

Summary and Outlook

Although excavated by French archaeologists, the discovery of the stele bearing the Code of Hammurapi was a much bigger media event in Wilhelmine Germany than it was across the Rhine. In Germany, the find was widely discussed and attracted considerable scholarly and public attention, well beyond the small circle of specialists in the niche discipline of Assyriology. Hammurapi could not have chosen a better time and place to be resurrected from oblivion, as Romantic Orientalism was deeply rooted in German literature and scholarship and the Reich was ruled by a monarch with a particular interest in the history and politics of the Middle East. In addition, the prolific German excavations at the ancient site of Babylon had begun only a few years before Hammurapi's stele came to light, and had themselves sparked a Babylomania that was further intensified by media events such as the Babel-Bible-controversy.

In this context, Hammurapi and his law collection became significant reference points for discussions on a wide range of topics, some of which, at first glance, seem to have little to do with the history of the ancient Near East. Modern scholars began to identify striking similarities between the Babylonian king of the eighteenth century BC, the Prussian kings of the eighteenth century AD, and their own monarch; depicting all of these characters according to the model of enlightened absolutism. This historical entanglement of very different rulers and societies was not the result of a lack of historical reflection; of course, everyone recognised the considerable differences between the societies of the ancient Near East and modern Europe. Rather, what made these temporal entanglements attractive were specific issues and problems, particularly in the areas of politics, law, and religion, which contemporary German scholars believed both ancient Babylonia and their own society had in common. The notions of historical continuity, progress, and development that are usually associated with specific modern understandings of time and history were already being challenged by the turn of the twentieth century (in fact, these notions have always been less dominant than our postmodern perspective on the 'classical' modern period assumes). The discovery of a historical era that appeared almost modern – or rather, as an ancient version of modernity – contributed to a crisis in the traditional conception of history. Alternative ways of representing history and relating different eras to one another, such as the concept of key-epochs, brought to life by a few (male) heroic individuals, seemed to offer new solutions. One of the conceptual frameworks used to link together certain 'bright' epochs stemming from various historical contexts was enlightened absolutism. Differences in the social, technological, and economic status of the historical contexts to which the concept was applied (i. e., Old

Babylonia, medieval Sicily, eighteenth-century Prussia, modern Germany) mattered far less than the alleged common spirit of these ages, or *Zeitgeist*, characterised by rational administration, strong economies, and social welfare. The most important element of the concept of enlightened absolutism, however, was a rulers' personal will to mould their realm according to their wishes. This last point, which appeared to be substantiated by Hammurapi's interventions and decisions in individual law cases (as evidenced by his letters), attracted significant public attention during the first decade of the twentieth century due to its political ramifications. After all, the German Kaiser and his supporters had sought to establish an autocratic and anti-democratic form of government in modern Germany, which they described as *persönliches Regiment* and attempted to legitimise this principle by linking it to ancient Babylonia. In his ultimately unsuccessful attempt to modify the political system of the German Reich to his advantage, the Kaiser exploited the ambiguity in the German constitution regarding the definition of the monarch's position. Though scholars of the time did not compare the Code of Hammurapi with modern constitutions (as the CH does not address the position of the monarch in the Babylonian political system) they did compare its spirit to that of certain modern law codes and constitutions. This included making analogies between the Babylonian and German rule of law, or *Rechtsstaatlichkeit*, usually by focusing on formal aspects such as legal certainty and judicial independence.

In terms of the broader history of law however, the main question raised by the discovery of the Laws of Hammurapi concerned their relationship to biblical law. This aspect gained a highly political dimension due to the concurrent Babel-Bible controversy, in which the Code of Hammurapi became a central reference point for both sides of the debate. For those taking the view of Delitzsch, the Code of Hammurapi seemed to testify to the Bible's dependence on Babylonia and thus to contribute to its general disenchantment. In contrast, Delitzsch's opponents sought to identify differences between the two law traditions that would ultimately prove the superiority of biblical law. These opposing viewpoints reflected longstanding debates in German legal theory and philosophy regarding the relationship between law, morality (*Sittlichkeit*), and religion. Again, the Code of Hammurapi served as a reference point for various positions. For proponents of the German historical school and pioneers of legal positivism, the apparent absence of moral rules and any normative framework in Babylonian law, along with its generally 'secular' character, seemed to demonstrate its modernity, whereas proponents of natural and rational law theory considered these features to be a major weakness of Babylonian law as compared to biblical law.

If the Code of Hammurapi had been discovered only twenty years later, these discussions may have been entirely different. While the larger debate did not end

with the outbreak of the First World War, one can nevertheless observe a clear discursive break between the Wilhelmine period and the new Weimar era. One reason for this was a generational change; many of the thinkers who dominated the German debate involving the Hammurapi Stele in the first decade following its discovery died before, during or shortly after the First World War: The theologian Samuel Oettli in 1911, the Orientalist David Heinrich Müller in 1912, the Assyriologist Hugo Winckler in 1913, the legal historian Josef Kohler in 1919, and the Assyriologists Friedrich Delitzsch and Felix Peiser in 1921. Others, such as the Assyriologist Fritz Hommel retired and ceased to publish. The great editions of Babylonian law, initiated by Kohler and Peiser, were continued by Koschaker and Ungnad, while younger scholars such as Benno Landsberger (1890–1968) further contributed to the study of the Code of Hammurapi.³⁵⁶ The ongoing political situation in Germany deeply affected the fields of Ancient Near Eastern Studies, Biblical Studies and Legal History, to name those most relevant to this monograph. German Middle Eastern Studies, which had been expanding rapidly in the Wilhelmine era and were both admired and envied by international colleagues, suddenly lost their leading position due to a lack of financial support and new difficulties in gaining access to scholarly materials. The loss of Germany's colonial and imperial infrastructure was particularly hard on these disciplines, as Middle Eastern sites were no longer part of an allied country such as the Ottoman Empire. Instead, previous study areas now belonged either to the newly formed Turkish nation state or were under the control of Western colonial empires, as was the case for archaeological sites in Syria and Mesopotamia. Furthermore, the First World War resulted in a breakdown in international scholarly cooperation, thereby, complicating the study of objects in British, French, and American museums and university collections by German scholars.³⁵⁷

Most importantly however, was the changed political, cultural, and intellectual landscape after 1918, which resulted in a different public reception and level of attention paid to such issues, as compared to before the war. Although nearly all of the general ideas that shaped German Orientalism in the 1920s were present before the First World War, the discursive constellations shifted during the Weimar Republic. It was primarily political radicalisation that reshuffled the cards in the great game of ideas and ideologies. For example, whereas legal positivism had previously been found among both conservative and liberal scholars, by the 1920s it was restricted to democratic defenders of the democratic status quo, with the Austrian-Jewish jurist and political philosopher Kelsen as its most promi-

356 Koschaker and Ungnad 1923; Landsberger 1939.

357 See Marchand 2009, 476–87.

ment representative.³⁵⁸ Conversely, legal scholars still sympathetic to the old monarchy questioned the legitimacy of the new republican order, referring to supposedly higher principles of law than the written Weimar constitution. As a result, legal positivism became the central bogeyman for nationalist and antisemitic scholars, who denounced it as ‘Jewish’ legalism, its most prominent detractor being the future Nazi jurist Carl Schmitt, who drew heavily on the tradition of Christian antinomism.³⁵⁹ Therefore, Weimar anti-positivism did not lead to the return of the normative into law; rather, it paved the way for the “normativity of the ideological” under the Nazis, to borrow a phrase from the legal scholar Bernd Rüthers.³⁶⁰

The ‘great men’ paradigm, which had significantly influenced the discourse on Hammurapi during the Wilhelmine period, also underwent an important transformation after the First World War. As noted above, in the nineteenth and early twentieth centuries, this concept was closely linked to similar ideas about so-called geniuses, particularly in the fields of art and science. During the Weimar years however, the study of great men was increasingly refined into an authoritarian notion of political leadership, characterised by a strong (male) leader presiding over masses who blindly followed his will. The ideology and cult of political leadership became core elements of right-wing and fascist movements across Europe during the 1920s. Consequently, the older concept of enlightened monarchs favouring pastoral and patriarchal styles of authoritarianism while promoting the rule of law (though they themselves were of course above the law), did not align with this new framework. For this reason, neither the two Fredericks nor Hammurapi were suitable for fascist appropriation. Lastly, new tides of anti-semitism became a major factor in the increasing radicalisation of politics. Even during the Babel-Bible controversy, siding with Babel against the Bible had often (but not always) coincided with antisemitic prejudices. By the 1920s, this polarisation had intensified, as the radical rejection of the Old Testament emerged as an important signifier of political antisemitism. This sentiment frequently appeared intertwined with notions of a *völkisch* religion, either Christian or neopagan, that was purged of all ‘Jewish’ elements.³⁶¹

Since 1902, Mesopotamian law collections older than the Code of Hammurapi have come to light, with the oldest known being the Laws of Ur-Namma, written c.

³⁵⁸ See (among others) Dreier 2019.

³⁵⁹ See with further references R. Gross 2005; Maus 2011 [1995].

³⁶⁰ Rüthers 1988, 65.

³⁶¹ On *völkisch* conceptions of religion, see (among others) Schnurbein and Ulbricht 2001; Cancik and Puschner 2004; Puschner and Vollnhals 2012.

2100 BC.³⁶² This means that the laws of Hammurapi have lost their status as the oldest of human history; furthermore, given the long tradition of Mesopotamian law, the erection of the stele can no longer be considered the heroic act of one individual, as early twentieth-century scholars held. However, several other issues raised by the Code of Hammurapi continue to be subjects of ongoing debate in the fields of Ancient Near Eastern Studies, Biblical Studies, and Legal History, partly due to their general nature. Questions such as whether law, ethics, and religion developed separately, and at what date they became intertwined, are perhaps not ultimately answerable and so are revisited by every new generation of scholars. The general positions of the ‘Hammurapi vs. Moses’ debate from the early twentieth century are still identifiable in some scholarly writings of today. There are modern scholars who claim that biblical law strongly depends on the Laws of Hammurapi and portraying the Israelites as mere imitators.³⁶³ Conversely, a German Old Testament scholar recently made a sharp distinction between an “ethos of ruling and serving,” as represented by Hammurapi and the Babylonians, and an “ethos of freedom and equality,” as represented by Moses and the Bible. These perspectives clearly echo the polemics of early twentieth century Christian and Jewish defenders of Moses against Delitzsch and his followers.³⁶⁴ To take another problem, the historical relationship between customary or common law and positive or written law and how each developed remains a subject of debate. This debate includes the related questions of which aspects of Babylonian and biblical law can be attributed to which traditions, and whether a common source for both of these ancient Near Eastern law codes should be assumed.³⁶⁵

However, the context in which these questions are being discussed at the beginning of the twenty-first century is very different from that of Wilhelmine Germany, which gives this scholarly discourse a different significance. To begin with the most obvious point, although the concept of secularism (understood as a teleological category intrinsically linked to modernity), has been rightly criticised, there is no doubt that the importance of religion to almost all European societies dramatically decreased over the course of the twentieth and twenty-first centuries (this does, however, not apply to other regions of the world in a similar way).³⁶⁶ In Germany, persons who do not belong to one of the Christian churches now make up the majority of the population; in Berlin, almost 70 % of residents are con-

³⁶² See (among others) Roth 1995b; for the Laws of Ur-Namma Roth 1995a, 13–22.

³⁶³ See especially Wright 2009, but also the critique by Otto 2010.

³⁶⁴ Lux 2003, 112–13.

³⁶⁵ See the overview of current scholarship by Otto 2006, 2010; Schmid 2021.

³⁶⁶ For criticism of the concept of secularism, see Asad 2003.

sidered non-denominational.³⁶⁷ As knowledge of the Bible comes to be increasingly rare, it is difficult to envision major public debates like those of the Babel-Bible controversy occurring today. Moreover, any current discussion of the relationship between Babylonian and biblical law or the figures of Hammurapi and Moses are only followed by a small segment of society.³⁶⁸ Even radical criticism of the Bible and the outright rejection of biblical religion do not provoke society anymore. But it is not only Moses who has faded from public discourse, Hammurapi has almost completely lost his relevance as well, largely due to a lack of knowledge about the ancient Near East, which is no longer included in the school curriculum. Therefore, while biblical and ancient Near Eastern scholars continue to debate some of the questions raised following the discovery of Hammurapi's stela, their discussions rarely attract attention beyond academia.

Though the religious issues related to the Code of Hammurapi have lost their political and cultural relevance, it is more challenging to address the political and constitutional issues that characterised German debates involving the Code of Hammurapi at the beginning of the twentieth century. The problems surrounding the monarchy and its historical legitimacy have become irrelevant since the Kaiser abdicated in 1918, though a small minority on the far right (the so-called *Reichsbürger*) may still dream of a new German monarchy.³⁶⁹ The 'monarchical principle' is now a matter for historians rather than constitutional lawyers, and journalists no longer need to speculate about benefits or disadvantages of the 'personal rule' of a monarch who claims divine right. The decline of monarchism does not mean, however, that the appeal of autocratic and authoritarian rule has disappeared. Calls for strong leaders (still usually conceived of as men) and authoritarian conceptions of the welfare state are gaining new currency. These tenden-

367 See Forschungsgruppe Weltanschauungen in Deutschland, Kirchenmitglieder und Konfessionsfreie in Berlin, 2019, <https://fowid.de/meldung/kirchenmitglieder-und-konfessionsfreie-berlin-1867-2017>, accessed 15 May 2025.

368 However, it seems that there are national and cultural differences and this observation should not be generalised. Though both articles are of a similar length, the English Wikipedia article on Hammurapi includes a paragraph discussing the relationship between the Code of Hammurapi and biblical law which is absent from the German version. This difference may reflect the different levels of importance placed on religious issues in German and American contexts.

369 See, for instance the extremist group *Königreich Deutschland* (Kingdom of Germany), <https://koenigreichdeutschland.org/de>, accessed 01 April 2025. The website is no longer accessible as the group was banned in May 2025 by the German Minister of the Interior. See <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2025/05/verbot-koenigreich-deutschland.html>, accessed 30 May 2025. On the organisation and ideology of the *Reichsbürger*-movement, see the brief summary in Bundesministerium des Inneren und für Heimat 2023, 30–34.

cies have been accompanied by a steady decline in the rule of law worldwide over the past decade, including in liberal democracies.³⁷⁰ Without repealing liberal constitutions as neo-absolutist monarchs did in the nineteenth century, current authoritarian movements have found ways to disrupt constitutional structures and institutions and have been quite successful in certain countries, such as Hungary. Rather than relying on democratic and constitutional procedures, the current “authoritarian constitutionalism”, as defined by legal scholar Günter Frankenberg, depends on special mandates and decrees, as well as the disempowerment of the judiciary and an abolition of the separation of powers.³⁷¹

It is true that the ongoing debates regarding threats to democracy are now conducted without reference to ancient Near Eastern or biblical history, as these references are no longer considered relevant. Given the current situation however, an acknowledgement of the long history and evolution of law has acquired new political urgency. While there may be no need to declare the Code of Hammurapi the historical origin of our modern *Rechtsstaat*, as German scholars did at the beginning of the twentieth century, it is important that the rule of law not be taken for granted. It is rather a historical achievement worth defending. For this reason, reflections on the long history of law, sometimes going back to the era of Hammurapi, remain relevant in the 21st century.

³⁷⁰ See the latest (2024) “Global rule law report” by the World Justice Project (WJP): <https://worldjusticeproject.org/rule-of-law-index>, accessed 30 March 2025. There is a huge body of literature on this topic, see (among others) Huber 2019; Schmidt and Zabel 2021; Pichl 2024.

³⁷¹ Frankenberg 2020, 134–69.