heaven mayest thou rise.

After this Enki goes to Meluhha² and he blesses its plant-life, animal-life, minerals, and human beings. Then he fills the Tigris and Euphrates with water and appoints a god to take care of them. Enki fills the two rivers with fish, and he sets the rules of the sea and appoints a goddess in charge.

Over the winds, he appoints the god Ishkur, and over the plow and yoke the god Enbindu, he then turns his attention to the products of the field:

The lord called to the steadfast field, he caused it to
produce much grain,
Enki made it bring forth its small and large beans
The . . . grains he heaped up for the granary,
With Enlil he increased abundance in the land . . . ,
. . . , Ashnan, strength₃ of all things,
Enki placed in charge.

¹ Ibid., p.60.

² For the discussion of the problem of Meluhha see W.F.Leemans, Foreign Trade in the Old Babylonian Period, (Leiden: E.J.Brill, 1960), pp. 159ff.

³ Kramer, Sumerian Mythology, p.61.

Enki then appoints a god to be responsible for the brick mold and pickax, and another to be in charge of houses. After he fills the fields with plants and animals he places the god Sumugan in control. Finally Dumuzi (the shepherd god) is put in charge of the stables and sheepfolds. "Enki has instituted every important function in the economic life of Mesopotamia; he has set it going; and has appointed a divine overseer to keep it going."¹

This order in the world is divine, and in general, commands admiration. Still, there are things which do not fit neatly into this design. Why for example do we find in society individuals with defects both in the body and soul? The myth entitled The Creation of Man deals with this particular issue.

The myth begins with the difficulties the gods are encountering in the process of obtaining their food. They complain and Enki's mother brings the gods' complaint to him while he is lying asleep in the deep, awakens him and says:

O my son, rise from thy bed, from thy .. work what is wise, ²
Fashion servants of the gods, may they produce their . . .

¹"Mesopotamia," p.175.

²Kramer, Sumerian Mythology, p.70.

Enki answers her:

O my mother, the creature whose name thou has uttered,
it exists, . . .
. . . Mix the heart of the clay that is over the abyss,
The good and princely fashioners will thicken the clay,
Thou, do thou bring the limbs into existence;
Ninmah (the earth-mother goddess) will work above thee,
. . . (goddesses of birth) will stand by thee at thy fashioning;
O my mother, decree thou its (the new-born's) fate,
Ninmah will bind upon it the . . . of the gods,
. . . as man . . .

Thus, as in the Biblical version of the creation man is fashioned out of clay (this particular myth antedates the biblical one by at least a millenium¹). After a break of several lines we find the gods present at a banquet given by Enki, possibly to commemorate man's creation. At this feast both Enki and Ninmah (the same as Ninhursag, the goddess of the earth) become drunk from too much wine. Ninmah takes some clay and creates six kinds of individuals, each of them with certain body defects: a man who cannot hold back his urine, a woman who is unable to bear children, a being who has neither male nor female organs, etc. But for each one of them Enki is ready to decree a certain useful fate:

¹Ibid., p.69.

The .. she (Ninmah) made into a woman who cannot give birth.
Enki upon seeing the woman who cannot give birth,
Decreed her fate,¹ destined her to be stationed in the
"woman house."

The .. she (Ninmah) made into one who has no male organ, who
has no female organ,
Enki, upon seeing him who has no male organ, who has no
female organ,
To stand before the king, decreed as his fate.²

Thus Enki shows that he is a match for the worst that Ninmah
can create. He is able to give all these abnormal individuals a
useful position in the world order. He then proposes that they change
sides, and creates a creature which is frail in body and spirit. He
addresses Ninmah as follows:

Do thou decree the fate of him,³ whom my hand has fashioned,
Do thou give him bread to eat.

Ninmah talks to the creature, but he does not answer. She
gives him bread to eat, but it is beyond his power to do so. He can
neither sit nor stand. Ninmah fails with him, since she cannot

¹Ibid., p.71. Jacobsen explains that this means the "ladis-
in-waiting to the queen." "Mesopotamia," p.177.

²Kramer, Sumerian Mythology, p.71. These are probably eunuchs.

³Loc.cit.

integrate him into the world order, cannot find a useful place for him in society. This, the Mesopotamians could not understand. They could understand that there were persons with defects but who could do something useful in society, but the creature which Enki created is not a live human being, he is a useless amount of flesh, he is outside world order, he goes contrary to it.

For this reason Ninmah curses Enki for his creation and, as a result, Enki, the god of the sweet waters, is confined to the dark regions below the earth; Enki accepts the curse as his due.¹ This goes to show that even the gods themselves, if they act contrary to the "cosmic order" are liable for penalty. The cosmic order is supreme and transcends even Enki and his fellow immortals.

To the rules and regulations which constitute this cosmic order and which have particular bearing on man and his culture we turn to the list of me's which is found in Inanna and Enki. At the beginning of the myth Inanna decides to go to Eridu, the city of Enki, for he has in his charge all the divine regulations which are

¹Ibid., p.72, and "Mesopotamia," p.178.

the substance of Mesopotamian culture. If she can get them and bring them back to Erech, her city will become without equal.

She goes and sits with Enki to feast and banquet. After Enki gets drunk, he exclaims:

"O name of my power, O name of my power,
To the pure Inanna, my daughter, I shall present the divine laws
Lordship, ...-ship, godship, the tiara
exalted and enduring,¹ the throne of kingship".
Pure Inanna took them.

So Enki presents Inanna with over one hundred divine decrees (the me's) which are the basis of the cultural pattern of Mesopotamian civilization and constitute the detailed content of the cosmic order on the human level-- the order of society, state, and civilization. Later, when Enki sobers, he tries to make Inanna return the "divine laws" but she refuses and escapes with her prize, returning safely to Erech where, in front of the happy citizens, she deposits the divine laws.

Only sixty-eight of the more than hundred me's are at present

¹ Ibid., pp.65-66, and Kramer, History Begins at Sumer, p.101.

intelligible.¹ Here they follow in the exact order by which they are listed in the myth:

(1) Lordship; (2) godship; (3) the exalted and enduring crown; (4) the throne of kingship; (5) the exalted sceptre; (6) the royal insignia; (7) the exalted shrine; (8) shepherdship; (9) kingship; (10) lasting ladyship; (11) (the priestly office) lunah; (14) (the priestly office) guda; (15) truth; (16) descent into the nether-world; (17) ascent from the nether-world; (18) (the eunuch) kurgarra; (19) (the eunuch) gurbadda; (20) (the eunuch) sagursag; (21) the (battle) standard; (22) the flood; (23) weapons; (24) sexual intercourse; (25) prostitution; (26) law; (27) libel; (28) art; (29) the cult chamber; (30) "hierodule of heaven"; (31) (the musical instrument) gusilim; (32) music; (33) eldership; (34) heroship; (35) power; (36) enmity; (37) straightforwardness; (38) the destruction of cities; (39) lamentation; (40) rejoicing of the heart; (41) falsehood; (42) the rebel land; (43) goodness; (44) justice; (45) art of woodworking; (46) art of metal-working; (47) scribeship; (48) craft of the smith; (49) craft of the leatherworker; (50) craft of the builder; (51) craft of the basketweaver; (52) wisdom; (53) attention; (54) holy purification; (55) fear; (56) terror; (57) strife; (58) peace; (59) weariness; (60) victory; (61) counsel; (62) the troubled heart; (63) judgement; (64) decision; (65) lilis (the musical instrument); (66) ub (the musical instrument); (67) nesi (the musical instrument); (68) ala (the musical instrument).

¹Kramer does not list them all in Sumerian Mythology which was first published in 1944. He published them later in History Begins at Sumer, pp.99-100, and in The Sumerians, p.116.

This list cannot but be considered a conscious attempt to analyze Mesopotamian civilization by listing its institutions (kingship, prostitution, law, etc.) its religious ideas (godship, priestly offices, the cult-chamber, descent into the nether-world, etc.) its dominant historically recurring catastrophes and reactions (the destruction of cities, the flood, the rebel land, lamentation), its values (goodness, justice, rejoicing of the heart, peace, judgement, decision, heroship, power, etc.), its crafts (woodworking, metal-working, scribeship, the builder, the basket-weaver, etc.), its negative values and the dark side of human existence (fear, terror, strife, weariness, enmity, falsehood, etc.), and the neutral facts and norms of social and human existence (sexual intercourse, weapons, art, musical instruments, etc.).

A document which includes such things cannot be considered idealistic; it is a very "objective" analysis of the historical phenomenon that was Mesopotamian civilization. The Mesopotamians considered all of the items mentioned as of divine origin and significance, and when Inanna takes these divine laws to Erech (to the delight of the inhabitants of this city) she does not take only godship, heroship, and the different crafts, but also strife, terror,

and lamentation. All belong to cosmic order, which is of such transcendental and supreme origin and integrity that even Enki himself, as we saw in The Creation of Man, could not go against and create something contrary to it.

To the divine laws which constitute this cosmic order belong both justice and law. Both, significantly, are consciously included in the list of me's. We have thus established the first basis of our argument and analysis of the concept of Mesopotamian law; that it is an aspect of cosmic order which is the gift of the forces of the universe and this belongs to the very structure of Mesopotamian civilization.

We must now turn to the concept of authority in ancient Mesopotamia showing how ultimate authority did not reside in one individual, the king. The king was rather a "trustee" with a divine burden to uphold the cosmic order in society and to enhance and protect it. This will complete the two main arguments which prove that the "individual has the comfort and assurance of certain inalienable rights."¹

¹Speiser, P.A.P.S. 107, No.6(1963), p.537.

CHAPTER VI

THE CONCEPT OF AUTHORITY

We demonstrated in our chapter on legal procedure that the judiciary organization is "democratic" and that judicial powers are the domain of an assembly open to all citizens. Thus legal authority resides in an assembly and not in any single individual.¹ We shall now see that as we go back in time the influence of the "assembly" extended to other important functions of government. Tradition which pertains to the kings of Akkad (end of third millenium) already proves that the assembly had the authority to choose a king:

In the "Common of Enlil," a field
belonging to Esabad, the temple of Gula
Kish assembled
and Iphurkish, a man of Kish
.....².....
they raised to kingship.

¹Jacobsen, JNES II(1943), p.165; ZA 18(1957), p.100.

²Boissier, RA XVI(1919), p.133. The phrase "Kish assembled" refers to a regular assembly, and is another example of the use of "town" and "assembly" as alternatives in the documents. See Supra p.53.

This sets the tone for Mesopotamian kingship. The king is only a man who, in this instance, has authority vested in him by the assembly and in other instances by the gods. As a matter of fact, the very concept of a deified ruler would be incompatible with the whole spirit of Mesopotamian civilization, as we will show in the present chapter.

In a still older tradition concerning Uruk in the time of Gilgamish,¹ the ruler does not act in question of war or peace until he attains the agreement of the assembly, in which, therefore, the internal authority of the state seems to reside. In a Sumerian epic entitled Gilgamish and Agga² the king of the city-state of Kish (Agga) sends an ultimatum to Gilgamish of Uruk demanding his submission. Gilgamish goes to stand in the assembly of elders and urges them to refuse Agga's ultimatum:

¹A.N.E.T., pp.44-47.

²In the Sumerian King-List, Jacobsen dates Gilgamish between 2888-2858 B.C. Table II, facing p.288. However, in JNES II(1943), p. 160, he reduces the scale of time in the King-List by 275 years in conformation with the Middle Chronology. This would make the reign of Gilgamish between 2613-2583 B.C.

[The lord] Gilgamish before the elders of his city
 Put the [matter], seeks out their word:
 "To complete the [wells], to complete all the wells of the land
 To complete the [wells] (and) the small bowls of the land,
 To dig the wells, to complete the fastening ropes,
 Let us not submit₁ to the house of Kish, let us smite it
 with weapons!"

Gilgamish seems to be arguing that in order to be able to complete the public projects in the city they should fight Kish. The assembly of elders, for the very same reason, suggests submission:

To complete the wells, to complete all the wells of the land, . . .

 Let us submit₂ to the house of Kish, let us not smite it
 with weapons.

Because the answer was in the negative, Gilgamish takes the matter to the assembly of "men," possibly arms-bearing males, and he repeats his plea for fighting Kish (11.15-22), the result is that:

The convened assembly of the men of his city answered Gilgamish:

 "Do not submit to the house of Kish, let us smite it with weapons."³

¹A.N.E.T., p.45, 11.3-8.

²Ibid., 11.11-14.

³Ibid., 11.24-30.

The assembly thus declares war on Kish, and Gilgamish is pleased.¹ We have in the myth, thus, two political assemblies: an assembly of "elders" which seems to be more restricted and an assembly of "men," which would include all the arms-bearing males of the city. The procedure seems to be that the king takes the matter first to the assembly of elders. If the proposal is refused there, then he takes it to the assembly of men. We do not know whether in the case of acceptance in the assembly of elders, the proposal has to be ratified by the "men", or whether in that case the consent of the "elders" is enough. In any case, and according to this tradition, the assembly of "men" appears to be the ultimate political authority.²

¹In an unpublished epic we have an example of what would have happened had the king acted against the wish of the assembly. The epic in question is "Enmerkar and Sukeshdanna of Aratta." Jacobsen quotes the following lines on the opposition of the assembly to the ruler. (ZA 18(1957), p.100):

"After an assembly had been established
it straightforwardly answered him:
You yourself first sent to the lord of Uruk
Arrogant message, to Enmerkar.
It is not Enmerkar's doing, it is your own doing,
Your wicked heart prompted everything as far as can be known."

²For a similar view see Evans, "Ancient Mesopotamian Assemblies," JAOS 78(1958), p.11: "The assemblies of Uruk in the time of Gilgamish consisted of a body of elders with advisory powers, recruited from the heads of the powerful family groupings which made up the state; many of them may have been in fact elderly men, but age was not of itself a qualification for membership; and an assembly of all the freemen of the city, young and old, which enjoyed ultimate sovereignty."

Further, indirect proof for the assembly and its method of operation reaches us because the ancient Mesopotamians projected the human assembly into the world of gods: "The Sumerians and Akkadians pictured their gods as human in form, governed by human emotions and living in the same type of world as did men. In almost every particular the world of the gods is therefore a projection of terrestrial conditions."¹

The most informative source on the assembly of the gods is the Enuma Elish, the Creation Epic.² The assembly was usually held in a large court called Ubshukinna:

. . . All the great gods who decree the fates.
They entered before Anshar, filling [Ubshukinna].
They kissed one another in the assembly.
They held converse as they [sat down] to the banquet.
They ate festive bread, poured [the wine],
They wetted their drinking tubes with sweet intoxicant.
As they drank the strong drink, [their] bodies₃swelled
They became very languid as their spirits rose.

This description is interesting, for the divine banquet prior to making a decision is a universal feature of epic poetry. The

¹Jacobsen, JNES II(1943), p.167.

²A.N.E.T., pp.60-72, translated by Speiser.

³Enuma Elish III, pp.130-137.

leadership of the assembly belonged to An, "father of the gods." Enlil also appears with him, though sometimes Enlil is alone.¹ The discussion in the assembly was most probably dominated by the so-called ilū rabiūtum, the fifty great gods. In addition there were seven gods of destiny² (or who "decree fates").³ There is little evidence regarding the relation of the "great gods" to the "gods of destiny." They might have been separate groups in the assembly, or possibly the seven who determine destiny formed merely a part of the "great gods." But the final decisive word belonged to the seven powerful gods who "decreed fates,"⁴ and the executive duty, the power to carry the decision into effect rested with Enlil.⁵

¹ Jacobsen, JNES II(1943), p.169.

² Enuma Elish mentions them in III, 130 "All the great gods who decree the fates," and again in IV, 80: "The fifty great gods took their seats. The seven gods of destiny set up the three hundred in heaven."

³ Jacobsen, JNES II(1943), p.169.

⁴ Ibid.

⁵ In "Lamentation over the destruction of Ur," in A.N.E.T., pp.445-463, ll.170ff, it is Enlil who gives the detailed orders concerning the destruction: "Enlil called the storm; the people groan, etc."

The divine assembly, like the human assembly, also acted as a court of law. In its sentence was once passed on all humanity because the noise they made could not be tolerated by the gods:

[Because of] their clamor he is disturb[ed],
[Because of] their uproar [sleep] cannot seize him,
[En]lil set up [his] assembly,
[Saying to the gods, his sons:
"Oppressive has become the clamor of mankind . . .
. . . The pestilence¹ shall [prompt]ly put an end
to their clamor . . .

But the most important function of the assembly is that it has within its authority to grant kingship.² Once in the Enuma Elish a great danger threatened the gods when Tiamat decided war against them. In this emergency Marduk was willing to be the champion of the gods but he demanded absolute authority:

If I indeed, as your avenger,
Am to vanquish Tiamat and save your lives,
Set up the Assembly, proclaim supreme my destiny!
When jointly in Ubshukinna you have sat down rejoicing,
Let my word, instead of you, determine the fates.
Unalterable shall be what I may bring into being;

¹Related in the poem Atrahasis in A.N.E.T., pp.104-106, and translated by Speiser. The lines quoted are iii, 2-10.

²Jacobsen, JNES II(1943), p.169.

Neither¹ recalled nor changed shall be the command of my lips.

So the gods assembled, and because of the danger of the situation they gave Marduk supreme authority:

Thou art the most honored of the great gods,
Thy decree is unriveled, thy command is Anu.
Thou, Marduk, art the most honored of the great gods . . .
. . . From this day unchangeable shall be thy pronouncement
To raise or to bring low - these shall be (in) thy hand.
Thy utterance shall be true, thy command shall be
uninpeachable.
No one among the gods shall transgress thy bounds!²

Then they proclaim Marduk king and confer upon him the marks of kingship:

Joyfully they did homage: "Marduk is king!"
They conferred on him sceptre, throne and vestment;
They gave him matchless weapons that ward off the foes:
"Go and cut off the life of Tiamat.
May the winds bear her blood to places undisclosed."³

Only then, and with the authority of kingship, does Marduk go to fight Tiamat. The account which the Enuma Elish gives of how

¹A.N.E.T., p.64, Tablet II, ll.123-130.

²Ibid., Tablet IV, ll.3-10.

³Ibid., Tablet IV, ll.28-32.

Marduk became king throws much light on the origin and nature of early Mesopotamian kingship. It shows the king as primarily a leader in war, chosen by the assembly to lead the people in times of emergency. And (in the sense of the detailed description of presenting the king with the insignia of authority) throws light on the historical text we quoted at the beginning of this chapter of how the assembly at Kish raised Iphurkish to kingship.¹

Since the assembly is the authority that grants kingship, it can also take it back. For the Sumerians, kingship was an office to be held for a limited period of time.² As illustration of this we must refer again to the affairs of the gods. The time during which Kish and Akkad, the two cities of Inanna, were politically supreme in Mesopotamia was "the term (ba-la) of Inanna."³

In the Lamentation over the Destruction of Ur, the catastrophe is seen as the normal end of Ur's, and of its god Nanna's, term of

¹RA XVI(1919), p.133.

²Jacobsen, JNES II(1943), p.170.

³Loc.cit.

office. The plea made by Nirgal, Nanna's consort, on behalf of the doomed city in the assembly of the gods is very moving:

After they had pronounced the utter destruction of Ur,
After they had directed that its people be killed -
On that day verily I abandoned not my city;
My land verily I forsake not.
To Anu the water of my eye verily I poured;
To Enlil I in person verily made supplication.
"Let not my city be destroyed," verily I said unto them;
"Let not Ur be destroyed," verily I said unto them;
"Let not its people perish," verily I said unto them;
Verily Anu changed not this work;
Verily Enlil with its "It is good; so be it" soothed not my heart.
The utter destruction of my city verily they directed
The utter destruction of Ur verily they directed;
That its people be killed, as its fate verily they decreed.¹

Thus we see that the assembly had power to revoke kingship, as well as power to grant it. In conclusion then we may state that the assembly as a judiciary organization had authority to decide in conflicts which arise in the community, to resolve questions of war or peace, and if necessary, to give ultimate authority, kingship, to one of its members.² There are parallels to the Mesopotamian assembly

¹A.N.E.T., p.458, ll.140-164.

²Jacobsen, JNES II(1943), p.172.

elsewhere, especially in early Europe.¹

. . .

We stated early in this chapter (Supra p.82) that the concept of a deified ruler would be incompatible with the whole spirit of Mesopotamian civilization.² In the list of me's mentioned above (p.78), kingship is listed in fourth place after three divine institutions, and an Old Assyrian inscription points out that the real king is Ashur.³ We also saw how ultimate authority resided not in the incumbent ruler, but in a corporate assembly.

The first lines of the Etana Epic recalls a time when mankind had not as yet had the benefit of consultive government:

¹W.J.Shepard, Encyclopaedia of Social Sciences VII, p.11:
"The significant political institutions of the primitive Teutonic tribes who overran Western Europe were a folkmoet, or meeting of all the adult males bearing arms; a council of elders; and in time of war a war leader or chieftain. All important questions, such as peace and war, were decided by the folkmoet. The council of elders prepared questions to be submitted to the folkmoet and decided minor matters. It was a rude form of democracy in which government was not differentiated nor law clearly distinguished from religion or social custom."

²See also E.A.Speiser, JAOS, Supplement 17(1954), p.8.

³Loc.cit.

The great Anunnaki, who decree the fate,
.....
A stated time for mankind decreed.
The beclouded people, in all, had not set a king,
At that time, no tiara had been tied on, nor crown,
And no scepter had been inlaid with lapis,
.....
Scepter, crown, tiara, and (shepherd's) crook
Lay deposited before Anu in heaven,
There being no counseling for its people.¹
(Then) kingship descended from heaven.

The people, without kingship, are seen to be confused, "beclouded," and without "counseling," and kingship itself descends from heaven. This incident, to the ancient Mesopotamian historiographer, must have meant the beginning of history proper. The Sumerian King-List starts with the statement "When the kingship was lowered from heaven,"² and it is found necessary after the flood that kingship descends again from heaven: "After the Flood had swept thereover, when the kingship was lowered from heaven, the kingship was in Kish."³ So mankind is twice indebted to the gods for the institution of kingship. When it was first "washed away" by the flood, the gods reinstated it again.

¹ A.N.E.T., p.114, i, ll.1-13.

² Jacobsen, The Sumerian King-List, p.71, Col.i, l.1.

³ Ibid., Col.i, ll.40-43.

Sumerian lugal, the earliest Mesopotamian term for king, is typical of the Mesopotamian point of view. It means "great man"; it is strongly emphasized that he is a human member of the community and not a god.¹ "He leads his people, but is not different in essentials from his subjects."²

It would be beneficial to tackle the arguments of I.Engnell at this point.³ He states that "according to Sumero-Accadian king-ideology the monarch is of divine origin. The kingship is from eternity, is preexistent."⁴ Engnell here confuses between "kingship" and the king (the monarch). Kingship is truly of divine origin, as we saw in the list of me's (supra, ch.V), but not the king himself. The institution is divine, not the particular incumbent, and the two should not be confused.

¹H.Frankfort, Kingship and the Gods, (Chicago: The University of Chicago Press, 1948), p.6. For a detailed discussion of the problem of deification see pp.295-307.

²Ibid., p.8.

³I.Engnell, Studies in Divine Kingship in the Ancient Near East, (Uppsala: Almqvist and Wiksells Boktryckeri, 1943).

⁴Ibid., p.16.

He further states that "the king's identity with the god has not been directly proclaimed as an ideological dogma except maybe in the earliest times."¹ It is precisely in "earliest times" that the king was chosen by the assembly for a limited period of time: it is precisely in "earliest times" that political authority resided in a primitive democratic assembly.²

He continues his argument by saying that "still more common and important for the conception of divine kingship is the identity of the king with the vegetation deity (i.e. Tammuz)."³ And that:

In the New Year Festival the role of the god is mimic-dramatically impersonated by the king, who undergoes the symbolic death and performs in gestures etc. the god's fight with and triumph over the chaos-power, is⁴ reinstated, and has his own and the country's destiny fixed.

Engnell here repeats the common mistake that Tammuz (Dumuzi)

¹ Ibid., p.23.

² Jacobsen, JNES II(1943).

³ Engnell, Studies in Divine Kingship in the Ancient Near East, p.24.

⁴ Ibid., p.33.

dies and is resurrected, and that the king at the New Year Festival impersonates him, and reenacts the whole drama. It has been finally demonstrated by both Falkenstein and Kramer that Dumuzi dies and stays dead.¹

But in reference to law and justice, final proof of the limitation of the king comes from the domain of Mesopotamian law itself. In Akkadian, which reflects here the antecedent Sumerian, "law" is summarized by the phrase kittum u mešarum, that is "truth and justice."² In the epilogue to the CH, Hammurabi says in unequivocal words that the god of justice, Shamash, conferred on him the different modes of kittum while Hammurabi's own authority was restricted to mešarum.³ "Law," kittum u mešarum was impersonal and above the crown. It belongs, as we saw earlier (Supra, ch.V), to cosmic order, which is even above the gods themselves. Another

¹Kramer, The Mythologies of the Ancient World, (Chicago: Quadrangle Books Inc., 1961), p.10: "He must under no circumstance leave the nether-world and return to the upper regions, since in this case Inanna would have no substitute and would therefore be forced to return to the nether-world. It is for this reason, too, that we find only laments for Dumuzi's death, there are no songs of rejoicing for his resurrection." See also pp.110-115.

²Speiser, P.A.P.S., 107, No.6(1963), p.537.

³Ibid.; CH XXIV, rev.96-108. Hammurabi speaks of himself as the "just king" (šar mešarim) to whom Shamash committed the truths (kinātim).

text, in the context of law itself, maintains just this. The text in question is that of Iaḥdun-Lim, king of Mari, who ruled slightly earlier than Hammurabi:

A Šamaš, roi du ciel
et de la terre,
le "juge" des dieux et des hommes,
dont le lot est l'équité (mēšerum, local variant of mēšarum)
et à qui les lois
ont été offertes en don ... (kīnātim - nom. plural of kittum).¹

Here kittum is seen even transcending the god himself. But this is precisely the nature of the cosmic order, that its intrinsic rules and regulations could not be transgressed either by god, ruler or individual man. It is this which assured the ancient Mesopotamian certain "inalienable rights," and protected him from autocracy.²

¹G.Dossin, "L'inscription de fondation de Iaḥdun-Lim, roi de Mari," Syria XXXII(1955), pp.1-28, ll.1-6.

²Speiser, P.A.P.S., p.537.

CONCLUSION

CHAPTER VII

THE INFLUENCE AND SIGNIFICANCE OF MESOPOTAMIAN LAW

If, as we said, government and law are the means whereby civilization attempts to solve the problem of the individual's relation to society, the Mesopotamian answer seems to have enjoyed "extraordinary success."¹ Paul Koschaker explains the fact of the existence of one common law in all Mesopotamia (Sumer, Babylon, and Assyria) by pointing out that they, after all, shared one civilization.² But the question is: why do we speak of Mesopotamia as having "one civilization"? Mesopotamia did not enjoy the benefit of one language; the geographic differences between the plains of Babylon and Sumer and the highlands of Assyria are obvious; the political history of ancient Mesopotamia is as disconnected as is possible for a history to be.

¹Speiser, JAOS, Supp. 17(1954), p.14.

²P.Koschaker, Encyclopaedia of the Social Sciences, Vol.IX p.213.

We speak of a Mesopotamian civilization exactly for this reason: that the common law plus the common religion and the common concept of government, authority and kingship out-weighed by far the differences of language, geography and politics. The influence of law as a unifying factor in ancient Mesopotamia has not been overly stressed before, the unity of culture being taken for granted. But if we analyze this unity to its most important constituent elements we have the three above mentioned common factors - - law, government and religion.

These three elements are tied together in the fact that the Mesopotamian ruler is answerable, first to a corporate assembly of fellow human beings and second to the gods; all this being supported by written law. This written law itself was completely secular, concentrating on security in the daily life of society, and steering away from religion.¹

¹The influence of this written law on religion is discussed in Appendix I below, "The Moral Revolt."

Since law belonged to cosmic order it was considered true and valid forever. The written document serving as a concrete guarantee of a person's rights in society and (since a pledge in writing was not only a commitment to the other person but also to the ultimate powers of the cosmos from which the law ultimately derived)¹ of harmony with the cosmic order. This is why the Mesopotamians were such convinced believers in the legal document.²

. . .

Throughout the history of ancient Mesopotamia the northern kingdom of Assyria remained a political rival of Babylonia. But the Assyrians shared with the Babylonians their language and religion; and Assyrian law was almost completely "Babylonianized."³

But the influence of Mesopotamian law did not stop with Assyria. The most dominant characteristic of this law was its appeal to ancient peoples who were historically in touch with Mesopotamia.

¹Speiser, P.A.P.S., CVII(1963) No.6, p.538.

²CH par.7 states clearly that a purchase without contract and witnesses exposes the merchant to suspicion of theft and possible death penalty. See also Goetze, The Laws of Eshnunna, pp.113-115.

³Supra, ch.III.

As far back in time as the reign of Hammurabi the Syrian city of Alalakh, which was never politically ruled or occupied by Babylonia, used both Mesopotamian law and the Mesopotamian cuneiform script.¹

The Hurrians followed the same path, but even more so. Though living on the geographic borders of Mesopotamia they adopted the cuneiform script and the Mesopotamian passion for the written document. Their law was, with the exception of some Hurrian elements which can be distinguished, thoroughly Mesopotamian.²

¹Wiseman, The Alalakh Tablets. There are around a hundred legal texts (trials, loans, sales, exchange, surety, gifts, marriage, contracts) from Alalakh (pp.33-55). In Alalakh '8 both the oath of the god and the clause which forbids reopening the case appear (p.37). The most complete texts are those which have to do with loans. As in Mesopotamia the man in debt sometimes enters the house of the debtor as guarantee: "For this silver he shall dwell as guarantee (and enter) in the service of house of A." ('18, p.40; also '19, '24). Sometimes also the wives and children enter as guarantee ('20, p.41). '21 states that the man will be freed on payment (p.41) if "he disappears or flees his silver will be debited against his brother, Z." ('23). Marriage contracts state explicitly that if the wife gets no children (sons) the husband could marry another, and even a third if the second also does not bear any sons ('91, p.54).

²Supra, ch.IV.

Ugarit, during the second millenium the most important town on the coast of Syria, had its own west-Semitic dialect and the first alphabetic system of writing in history. The local language and script were used to record the now famous literature of Ugarit, and for various administrative purposes. But when it came to law and diplomacy the cumbersome syllabic script and the Akkadian language were used.¹

In Asia Minor, the Hittites wrote a law-collection in their own Indo-European dialect. This law-collection, however, could be easily placed within the domain of "cuneiform law."² Mesopotamian

¹J.Nougayrol, Palais Royal d'Ugarit III, (Paris: Imprimerie Nationale, 1955). The Ugaritic legal archives were found in the palace, and belong essentially to the reign of Niqmad II (1365-1330 B.C.), (p.23). The legal texts of Ugarit are characterized by the prominent place that the king takes as an organ of public authority. He intervenes in his capacity as supreme judge to pronounce judgement to end strife between individuals (p.28 3, legal commentary by G.Boyer). The legal formula is simple: first the accusation is brought forth, then the witnesses, and judgement follows. As in Babylonia the loser takes an oath to respect the judgement. Nothing differs in this from the practice of the first Babylonian Dynasty. The documents, furthermore are completely secular (p.284). The judgement by the king himself is found in other contemporary texts of the legal acts of the Kassites at Alalakh (Wiseman, The Alalakh Tablets, Nos. 7, 8 and 9). "L'emploi d'une même écriture n'est que le signe d'une civilization commune qui s'est répandue sur de vastes territoires grâce au rayonnement économique et intellectuel qu'exerçaient les villes de Babylonie à travers tout le Proche Orient. Cet attrait, les relations commerciales, la similitude de vie et de besoins se sont joints aux parentés de race pour faciliter une unification que chaque découverte nouvelle vient confirmer." (Boyer, p.307).

²Speiser, P.A.P.S. CVII(1963) No.6, p.539.

influence is reflected not only in the Hittite use of the cuneiform script, but also in particular legal ideas and forms.¹

The ultimate example of the fact that a Mesopotamian source can be recognized instantly even when the Mesopotamian cuneiform script is not used (the script being the usual form in which Mesopotamian law and law influenced by it appear) is the Bible:

Whether one takes up the Book of the Covenant in Exodus, the legal material in Leviticus, Numbers, or Deuteronomy, or pertinent passages in various narrative accounts, the most intimate kind of connection is immediately apparent to anyone who had dealt with both the Biblical and the Mesopotamian material. Yet mere correspondance in detail does not begin to define the closeness of the relationship involved. It is in the basic concepts of law and government that the strong ties between the Bible and Mesopotamia

¹"With regard to the type of their substance, structure, legal scope, technical presentation and arrangement of subject-matter, the collection of Hittite laws shows, on the surface, a remarkable degree of uniformity with LE (Lipit-Ishtar), LH (Laws of Hammurabi), the Assyrian law tablets." E. Neufeld, The Hittite Laws, (London: Luzac Co., 1951), p.101. The very close parallels between the Hittite laws and the CH are the following:

Hitt.L. pars. 22-24 - CH par. 17; Hitt.L. par. 189 - CH par. 157; Hitt.L. par. 29 - CH par. 160; Hitt.L. par. 17 - CH par. 209; Hitt.L. par. 98 - CH par. 232; Hitt.L. par. 75 - CH pars. 263, 266.

are especially prominent and significant."¹

The legal documents in Old Aramaic are another example of the continued influence of Mesopotamian law in time, and their spread in space. Of such strength and integrity was the legal tradition of ancient Mesopotamia that it could survive a different language and a different and dissimilar society nearly

¹Speiser, P.A.P.S., CVII(1963) No. 6, p.539. The subject of the relationship between Mesopotamian and Biblical laws deserves more than one thesis. We shall here point out to laws in the CH and the Bible which have a particular correspondance or relationship. On bond-service CH par. 117 and Exodus xxi: 2-3; on compensation CH pars. 209-210 and Exodus xxi: 22-25; on adoption CH pars. 185-193 and Genesis xlvi: 5-6, Exodus ii: 10; on care of beast CH pars. 24-29 and Exodus xxii: 10-13, Genesis xxxi 38-40; on assault and damage CH pars. 195-200 and Exodus xxi: 22-24, Leviticus xxiv 18-20, Deuteronomy xix: 21. On corporal punishment CH par. 157, and Leviticus xviii: 17, xx: 14, and xxi: 9; on crafts CH pars. 185-186, and I Chronicles iv: 14, 23, Nehemiah iii: 8, Jeremiah xxvii: 21. On debt and bondage CH pars. 151-152 and Exodus xxi: 2-6. On dishersion CH pars. 168-169 and Exodus xxxi: 15, Deuteronomy xxi: 18-21. On divorce CH pars. 137-149, and Deuteronomy xxii: 13-19, 28-29. On homicide and blood feud CH pars. 153-158 and Exodus xxi: 12-14. On kidnapping CH par. 14 and Exodus xxi: 16. On incest CH par. 157 and Leviticus xviii: 17, xx: 14. On rape CH par. 130, and Deuteronomy xxii: 23-27. On marriage by purchase CH pars. 163-164 and Hosea iii: 2. To mention only some.

two thousand miles away from Babylon.¹

¹The documents in question are the papyri from the island of Elephantine in southern Egypt, which was manned in the fifth century B.C. by a Jewish garrison. The legal records are "unmistakably Mesopotamian in content and phraseology." E. Kraeling, The Brooklyn Museum Aramaic Papyri, (New Haven; Yale University Press, 1953). For example, papyrus 3 (pp.152-164). In the matter of a house which B and V have sold, "removed themselves from," they will not be able to start "suit or process" - that is, reopen the case. If they do, they must pay a fine of 10 Karsh, which is exactly the Babylonian practice we saw in our chapter on "legal procedure." This papyrus shows "Babylonian legal verbiage that persists not only here but likewise passes over into the Greek papyri in new dress." (Kraeling, p.152). In papyrus 5, in the matter of branding slaves, the same Akkadian word is used in Aramaic guise (Bab. šintu for Aramaic שנית) (p.183). In the same papyrus also appears Babylonian mandattu "tribute" as מנדת (p.184). See also pages 136, 148, 173, 175, 186, and 211.

APPENDIX I

THE MORAL REVOLT

The code of "practical ethics" evolved in the legal tradition of Mesopotamia, that is in the law-codes and courts, must have given rise to a very acute consciousness of crime and punishment. This works both ways: If a man commits a crime, he was (or at least should have been) punished, but if a man did not commit a crime, he should not be punished. Written law-collections remain an articulate testimony to this.

Now the ancient Mesopotamian gods were creators of both good and evil. The list of me's included not only truth, peace, goodness and justice, but also falsehood, strife, lamentation and fear.¹ Furthermore, it was the gods who were behind the great catastrophes of history. They destroyed Ur, they sent the flood, and their actions therefore were not exactly "moral."

The code of practical ethics as incorporated in the law-collections was thus in sharp contrast to the arbitrary and amoral

¹Supra, pp.78ff.

behaviour of the gods. To widen the cleavage between man and his gods the Mesopotamians came to see the link between crime and punishment on the moral plane.¹ Sin had been earlier a matter of not following a taboo, or not offering the right sacrifice to the god; in a word it was "formal." But now it also became "existential": sin is doing the morally bad, and for doing the morally bad, man suffers. And offences which would anger the gods came to include all the serious lapses from ethical and moral standards.

Soon the idea of justice as right, passed from the personal to the universal. "Man no longer permitted his world to be essentially arbitrary, he demanded that it have a firm moral basis."² The powerful gods, by letting evil and illness occur are ultimately responsible, for only when an offence has been committed the offender must be punished.³ Thus, the problem of the righteous sufferer emerged.

¹I. Mendelsohn, Ancient Mesopotamian Religion, (New York: The Liberal Arts Press, 1955), p. xxi.

²"Mesopotamia," p. 228.

³Loc. cit.

This theme has been made famous in world literature and religion by the Biblical "Book of Job." We have both Sumerian and Akkadian texts of a Mesopotamian essay dealing with this theme. The Sumerian tablets on which the essay is inscribed date back to more than a thousand years before the compilation of the Book of Job.¹

The name of the Mesopotamian Job is Subi-mesre-sakkan.² He was once a man of affluence and authority. It is evident from the poem that he had occupied several high offices, owned slaves and fields, had a family, and even speaks of "my city" as if it belonged to him. At the same time he had been a model of piety both to the gods and to the king.³

The hero of the poem prays to his god:

My god, I would stand before you, would speak to you,

¹Kramer, History Begins at Sumer, p.115.

²The text of the essay can be found in a number of books the most important of which are:

Babylonian Wisdom Literature, pp.21-61.

A.N.E.T., pp.434-437.

"Mesopotamia," pp.228-231.

³Lambert, Babylonian Wisdom Literature, p.21.

my word is a groan, I would tell you about¹ it, would
bemoan the bitterness of my path, . . .

He definitely thinks of himself as being good, and
emphatically denies that he has done any evil:

I only headed prayer and supplication,
my very thought was supplication,
sacrifice habitual to me.
The days when gods were worshipped were my heart's delight.
. . . And I instructed my estate to observe the ritual
of the gods,
I taught my people to revere the name of the goddess.²

Nevertheless he is afflicted with terrible illness:

Alu-disease covers my body like a garment;
sleep in a net enmeshes me;
my eyes stare but see not,
my ears are open, but hear not,
weakness has seized my body.

Even his own personal god left him and had no pity on him:

No god came to my aid, or grasped my hand,
my goddess did not pity me or succour me.

¹These lines are taken from the Sumerian text History Begins at Sumer, p.117.

²These lines and the following, if not otherwise indicated, are from the Akkadian text.

And every one had considered him dead:

The grave was open still when they rifeled my treasures,
While I was not yet dead, they stopped mourning.

All of his enemies were very happy: "My evil-wisher heard of it and his face brightened." One pessimist even tells him that "never has a sinless child been born to his mother."¹ But this is not the sufferer's attitude. He denies that a human being can apply his standards of morality to the gods. Man is too limited "to pass judgement on things which are divine. He has no right to set up his human values against the values which the gods hold."²

What seems praiseworthy to one's self, is but contemptible
before the gods,
What to one's heart seems bad, is good before one's god.
Who may comprehend the mind of gods in heaven's depth?
The thoughts of a god are like deep waters, who could
fathom them?
How could mankind, beclouded, comprehend the ways of gods?
.....

¹From the Sumerian text, History Begins at Sumer, p.117.

²"Mesopotamia," p.230.

Who came to life yesterday, died today.
In but a moment man is cast into gloom, suddenly crushed.
One moment he will sing for joy, and in an
instant he will wail - a mourner
Between morning and night-fall men's mood may change
When they are hungry they become like corpses,
When they are full they rival their god.

What, therefore, is the value of man's judgement against
that of a god?

But a righteous man is suffering, and a righteous man
deserves what is good, not what is bad. Now, the human heart knows
this beyond any doubt; so he was finally saved from his afflictions,
and his health and dignity were returned to him, and all was
happiness again. "All he can say is that though it be the lord
who has smitten, yet it is the lord who will heal."¹

...

If the poem of the "Righteous Sufferer" raises the important
problem of the morality of the ancient gods, it backs up in the

¹Lambert, Babylonian Wisdom Literature, p.27.

end and does not follow the logic which first gave rise to it. It starts with the agony of an innocent man suffering and ends with the serenity of a fairy-tale. The reason is obvious. Like the "Book of Job" in the Bible, the problem of the suffering righteous man was real, but man's ultimate dependence on forces outside himself, (nature or god, and in this case god) was more real. This dependence forms the background of all ancient man's attitudes. It is true that ancient man felt very uneasy about the suffering good, but he could not possibly pass judgement on the higher forces. For in any case, his final dependence, for good or worse, is upon them. With the emphasis of ancient man on powers outside himself this could only be so.

The moral history of mankind, to reach other conclusions, needed a shift of emphasis from the outside to the inside. From powers in the universe to the freedom of conscience in man's innermost soul. And for the shift to become finally real the world needed the example of both Socrates and Christ: "No force in the world can destroy the inward freedom of conscience; it remains when a man is imprisoned or led to execution."¹

¹Nicolas Berdyaev, The Destiny of Man, (New York: Harper and Brothers, 1960), p.169.

What this shift of emphasis could lead to is best observed in Dostoevsky's The Brothers Karamazov. In this novel Ivan Karamazov says that he neither accepts God nor God's world; for no world harmony can be reconciled with unmerited suffering, even if it be one tear of a single child.

" . . . If there is a distinction between good and evil, and if evil exists, God must be justified, since the justification of God is the solution of the problem of evil . . . Ethics judges not only man but God also. The good as well as the wicked rebel against God for they cannot reconcile themselves to the existence of evil."¹

Continuing the argument, Berdyaev says in another work of his that "it is a striking fact that any doctrine which is degrading to man also degrades God."² With the example of Christ in front of them, both Dostoevsky and Berdyaev could pass judgement on higher powers for evil in the world. For the shift has been accomplished:

¹Ibid., p.23.

²Berdyaev, Slavery and Freedom, (New York: Charles Scribners Sons, 1944), p.39.

man should morally depend, not on outside forces, but on his inner freedom of conscience.

This was not possible in the pre-Christian ancient Near East. The problem in the sense of raising the question existed, but the argument, for the reasons outlined above (man's final dependence on powers outside himself), was not followed to its logical conclusions.

This is why, in the first millenium B.C. when the ancient values of Mesopotamian civilization began to lose their hold on man, the final attitude, because of the absence of an inner centre of moral reference, was nihilistic. In the "Dialogue of Pessimism"¹ (there being no inner conscience to which man could refer) the final attitude is nihilism. It is all the same whether man takes a wife, or does not take a wife, whether he sacrifices to a god, or does not sacrifice to a god, whether he helps his country or whether he does not help it. And when the master asks his servant this final question: "Now, what is good?" the answer comes: "To break my neck, your neck, throw both in the river - that is good." And thus, with a nihilistic outcry the dialogue ends.

¹The translation is published in A.N.E.T., pp.437-438.

APPENDIX II

A NOTE ON CHRONOLOGY

Mesopotamian chronology revolves mainly around one problem: the date of Hammurabi. The number of years Hammurabi spent on the throne is a subject of general agreement, but the date is still in dispute. In general there are three "chronologies": high, middle, and low. Some of the dates given for Hammurabi in the past forty years follow:

Thureau-Dangin (1927)	2003-1961 B.C.
Langdon (1928)	2067-2025 B.C.
Smith (1940)	1792-1750 B.C.
Sidersky (1944)	1848/7-1806/5 B.C.
Cavaignac (1946)	1720-1678 B.C.
Van der Meer (1947)	1711-1669 B.C.

Representative of High chronology is now A.Goetze's 1848-1806 B.C.; of Low chronology Albright 1728-1686 B.C., and

S.Smith 1792-1750 B.C. for Middle chronology. Most ancient historians use now S.Smith's Middle chronology. This has been used throughout this thesis. Chronological tables according to the Middle chronology are most recently given in Saggs, The Greatness that was Babylon, pp.531-536.

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