Introduction

In the spring of 1903, the popular Munich magazine *Jugend*, which gave its name to an entire artistic movement that dominated the decorative arts at the turn of the century – *Jugendstil* (Art Nouveau) – published a highly complex cartoon entitled *Eine Babel-Bibel-Allee* (fig. 1).[1] The title alluded to the so-called Babel-Bible controversy, which engrossed the German public during those months. A year earlier, the Berlin Assyriologist Friedrich Delitzsch (1850–1922) had given a public lecture on the question of how much the Bible owed to ancient Mesopotamia, which many Christians and Jews perceived as an open attack on the Old Testament respectively the Hebrew Bible. In a second lecture in January 1903, the Assyriologist sharpened his thesis, while his antisemitic motives, already present in his first lecture, became increasingly apparent.[2] What made the lectures a true scandal was the presence of an illustrious audience of cultural and political celebrities, including Kaiser Wilhelm II (1859–1941).[3] The cartoon features the most prominent names present in the debate, without distinguishing between mythical and historical figures and the actual protagonists involved. It ironically suggests placing stelae for each of them along Berlin's significant east-west axis (today Straße des 17. Juni), another contentious topic in contemporary discussions. Thus, we find Delitzsch himself, the theologian Adolf von Harnack (1851–1930) and the German-British antisemitic ideologue Houston Stewart Chamberlain (1855–1927) alongside Abraham, Moses (both of whom are portrayed in a clearly antisemitic manner), Homer, and Kaiser Wilhelm I (1797–1888), the grandfather of the Kaiser and the first ruler of the newly founded Reich.[4]

Against the backdrop of the contemporary debate, the appearance of most of these figures in a cartoon is not surprising. However, the figure on the first stele in the row is particularly significant: it is King Hammurapi of Babylon, ruler of the Old Babylonian Kingdom from c. 1792 to c. 1750 BC.[5] While the other characters were likely recognisable from the historical canon or everyday politics, Hammu-

1 See on the influence of the magazine Spielmann 1988; Danguy 2009; Pearce 2024.

2 See his lectures devoted to the subject: Delitzsch 1902, 1903, 1904, 1905.

3 See on the debate Johanning 1988; Lehmann 1994; Sweek 1995; Arnold and Weisberg 2002; Cancik-Kirschbaum and Gertzen 2021.

4 Space does not allow for a detailed description of the cartoon here. It also features the court chaplain of Wilhelm I Adolf Stoecker (1835–1909, well-known for his antisemitism), the Bishop of Trier, Felix Michael Korum (1840–1921), Chancellor Otto von Bismarck (1815–1898), and the Prussian field Marshall Helmuth von Moltke (1800–1891).

5 The date of his reign is given according to the so-called middle chronology. On the life of Hammurapi see the two most recent biographies by Van de Mieroop 2005 and Charpin 2021.

 https://doi.org/10.1515/9783112223352-003

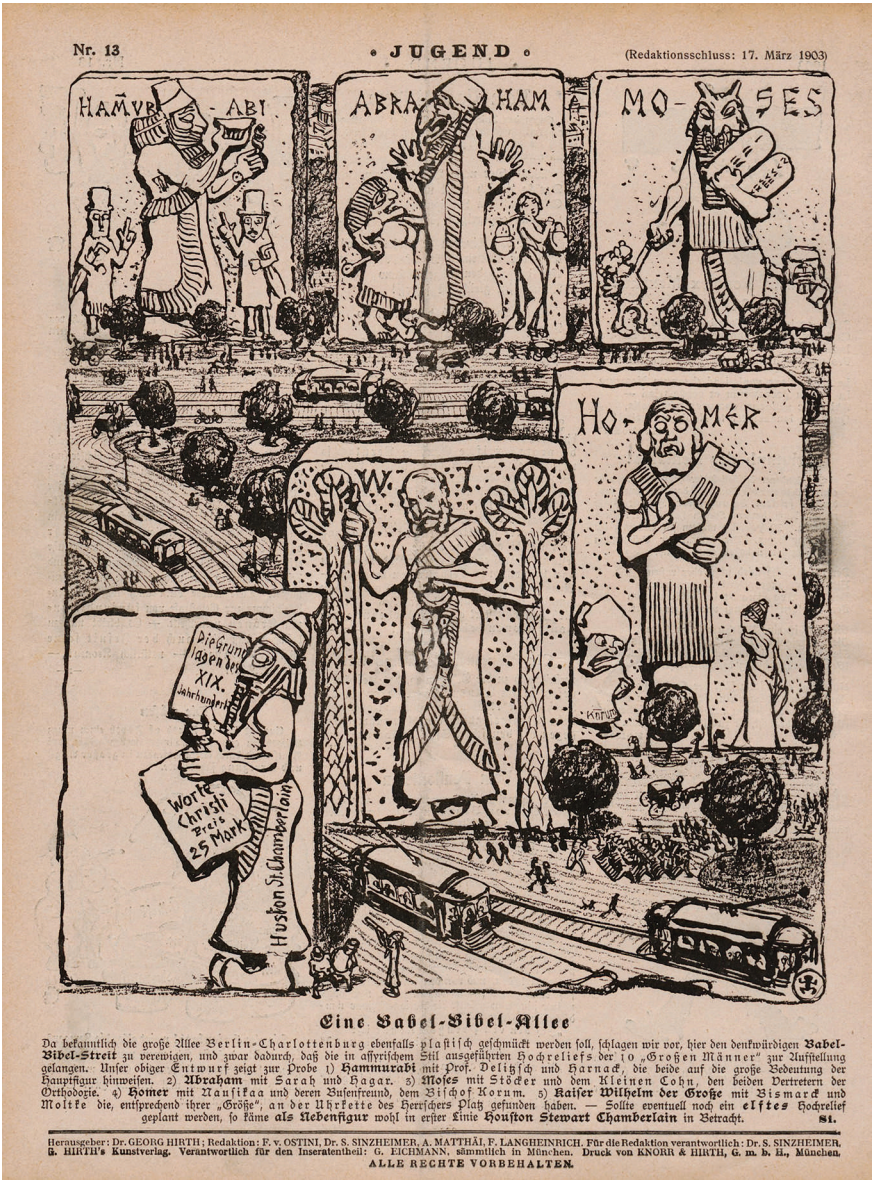

Figure 1: The cartoon "Eine Babel-Bibel-Allee" was published in 1903 by the journal *Jugend*.

rapi was almost entirely unknown beyond the niche field of Assyriology before 1900. Unlike other rulers from the ancient Near East, such as the Neo-Babylonian king Nebuchadnezzar or the Assyrian ruler Sargon II, he was not mentioned in

the Bible or by the ancient Greek writers; even Assyriologists had only come across his name a few decades before. The Old Testament scholar Rudolf Kittel (1853–1929) may have exaggerated when he claimed that the Babylonian king was discussed "in trains and cafés" during the late Wilhelmine era, but there can be no doubt that Hammurapi emerged as an important historical reference in the first decade of the twentieth century, with his fame seemingly taken for granted even by cartoonists.[6]

Hammurapi's comet-like rise to modern fame can be traced back to one of the great moments in the history of archaeology and Ancient Near Eastern Studies, which took place in December 1901: Three weeks before Delitzsch gave his controversial first lecture on Babylon and the Bible French archaeologists excavating the ancient site of Susa in southern Iran came across a remarkable object, a fragment of a black basalt stone covered with text in small cuneiform signs rendering the Akkadian (Babylonian) language. One month later in January 1902, two more fragments were found, thereby completing one of the most important archaeological discoveries from the ancient Near East, the Stela of Hammurapi, now housed in the Louvre in Paris. Originally erected in the southern Babylonian city of Sippar, it was probably taken by the Elamites to their capital, Susa, when these arch-enemies of the Babylonians sacked the region in the twelfth century BC.[7] The stele is probably a replica of an original that was likely erected in the Great Temple of Marduk in Babylon, and fragments from other stelae suggest that there were additional replicas in other locations.[8] The cuneiform inscriptions covering the entire object soon revealed a table of around one hundred laws and regulations, framed by a prologue and epilogue in which the king addresses the reader directly.[9] Until that moment, the only evidence for Old Babylonian law were fragments of later copies.[10] In contrast, the law collection that had now come to light, probably issued near the end of Hammurapi's reign, was almost completely intact. For

6 Quote taken from Lehmann 2018, 56.

7 See on the history of this object André-Salvini 2003; Charpin 2023, 1–2. Due to errors in early literature, the material of the stele is often referred to as diorite instead of basalt. See on the background of this error Charpin 2023, 1–2 (note 1).

8 On the other fragments, see Nougayrol 1957; Nougayrol 1958; furthermore Charpin 2023, 16–17.

9 In this work I will use the translation into modern English by Roth 1995a, 71–142. The individual Laws of Hammurapi (LH) are referred to as paragraphs (§).

10 Fragments of the Laws of Hammurapi had previously been published by Felix Peiser and Bruno Meissner in the 1890s. See Peiser 1890; Meissner 1898. On the transmission and tradition of the Laws of Hammurapi in later periods of Mesopotamian history, see Oelsner 2022, 39–70, 98–105.

this reason, the text became known as the 'Code of Hammurapi', widely considered at the time to be the oldest written law in human history (fig. 2).[11]

Vincent Scheil (1858–1940), a French Assyriologist and member of the Susa expedition, immediately recognised the importance of the find and began translating the cuneiform text at a breathtaking pace. His French translation was published in summer 1902, only a few months after the object was excavated.[12] Translations into other modern languages followed apace: the Berlin Assyriologist Hugo Winckler (1863–1913) published a German version in his journal *Der Alte Orient* that very same year, and the first English translation, by Robert Francis Harper (1864–1914), followed in 1904.[13] Two years later, the Orientalist Felix Peiser (1862–1921) and the legal historian Josef Kohler (1849–1919) issued the first of a series of volumes on the Laws of Hammurapi – including a new critical edition, transcription and translation of the famous code and other Old Babylonian legal documents.[14] With the second volume, Peiser was replaced as editor by Arthur Ungnad (1879–1945); after Kohler's death in 1919, the final volume was co-edited by Paul Koschaker (1879–1951) the leading historian of ancient Babylonian law in the inter-war period.[15] While this became the standard scholarly reference edition, Scheil and Winckler also published the first popular – French and German – versions of the Laws of Hammurapi for what was commonly called the educated public.[16]

The rapid dissemination of the text of the Code of Hammurapi was accompanied by an extensive scholarly and public debate on the significance of this new find, particularly for the history of civilisation, the history of law, and the history of religion. Looking at this debate, to which the present monograph is devoted, one is immediately struck by the deep fascination of contemporary Germans for the Old Babylonian king. Hardly any author portrayed Hammurapi in a negative light, and no one employed the stereotype of 'oriental despotism' to characterise his reign.[17] Instead, he was typically depicted as a modern ruler, often compared to other admired leaders in German and European history, such as

11 The Laws of Hammurapi remain a central object of scholarly interest in various fields, including Assyriology, archaeology, Biblical Studies, and Legal History. For further references, see the most recent monograph by Barmash 2020.

12 Scheil 1902. On Scheil, see Charpin 2020.

13 Winckler 1902; Harper 1904.

14 Kohler and Peiser 1904.

15 Kohler and Ungnad 1909a, 1909b, 1910, 1911; Koschaker and Ungnad 1923; see also Koschaker 1917.

16 Scheil 1904; Winckler 1904.

17 On the concept of 'oriental despotism', see with further references chapter 2.1 below.

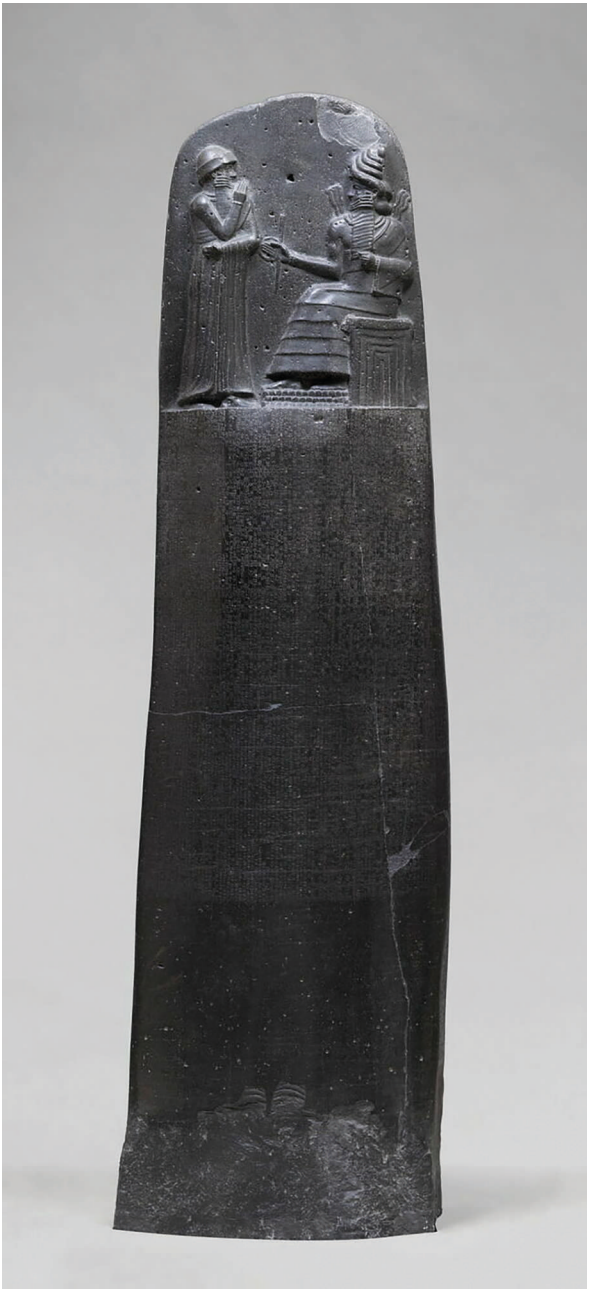

Figure 2: The Stele of Hammurabi, which features the famous 'Code', was discovered by French archaeologists in the winter of 1901/1902. It is currently on display at the Louvre Museum in Paris.

Charlemagne or Frederick II (1712–1786) of Prussia (Frederick the Great). One of Hammurapi's greatest admirers was the Kaiser himself, as evidenced by a small book on kingship in ancient Mesopotamia that he wrote towards the end of his life during his Dutch exile.[18] But already shortly after the discovery of the stela, he had expressed his enthusiasm for Hammurapi in his correspondence with Chamberlain. Certainly not least to flatter the emperor, the ideologue joined the chorus, lamenting "every page of paper that is not devoted" to the "sympathetic monarch" of ancient Babylonia.[19]

In other countries too, the sensational discovery of the stele attracted considerable attention and debate. However, as I aim to demonstrate in this work, the German discourse on Hammurapi had some peculiarities. While British, American and French scholars were concerned with similar issues – notably the relationship between Babylonian and biblical law – there was neither comparable public attention nor such a political dimension to the debate. Above all, the German romance with Hammurapi was characterised by an admiration and sympathy for the Old Babylonian king that had no parallel in Britain, the USA or France (even though the stele was excavated by French archaeologists and transported to the Louvre).[20] Major discursive events, such as the Babel-Bible controversy, which had no counterpart in other countries, certainly contributed to – or even triggered – the Hammurapi hype and can hardly be separated from it. The same applies to the great German excavation in Babylon, which had begun only a few years earlier. (It should be noted that, the fact that twelve hundred years separate the Old Babylonian and Neo-Babylonian periods, the latter of which was then coming to light through excavation, was not widely registered in public perception). However, as I hope to demonstrate, the debate surrounding Hammurapi had several specific features and cannot be reduced to either the Babel-Bible controversy or the broader German 'Babelomania' of the early twentieth century. It should instead be analysed against the backdrop of the specific discourses prevalent during the Wilhelmine era.[21]

In the heyday of nationalism and race theory, positive references and identifications with particular historical figures were often based on imagined common descent or supposed direct historical connections. It is all the more surprising that

18 Wilhelm II 1938.

19 Chamberlain 1928, 197 (letter to William II dated 27 March 1903).

20 Due to my personal knowledge of particular languages, I only mention Britain, the USA and France here. However, I would venture to say that in no other country did the discovery of the Code of Hammurapi spark a response comparable with that it did in Wilhemine Germany.

21 For an overview of German 'Babelomania' see Polaschegg and Weichenhan 2017. Unfortunately, the book contains some misinformation about the intellectual background.

such claims did not play a central role in the admiration of Hammurapi; even racial ideologues like Chamberlain did not care that the Babylonian king was not of Indo-Germanic or Aryan origin, but rather Semitic, according to contemporary racial categories.[22] Much more crucial to the German romanticised view of Hammurapi than race were contemporary conceptions of history, law, and religion, which stood to be either confirmed or challenged by the discovery of the Old Babylonian law collections. Late nineteenth and early twentieth century Germany witnessed significant discursive shifts and transformations in all of these subject areas. The modern "regime of historicity" described by the French historian François Hartog some years ago has always been less dominant than this phrase suggests.[23] Already during the so-called "crisis of historicism" at the turn of the century, ideas of historical continuity, progress, development, or evolution – usually considered constitutive of modernity – became increasingly implausible and were partly replaced by alternative conceptions.[24] The discovery of an almost unknown period of civilisation, which embodied less of 'eternity' (a trope commonly applied to ancient Egypt) than 'modernity,' contributed to these debates and even accelerated the dissolution of older concepts.

The fact that Hammurapi was a historically attested ruler, whose deeds could be narrated like those of other so-called 'great men' was crucial in this respect and had obvious political implications. As we shall see, the debate about the Old Babylonian king in many ways reflected the political and legal discourse about the (unclear) constitutional position of the German emperor, triggered not least by the autocratic behaviour of a monarch who positioned himself within a tradition of divine rulers that he traced back to none other than Hammurapi. A similar idea was the linking of Hammurapi and selected rulers of other epochs under the conceptual framework of 'enlightened absolutism', initially introduced to characterise the reigns of Prussian and Austrian kings in the eighteenth century. Although the enlightened kings were seen as initiators of progress and modernisation for their countries, crucially they ruled without constitutional constraints. The question of governmental constitutions however, was linked to the broader concept of the rule of law, or *Rechtsstaatlichkeit*, in imperial Germany. The leading schools in the philosophy and history of law, such as natural law theory, Kantian rational law, neo-Hegelianism, and legal positivism, all attempted to claim the stele of Hammurapi for their own approach. In this context, the ancient

22 This is not to say, of course, that racial theories were absent from Ancient Near Eastern Studies, quite the opposite, as I have shown elsewhere. See with further references Wiedemann 2020, 2024b.

23 Hartog 2015. See the critique of his ideas by Lorenz 2019 and Hölscher 2020, 55–58.

24 See with further references Oexle 2007b.

law code played a central role, as it challenged assumptions about the history of law and the relationship between positive (written) law and customary (unwritten) law. This also raised the question of the general relationship between law and morality (or *Sittlichkeit*), a central issue in modern legal philosophy since the eighteenth century, marked in the German tradition by the opposing positions of Immanuel Kant (1724–1804) and Georg Wilhelm Friedrich Hegel (1770–1831).

As we shall see, the Code of Hammurapi was employed as a historical reference for various, even contradictory, arguments in this regard. The ethical aspect was, of course, closely linked to the question of the religious basis of law. However, in the case of the Code of Hammurapi, the historical-religious question of the relationship between Old Babylonian and biblical law was far more significant. This issue became particularly contentious during the Babel-Bible controversy, as the apparent parallels between the two seemed to support Delitzsch's arguments and were thus perceived by conservative Christian and Jewish scholars as a threat to the belief in the revelation of biblical law. As a consequence, an intense debate ensued on the relationship between Hammurapi and Moses. This is usually treated by modern scholars such as Klaus Johanning, Yaakov Shavit and Mordechai Eran as a subchapter of the Babel-Bible controversy.[25] However, despite the obvious parallels, 'Moses vs. Hammurapi' became a debate in its own right, rather than just an offshoot of the discourse surrounding 'Babel and Bible'.[26]

In contemporary Germany, all debates about the relationship between Babylonia and the Bible involved the purported heirs of the ancient Israelites, the modern Jews, as is evidenced by the clearly antisemitic stereotypes in the cartoon. As a result, antisemitic motifs and prejudices played an important role in the Babel-Bible controversy and became even more strongly pronounced over the course of the debate, ultimately leading Delitzsch to become a fierce advocate of *völkisch* antisemitism in his later years.[27] The same reasoning applied to discussions of the Code of Hammurapi. The triumphant tone of certain archaeologists and Assyriologists who argued that biblical law might be a copy of older Babylonian sources, an argument that could be seen as attempting to render Moses an impostor, was motivated in large part by their personal antisemitism. Biblical law, now seemingly disenchanted by Babylonian law, had been a bone of contention for Christians since antiquity and continued to haunt modern atheists and agnostics. Against this

25 Johanning 1988, 291–316; Shavit and Eran 2007, 342–48.

26 Discussions about Moses and Hammurapi also took place in the Anglo-Saxon world. However, these were usually less heated than those in the German-speaking world and lacked the escalations associated with the Babel-Bible controversy. See, among others, Cook 1903; Duncan 1904; Davies 1905.

27 See especially his last book, Delitzsch 1920; on Delitzsch's antisemitism see Arnold 2021.

background, "ideas of Judaism" have always been present in fundamental critiques of law, in the sense, as David Nirenberg has argued, that anti-Judaism served as a negative foil to Western thought against which "new ways of thinking about the world" were developed.[28] As we shall see, this mechanism was also at work in the discourse surrounding the complex relationship between law, morality and constitutional rights within the German Reich. Given these implications, it is not surprising that antisemitic ideologues such as Chamberlain followed the scholarly debate on biblical law with great interest.

The intersections between Biblical Studies, Orientalism, Assyriology, and antisemitism since the late eighteenth century have rightly attracted attention in recent scholarship.[29] While it is present in all the branches of discourse that I will explore in this book, it would be a mistake to overemphasise this point and to reduce public and scholarly enthusiasm for Hammurapi and ancient Babylonia to mere antisemitism. Some of the scholars who championed Hammurapi, so to speak, were themselves Jews or of Jewish background, such as Peiser or Lehmann-Haupt, while most of the Christian defenders of Moses and the Bible were by no means defenders of the Jews. Finally, important factions of contemporary antisemitism simply did not care about the debate, as they were entirely focused on the alleged Germanic or Aryan roots of particular European peoples and thus rejected early twentieth century 'Babelomania'.

There can be no doubt that all contemporary references to and interpretations of the Code of Hammurapi were shaped by the political, cultural, and epistemological contexts of the nations that were engaging with it. As a result, these interpretations may reveal more about the discourses of history, law and religion in imperial Germany than about Old Babylonia and certain of them may seem outdated or even anachronistic. As we shall see however, this was not a unidirectional process and the reverse was also true: the famous object itself influenced discourses on history, law and religion at this time and helped contemporaries to understand their own present. Certainly, the parallels between the two worlds that seemed so striking to early twentieth century German society are no longer as convincing to us. But it is precisely this temporal entanglement between ancient Babylonia and modern Germany that makes the debate about Hammurapi highly relevant from a 'Chronoi' perspective. What I am particularly interested in is how the temporal distance between ancient Babylonia and modern Germany was bridged by overlooking the gaps. I am also intrigued by the conceptual frame-

28 Nirenberg 2013, 5.

29 See among others Hoheisel 1978; Kusche 1991; Cooper 1993; Pasto 1998; Hess 2000; Wiese 1999; Beckmann 2002; Heschel 2005, 2008; Rohde 2009; Gerdmar 2009; Wiedemann 2023.

work that enabled contemporary scholars to draw direct connections between different historical contexts without being accused of unhistorical or anachronistic thinking. As I will argue, this frank use of different pasts not only illuminates contemporary historiographical practice but also offers significant insights into the historical consciousness *(Geschichtsbewusstsein)* in Germany at the turn of the twentieth century. Scholars were, of course, acutely aware of the considerable differences between the societies of ancient Babylonia and modern Germany. However, a decontextualised perspective on the so called great historical men (such as Hammurapi and other rulers considered exceptional), along with the systematic and synchronic approaches to the history of law and religion that were gaining traction, allowed them to set aside traditional historiographical notions such as continuity, development, and progress.

The present work focuses on the relatively short period between 1902, the year of the discovery of Hammurapi's stele and the beginning of the Babel-Bible controversy, and the fall of the German Reich at the end of the First World War. However, to understand the complex debates surrounding conceptions of history, German constitutionalism, and the relationship between law, morality, and religion, it is necessary to trace the relevant discourses back to the early nineteenth century, or even the late eighteenth century. Later developments and texts published after 1918 are only occasionally considered. For Germany, the end of the First World War brought not only profound political changes but also a discursive rupture in most of the fields discussed here. Therefore, it is reasonable to assume that if the Code of Hammurapi had been discovered twenty years later, the entire discussion would have been different.

As a historian of modern history, my general aim is to contextualise the scholarly and public debates regarding Hammurapi in Wilhelmine Germany. Therefore, I will not attempt to relate contemporary views on the ancient Near East to recent scholarship and so 'correct' them; such an endeavour that would be presumptuous anyway, given my lack of expertise in the complex fields of Ancient Near Eastern and Biblical Studies.[30] This is not to say that the questions raised by early twentieth century scholars or the answers they found are generally obsolete today (while in many cases they are, in others quite the opposite is true). My argument is, however, that both their questions and their answers existed in a complex relationship within the political, cultural, and epistemological contexts of their time, from which they cannot be extracted. This, of course, also applies to the scholarship of today, including my own. The present short study is situated at the intersection of the history of ideas, the history of historiography, and the

30 On the history of research, see Oelsner 2022, 34–38; Barmash 2020, 6–11.

political history of the German Reich during the Wilhemine era. It addresses a range of general questions that are raised and intensively discussed in these disciplines, including the formation and transformation of conceptions of time and history at the turn of the twentieth century, the contributions of Oriental Studies and Biblical Studies to contemporary antisemitism, racism, and nationalism, as well as the actual or perceived peculiarities of German historical thinking and German (constitutional) law. While the present work draws significantly on recent scholarship in these fields, it cannot explore each these issues in depth. Above all, this book is concerned with the question of German Orientalism. However, as I have argued elsewhere, I propose a different understanding of the term 'Orientalism' than that presented in postcolonial theory, which often follows Edward Said's misleading approach. Nevertheless, I do not wish to condemn such perspectives, as has become common in recent 'anti-woke' discourse from the political right, which I consider far more dangerous to academic freedom. At this point, I will only refer to my earlier remarks on the subject.[31]

Outline of the Present Work

I have chosen not to present my material in biographical or chronological order, but to follow a topical approach, dividing this monograph into three chapters that do not necessarily build on each other and can be read independently. The first chapter is of a general introductory nature and attempts to explain the German Babelomania of the turn of the twentieth century in order to understand the positive cultural references to Hammurapi. This chapter is devoted in particular to the conceptions of history that were commonly applied in the nineteenth and twentieth centuries to the presentation and writing of the history of the ancient Near East. It discusses the impact of the exploration of ancient Babylonia, specifically the discovery of Hammurapi and his code, on these conceptions, focusing on the idea of great men as almost transhistorical entities existing in a historical universe of their own. In the case of Hammurapi, it is particularly striking that he was portrayed as the ruler of an ostensibly modern society. In the second chapter, I place the discourse surrounding Hammurapi and his rule in the context of the ongoing discussions regarding the constitutional position of the monarch and the meaning of the rule of law in the newly founded German nation-state. This examination includes the classification of Hammurapi as an enlightened ruler in con-

31 See Wiedemann 2020, 393–411; 2021. On German Orientalism and its peculiarities, see among others Marchand 2009.

temporary scholarly and public discourse, as well as the direct and indirect analogies that this concept evokes. The third chapter discusses the relationship between law, ethics, and religion with reference to the Code of Hammurapi. It begins with the debate within Assyriology and Biblical Studies regarding the impact of Old Babylonian law on the laws recorded in the Bible, then moves on to the philosophical discussions regarding law and morality that were prompted by the new discovery. Finally, it outlines contemporary portrayals of Hammurapi as a secular ruler, which often aligned with anti-clerical and, in many cases, antisemitic views.

A Note on Translation and Spelling

One of the major problems in writing this book was the issue of translation. German discourses on law, politics, and religion at the turn of the twentieth century feature a distinctive language that is difficult to understand, even for modern native speakers. This difficulty arises less from outdated wording and formulations and more from the use of certain key concepts that once played a significant role in such discourse, but which are either no longer in use (e.g., *Sittlichkeit*) or have changed their meaning in contemporary German. Furthermore, corresponding to different legal traditions, national peculiarities are particularly noticeable in the language of law. For instance, there are important German concepts that generally have no equivalents in other languages, such as *Rechtsstaat* (which does not only mean 'the rule of law'). Against this backdrop, providing adequate translations into modern English proved challenging. For classical philosophical or historiographical texts by authors such as Kant, Hegel, Nietzsche, and Burckhardt, I could draw on contemporary or modern translations, although I have highlighted some problematic translations where appropriate. As few translations were available for most of the German texts, in the case of longer quotations I have provided both the German original and an English translation.

Modern scholars agree that the traditional designation 'Code' or 'Codex' of Hammurapi, coined by Scheil in the early twentieth century, is highly misleading, as it originates from the European legal tradition and evokes comparisons with the Code of Justinian and the Code of Napoleon. While the actual status the Laws of Hammurapi held within the legal system of ancient Babylonia is still debated, it is clear that they were not a code in the modern sense.[32] Aware of this discussion, I will nevertheless refer to the 'Code' of Hammurapi, as this was the

32 See among others Renger 1994; Westbrook 2009a [1989]; Charpin 2010, 71–82; Barmash 2020, 15–17.

term used by the participants of the debate and it deeply shaped their perceptions of Babylonian law through the conceptual analogies it provides. Concerning the spelling of the name of the Old Babylonian king, Hammura*b*i or Hammura*p*i, a definitive solution was not possible, as both variants, alongside others, appear in contemporary texts. For the sake of consistency, I have chosen a coherent spelling that follows the suggestion of my Assyriological colleagues and use 'Hammurapi' (except in direct quotes).[33]

33 Transliterating the proper name from the Akkadian cuneiform script allows for both readings, Hammu-rāpi and Hammu-rabî. See on this issue Streck 1999.