

A HISTORICAL – LEGAL REVIEW OF HAMMURABI’S CODE


ABSTRACT: Hammurabi’s code shows the social relations of that time, although most of these relations were regulated by the Law of Contract. The Code covers a variety of legal matters: it regulates very complex property, family, obligatory and criminal-legal relations including the judiciary provisions. The Code expresses the class character of the society, because it primarily protects the interests of the ruling class and punishes the members of the ruling and subordinate classes differently for the same crimes. The Code was carved in a stone pillar and it was found by M. Morgan in 1901. This masterpiece of a human’s thought, almost four millennia old, was engraved in the stone of Babylon (Hammurabi) for the temple of Sippar (now the ruins of Abu Dhabi near Baghdad). An undamaged inscription of the Code is kept in the British Museum.

Keywords: *Hammurabi, Babylonia, Sumerian-Akkadian period, Assyrian period, New Babylonian period.*

1. Introduction

I believe that the presentation of Hammurabi’s law, as the oldest preserved written text of legal regulations, will arouse the interest, not only of lawyers but also of all those from other scientific disciplines. It is certain that there are researchers who are interested in the legal regulation of relations in the human community, through three or more millennia of development of

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human society. Hammurabi is considered to be the king of the first Babylonian dynasty (around 1792-1750 BC) and one of the most important figures of the Ancient East and human civilization in general. He is the creator of the Old Babylonian Empire. He united the Semites and Sumerians into one powerful state that included Mesopotamia and Assyria. In that common state (ruled militarily and administratively), the culture of those two nations was united in the so-called Babylonian civilization that will exist for almost two millennia (The Encyclopedia of War, 1972, p. 390).

Hammurabi was not only a great statesman, but also a great builder of cities, canals, bridges, fortifications, etc. He fortified the cities of Babylon and Sippar (Sippar-Abu Haba) as well as numerous fortifications. Of course, like many events from the past or archeological findings, for us they are still covered with a veil of mysteries and secrets, because official scientific explanations suffer great public criticism. There are numerous requests for reconsideration of official scientific views on past events, which is especially evident through electronic media, which are becoming an influential factor in the field of information.

"The Old Babylonian Code ("Hammurabi's Code" was found in Susa in 1901 (Iran), during archeological excavations. It is written in cuneiform and carved in stone ("to last forever"). It is believed that it had 282 laws and regulated various legal matters, which we will try to clarify in more detail. . The stone pillar is 2.25 m high, and the circumference of its base is 1.90 m" (Jasić, 1968, p. 36).

Hammurabi is shown on a stone monument receiving a code from the Sun God. The monument was brought to Baghdad around 1120 BC, as a war trophy, and today the remains of the code are preserved in the British Museum (Ignjatović, 2012, pp. 55–70).

Due to the interest of young researchers, we present the scientific views of several authors (referring to numerous scientific sources), who claim that the territory of the Ancient East, at the time mentioned, was visited and militarily occupied by ancestors of Serbs (Deretić & Antić, 2017, pp. 159–361).

Such a short introduction showed numerous dilemmas about the topic of our work, so we will try to explain the historical factors, as well as the socio-economic relations of Babylonia.

2. Antic Babylonia

"Babylonia is a state of the Ancient East that stretched over the area of today's Iraq, Iran, Yemen, Syria, etc., and historians call it after the capital Babylon. The name of the city, in translation, means "God's Gate" (Bab-ily). Babylon was the economic, cultural and religious center of all of West Asia and

parts of the African continent. The city of Babylon stretched on both banks of the Euphrates River. With fortifications, it covered over 12 km². The outer walls were surrounded by water. The canal was 14 km long and 7.10 m wide. There were 360 one-story towers in the city, at a distance of 42.5 m. There were also eight bronze gates, on the routes of the main roads. In addition to the palace, temple and other buildings in the city, the Tower of Babel (El-temen-an-ki) was built, 91.5 m high (The Encyclopedia of War, 1972, p. 390).

Throughout history, the city has been destroyed several times, and it seems that was only spared from the great conqueror Alexander Macedonian (Alexander the Great). After all, you can read more about that in the book “Ancient empires” by Jovan Deretić and Dragoljub P. Antić, who used extensive historical material and extensive professional literature.

For us Serbs (as well as other nations of Southeast and Eastern Europe), Babylon arouses scientific curiosity and has some special significance because Alexander the Great “Macedonian” died in it (probably poisoned).

The history of Babylonia is divided, usually into: Sumerian-Akkadian period (V-III millennium BC), Amorite (around 1850-1750 BC), Cassite period (around 1750-1500 BC), the Assyrian period, continues from the end of the second millennium to the middle of the first millennium, and then follows the New Babylonian period. It should consider that such a summary of Babylonia is not complete because there were certainly revolts and uprisings, i.e. liberation or enslavement-occupation of certain territories (Krstinić & Vasiljković, 2019, pp. 1–14).

The aim of the paper is not a complete historical study, or even a detailed presentation of that state formation. Displayed details are only a guide for easier observation and study, primarily of young researchers. The New Babylonian period arose after the division of the Assyrian Empire, because after independence it fell under the rule of Persia. The Persian ruler Xerxes destroyed the city of Babylon, which despite the destruction remains the cultural capital of that geographical area. The following presentation will be dedicated to the text of the Hammurabi Code, noting that every legal provision we process shows the socio-economic relations of that time. The Code was written in stone, so there could be no amendments, and the property provisions show that there was no inflation or debt consolidation at that time.

I note in particular that the presentation of the history of Babylonia was done with respect for the principles of official historical science, but it should be borne in mind that science has not yet harmonized views on the existence and evolution of some nations such as Sumerians, Semites, Amorites, Scythians, Getae, Macedonians and others.

3. Hammurabi's Code

The Old Babylonian Code is named after the ruler Hammurabi, whose face was carved in stone (as he receives earthly laws from the god Shamash). It is considered that it had 282 rules, because from the rule 65, one fortieth of the rules have not been preserved. The law was drafted as a constitutive act ("Constitution"), and regulates various legal matters: it regulates complex property relations, family relations, obligations, criminal-legal relations, and contains provisions on the judiciary and the army. Let's try to present and analyze these provisions, following the order as done by law (Jasić, 1968).

a) Military provisions

There are two types of conscripts in the law, classified by size of possession. The Code does not allow the replacement of a conscript with another person, even if the manager (Governor) of a certain area allows it, obviously in order to preserve the quality of the army.

The Temple and the Court are ordered to redeem the captured conscript, as well as to return his property if it was given to someone else to use. Provisions on inheriting military property regulate the continuity of family obligations, so that military property is inherited from father to son. The military property is well protected from usurpation and abuse (it cannot be confiscated or sold), in order to preserve the land fund for the purpose of mobilization and activation of the army. Conscripts are protected from the arbitrariness of administrative officials. For example, rule 26 stipulates that if an official or soldier who is ordered to go on the king's battle did not leave, and even if he hired someone, that someone left instead of him, that is. replaced him, he deserves death, and his property will be inherited by the person who replaced him.

b) Basic provisions of the Code

In modern legal texts, the basic provisions are the introductory and most important provisions that maintain the purpose of the law. When it comes to the Hammurabi Code, probably the first rules of the law are short and clear, and they regulated the most common delinquent behaviors, and thus the most socially harmful-dangerous behaviors. Rule 1. prescribes: "If a man brings an accusation against another man, charging him with murder, but cannot prove it, the accuser shall be put to death".

The next rule shows the religious prejudices of that time, because it prescribes: "If a man has accused another of laying a spell upon him, but has not proved it, the accused shall go to the sacred river, he shall plunge into the

sacred river, and if the sacred river shall conquer him, he that accused him shall take possession of his house. If the sacred river shall show his innocence and he is saved, his accuser shall be put to death.”

Rule 3 prescribes the death penalty for perjury, in case that the death penalty was prescribed for the act the person testified.

A judge who reversed his verdict was stripped of his judicial title.

The death penalty was also provided for the theft of a court's or temple's (God's) treasure, and the same punishment followed for the one who received those stolen items. The same punishment followed for buying without a contract or a witness, not only material goods but also slaves or animals (Rule 7).

The class dichotomy of society was reflected in the provisions that differently treated and regulated the property of the court or the “man” (probably the lord). The thief compensates thirtyfold for the property of the court or the temple, and tenfold the property of the “men” (Rule 8).

It is obvious that such severe punishments had reasons and justification, no matter how it seems to us today. Practically from Rules 9-13. it is prescribed that possession of another's property without a contract or witness “deserves death”.

The death penalty was threatened by false witnesses in property disputes. The death penalty was threatened (Rules 14-16) for stealing a male child or “taking” a slave out of the court or “a man”.

Theft and robbery were punishable by death (Rules 21-24), and the injured party was compensated by the regional sheikh or the city in case the perpetrator was not identified.

The provision of Rule 36 is still relevant today, at the time of “court executions”, and reads:

“The field, garden, and house of a chieftain, soldier, or assets given as a reward, can not be sold”.

c) Property law provisions

Ownership of property and disposal of property is enabled by Rule 39 of the Law. The law also regulated the relationship between turnover and lease of property.

The provision of Rule. 44 which regulates the lease of land that was not arable in order to be converted into arable land. If the buyer does not do that within the agreed deadline, he will have to do so (after the expiration of the agreed deadline), as well as pay the fine to the owner “10 gur of grain on 10 gan area”. Conditions of damage caused by force majeure were also foreseen, such as due to flood or drought. The provision of Rule 51, which

regulates the position of the debtor towards the creditor for the borrowed money, is interesting, that if there is no money to return, he will hand over the grain instead of the money, as determined by the royal tariff. With a free interpretation, I conclude that there were no usurers at that time.

The negligence of the damage was also regulated, so that if someone allowed the irrigation canal that he maintained to cause damage (e.g. to the city), and could not compensate the damage, the city could sell him and the property, and share the redemption price. (Rule 54)". It was similarly arranged for grazing the herd without the permission of the landowner: "he was obliged to give the landowner to harvest from his property" and on top of that 20 gur of grain on every 10 gak of the area" (Rule 57).

The provisions of Rules 58-65 of the law show the obligation of the owner of land, forest, pasture or orchard to have to "manage as a good host", i.e. to take care of the property in an exemplary manner. It is obvious that land property was also considered a common good. The provisions of Rules 65-99 were not preserved. Existing trade relations can be seen from the provisions of Rules 100-115 A broader interpretation shows that the trade was unhindered, and the relations between the contracting parties were provided by law. The law also regulated the relations between intermediaries and trade assistants. Here is an example from Rule 105 "If the agent is careless and does not take a receipt for the money which he has given to the merchant, the money not receipted for shall not be placed to his account". So, almost 4000 years ago, it was known how to prevent the illegal acquisition of property, i.e. it had to have the origin of money. It can be said with certainty that the rights and obligations were regulated by that time. Thus, Rule 110 provides: "If a priestess who is not living in a convent opens a wine shop or enters a wine shop for a drink, they shall burn that woman.

Other property relations were also regulated, such as service, pledge, debt slavery, etc. For example (Rule 117), the debtor could pledge family members (wife, son, daughter) while the debt lasts, but the legislator limited such debt bondage so that it could not last longer than three years.

The forced execution of the debt was regulated in such a way that if the abuser died in the house of the one who exercised coercion over him, and it is the son of a free man, he was paid "one third of the silver line and was deprived of what he lent". The law enabled the possession of slaves, and it is obvious that they had a legal position in the trade.

At that time, there was also warehousing of goods as a legal concept, so the provisions of Rules 120-123 regulated that issue, which means that there was a storage contract, the storekeeper's obligations to keep goods, payment

of compensation for stored goods, such as grain, etc. Rule 127 regulates the issue of compensation for insult or defamation, so that the one who slanders someone's wife or priest, "his forehead will be stamped".

d) Family relationships

Marital relations are also regulated by the Code, and Rule 128 stipulates that "If someone marries and has not determined the obligations of his wife, she is not considered married."

Adultery was severely punished, e.g. if a woman is caught in bed with another man, she will be tied up and thrown into the water, provided that if the husband does not allow the wife and the king to a servant to live. A man "deserved death" if it was found that he dishonored an unmarried girl.

The wife was not allowed to remarry, i.e. "go to another house if there is something to eat in the husband's house". If she left because "she did not take care of her body", i.e. she went to another house, she was tried, and then she was thrown into the water (Rule 133).

Upon their return from captivity, the prisoners of war found a wife who lived in someone else's house, because she had nothing to eat in her own house. In that case, the returnee took the wife back, and if she had sons from the relationship with both of them, each of them took them. "They followed their father" (Rule 135).

The concubines who gave birth to children were protected so that the man could not drive them away "until they raise the children".

The issue of dowry was regulated by Rules 137-139, and the issue of divorce by Rules 140-142. The law regulates the discriminatory status of a woman who has given birth and woman who have not given birth, so the law deprived women who did not give birth to children so that they could bring a concubine to give birth to a child, in which case the husband could not expel such a woman.

The wife could leave the house and return to her parents, and the husband was obliged to return part of the dowry from his father. She could not give the gift that the wife received from her husband to anyone, except to one of her children.

"If a man's wife, for the sake of another, has caused her husband to be killed, that woman shall be impaled"(Rule 153).

"If a man has committed incest with his daughter, that man shall be banished from the city" (Rule 154).

Sexual intercourse between mother and son was punished by mutual burning (Rule 157).

Sexual intercourse with the stepmother who gave birth to children with his father, lead to expulsion of criminal and expulsion from the father's home.

The dowry that the wife brings from the father is inherited by the children after her death, and if there are no children, then the husband returns the dowry to her father.

e) Inheritance law

The right to inherit existed at that time and was regulated in great detail. The father's property was divided between the sons into equal parts. Also, the existence of the so-called Necessary act (the notion of modern legislation), i.e. the father could not renounce the child and deprive him of his inheritance "if the child is not charged with a serious crime". Children with a slave whom the father recognized as his own participate equally in the division of the inheritance with children born in marriage. If the father did not admit during his life, that is said to the children of the slave "You are my children", after father's death they did not participate in the division of property, but were released from slavery.

The status of slavery was provided by law if there was a relationship between the daughter of a free man and a slave, the master of the slave could not demand that the children of the daughter of a free man be slaves.

A widow with small children could enter another man's house, only in the presence of a judge who lists the property of the previous husband, and it is kept for his children.

The law singled out female children who were priestesses or public women (in modern language - prostitutes).

The two mentioned categories were separated, i.e. they acquired a dowry at the request of their father, who was able to allow them to dispose of their property freely (Rules 178 and 179).

The daughter "loner" (unmarried) or a public woman who did not receive a dowry could live in her father's house and use the property, "and after her death it belongs to her brothers".

There was a category of child adoption.

It was provided so called full adoption, i.e. the child who adopter raised could not be sought back, i.e. seek annulment of adoption.

Similar provisions applied to children who were adopted and trained as craftsmen.

"If a son of a paramour or a prostitute say to his adoptive father or mother: 'You are not my father, or my mother,' his tongue shall be cut off" (Rule 192).

"If a child hits his father, his hands will be cut off" (Rule 195).

The principle of retaliation existed and was applied reciprocally. So, if someone breaks the hand of a free man, the hand of the perpetrator will be broken.

I note that the class character of the law is visible, because free people were more protected than slaves (Janković & Mirković, 1997. p. 9). Punishments for the abuse of slaves were provided, such as if someone slaps a slave of a free man, his ear is cut off (Rule 205), and for slapping a free man of the same social position “He will be paid with silver”.

Property fines were provided for physical attacks on free citizens, and especially high fines were provided for quackery or wrong treatment by doctors (Rules 215–227).

These provisions also contain similar property penalties for veterinarians.

f) Other provisions

The provisions of Rules 228–282 (Rule 262 has not been preserved) regulate various relations, and these provisions indicate that economic life was developed at that time.

Let's pay attention to the provisions that regulate the construction of houses. A contractor who does not carry out construction work properly, so the owner of the house dies because the house collapsed on him, the contractor is punished by death (Rule 229) (Slavnić, 2008, pp. 91–100).

“If it kills the son of the owner the son of that builder shall be put to death”.

Compensation for damage to unprofessional and low-quality construction works was also envisaged. If there were no fatal consequences, restitution of the damage included compensation for the complete damage and the construction of a new house.

The provisions of Rules 234–240 regulate shipbuilding, renting ships, transporting goods and passengers, as well as compensation for their damage.

These provisions also prescribe the amount of damages that could not be reduced arbitrarily even by the judge.

Obviously, at that time, agriculture was the most important, (Danilović & Stanojević, 1987, p. 11) because the Code (Rules 241–273), regulated the obligation to cultivate the land, renting land, as well as using and renting livestock to cultivate the land.

The law provided a value (usually grain) for renting oxen, donkeys or slaves.

The legislator also protected cattle breeders, as well as damages that happened or could happen due to the theft of cattle, field damage caused by cattle, and shepherds, etc.

Wage earners were paid for their work per day (“5 silver sheaves” – Rule 273 (Danilović & Stanojević, 1987, p. 9). The provisions of Rule 274 show that craft was developed, and for craftsmen (bricklayers, tailors, carpenters) the compensation per day was also determined by law. Obviously, the trade was also expressed because (Rules 275–277) the prices for renting scaffolding, sailing ships, etc. were determined by law. Rules 278–282 stipulate the slave trade, both for slaves in the country and for those who have fled, bought abroad.

4. Concluding remarks

Writing this text and thinking about the text of the law, there is little to say if it is said that the Code of Hammurabi is a jewel for lawyers and historians, as well as for all researchers of the ancient past. It is a real miracle that nothing more has been done to popularize the Hammurabi’s Code. For example, the text of the code was first translated into Serbian less than 100 years ago. (1925), and since then it has only been mentioned in the history of law.

The Law was published and made available on Wikipedia, but more complete works with a historical understanding of that time have not appeared yet.

Of course, this mild criticism was directed not only at lawyers but also at historians, archaeologists, linguists, art historians and even economists, because at that time economic relations were conducted according to the rules written in stone. When we say inscribed in stone, it means that those provisions could not be changed, and those who applied the law (judges), determined only the factual situation, while the law resolved the merits of the disputed relationship.

All of us who read this text must admire the purity of language and the clarity of legal norms. We believe that future researchers will find a connection between our great-great-grandparents and this code. The idea of this kind was created for me by reading the legal rules of Saint Sava and Dušan’s Code. It is unbelievable how many similarities there are between these three codes, and if it was not possible to know, in the time of Saint Sava or in the time of Emperor Dušan, to know about the existence of Hammurabi’s Code.

It is emphasized that some discriminatory provisions concerning women, such as stoning for adultery, have been maintained until today as a common and positive right in the geographical area from which the Hammurabi Code originates.

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ISTORIJSKOPRAVNI PRIKAZ HAMURABIJEVOG ZAKONIKA

REZIME: Hamurabijev zakonik prikazuje društvene odnose iz tog vremena, iako je veći deo ovih odnosa bio regulisan obligacionim pravom. Zakonik obuhvata raznovrsnu pravnu materiju: reguliše veoma složene svojinske, porodične, obligacione i krivično-pravne odnose, a sadrži odredbe o sudstvu. U Zakoniku je izražen klasni karakter društva, jer u prvom redu štiti interese vladajuće klase, a za ista krivična dela različito kažnjava pripadnike vladajuće klase i potčinjene klase. Zakonik je uklesan u kamenom stubu a pronašao ga je M. Morgan 1901 godine. To remek delo ljudske misli, staro skoro četiri milenijuma, urezao je u kamenu Vavilona (Hamurabi) za hram Sipar (sada ruševina Abu Dhabi kod Bagdada). Neoštećeni natpis Zakonika čuva se u Britanskom muzeju.

Ključne reči: *Hamurabi, Vavilonija, Sumersko-Akadski period, Asirski period, Novovavilonski period.*

References

1. Danilović J. & Stanojević, O. (1987). *Tekstovi rimskog prava: beleška Marija Torcija Katona Starijeg (234.-139. g.p.n.e.)* [Texts of Roman law, Note of Marcus Porcius Cato the Elder (234-139 BC)]. Beograd: Službeni list
2. Deretić, J. & Antić, D. (2017). *Istorija Srba i Rusa: knj. 2: drevna carstva* [History of Serbs and Russians: book two: ancient empires]. Beograd: Ganeša klub
3. *Vojna enciklopedija tom 10* (1972). [Encyclopedia of War]. Beograd: Vojnoizdavački zavod
4. Ignjatović, M. (2012). Rimsko pravo i njegov trajni karakter – uticaj rimskog prava na savremeno pravo [Roman law and its lasting character – the influence of Roman law on contemporary law]. *Pravo – teorija i praksa*, 29 (7-9), pp. 55–70

5. Janković, D. & Mirković, M. (1997). *Državnopravna istorija Jugoslavije* [State and legal history of Yugoslavia], Beograd: "Draganić"
6. Jasić, S. (1968). *Zakoni Starog i Srednjeg veka* [Laws of the Ancient and Middle Ages]. Beograd: Budućnost
7. Krstinić, D. & Vasiljković, J. (2019). Prve građanske i krivične kodifikacije [The first civil and criminal codifications]. *Pravo – teorija i praksa*, 36 (4-6), pp. 1–14, DOI:10.5937/ptp1904001K
8. Slavnić, L. (2008). *Istorija pravnih institucija* [History of legal institutions]. Novi Sad: Pravni fakultet za privredu i pravosuđe