

# *Analysis of the Death Penalty System in the Code of Hammurabi*

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**Abstract:** The Code of Hammurabi is an ancient legal code established by the Babylonian King Hammurabi, believed to have been written around the 18th century BCE. This legal code is considered one of the earliest known legal codes in the world and covers a wide range of legal areas, including criminal offenses, marriage and family matters, commercial crimes, and procedural aspects of litigation. The Code of Hammurabi contains relatively strict and distinctive provisions regarding the death penalty, reflecting the ancient society's understanding of punishment, culpability, and justice. This paper intends to explore these aspect of the code.

## **1. Introduction**

In the construction of human civilization, the element of "water" has had profound and significant impacts on the development of societies. The core region of the ancient Babylonian civilization was situated between the Tigris and Euphrates rivers, and the advantageous geographical location between these two rivers played a pivotal role in the prosperity of the Babylonian civilization. Fertile soil allowed for abundant agricultural production, while the accessibility of waterways facilitated cultural exchange and trade, making ancient Babylon a vital commercial hub.

With the advanced development of a market economy, the emergence of a legal system became inevitable. Among the 282 provisions in the Code of Hammurabi, it encompassed both criminal and civil laws, addressing a wide array of subjects such as family matters, property, construction projects, and more. Within this legal code, there were 34 provisions related to the death penalty.

## **2. Conditions for the Application of the Death Penalty**

In the Code of Hammurabi, the death penalty primarily applied to crimes related to the violation of property ownership, crimes against the person, crimes disrupting marriage and family, and crimes undermining the state system.

## 2.1. Crimes against Property Ownership

The Code of Hammurabi provides stringent protection for property ownership. Among the 34 provisions in which the death penalty is applicable, nearly half of them are dedicated to safeguarding property rights<sup>[1]</sup>. The protected subjects of property rights primarily include private property, religious temples, and palace property, as well as the property rights of slave owners over their slaves.

Article 7 of the Code of Hammurabi stipulates that if a person buys or holds property from someone else but cannot provide evidence of a contract proving that the property was legitimately acquired or held for another individual, that person would be considered a thief and subject to the death penalty. Articles 9, 10, and 11 of the code pertain to lost property. If someone claims that their lost property has been found in another person's possession, both parties are required to provide corresponding witnesses to establish ownership. If the person in possession of the lost property cannot prove that they obtained it through legitimate means, they would be deemed a thief and sentenced to the death penalty.

In ancient Babylonian society, the protection of religious temples and palace property held significant importance. Compared to the penalties for offenses related to private property, the Code of Hammurabi imposed stricter and more severe punishments for those who violated religious temple and palace property.

Article 6 of the Code of Hammurabi states that if someone steals property from a temple or the palace, not only will the thief be put to death, but also the person who receives stolen property from the thief will face the death penalty. Article 8 distinguishes between theft of private property and theft of temple or palace property. If someone steals oxen, sheep, donkeys, pigs, or boats that belong to a commoner, they are required to pay tenfold restitution. However, if the stolen property belongs to a religious temple or the palace, the thief must pay thirty fold restitution. If the thief is unable to make restitution, they will face the death penalty. This demonstrates the Code of Hammurabi's stringent measures for protecting the property of religious temples and the palace.

The concept of slaves as property was prevalent in many ancient societies, granting slave owners the authority to control and manage their slaves. Articles 15, 16, and 19 of the Code of Hammurabi all treat slaves as the property of their masters and provide for their protection within the legal code. According to the code, if someone captures a runaway slave and returns them to their owner, the slave owner is obligated to reward the individual with silver or gold. Conversely, if someone conceals a runaway slave in their home, they will face the death penalty. Furthermore, if a barber shaves off a slave's distinguishing mark without informing the slave's owner, that barber will be punished by having their fingers cut off. These regulations underscore the extent to which the Code of Hammurabi protected the property rights and control of slave owners over their slaves.

## 2.2. Crimes against Persons

The Code of Hammurabi reflects the principle of homogenous revenge through the concept of "an eye for an eye, a tooth for a tooth" (Lex Talionis). Simultaneously, it attempts to ensure fair trials and protect innocent individuals from unwarranted accusations and punishment through provisions addressing false accusations.

The principle of homogenous revenge in the Code of Hammurabi reflects an early concept of criminal law, where offenders were to receive a punishment equivalent to their crime. For example, in Articles 196 and 197 of the code, it is stipulated that if someone damages the eye of another person's son, their own eye should be damaged in return. Similarly, if someone breaks the bone of another person's son, their own bone should be broken in retribution. Articles 218, 229, and 230 of the code contain provisions that specify the consequences for individuals in certain professions. If a

doctor's surgery results in the death of a patient or causes blindness, the doctor would be required to cut off their own finger. In the case of a builder whose poorly constructed house collapses, leading to the death of the house's owner, the builder would be sentenced to death. If the house collapse resulted in the death of the owner's son, the builder's own son would be put to death in retribution. These provisions illustrate the principle of Lex Talionis, where the punishment matches the injury caused <sup>[2]</sup>.

The principle of homogenous revenge provides clarity in punishment by specifying a direct relationship between criminal actions and corresponding penalties. It also serves as a deterrent, as individuals are aware of the consequences of their actions. However, when viewed in a modern context, this rigid and punitive principle lacks legal flexibility and doesn't consider the complexity of circumstances in crimes. It may not be suitable for all types of crimes, particularly those that do not involve physical harm, such as economic or non-violent offenses. In such cases, the application of the principle of homogenous revenge can result in excessively harsh punishments, which may not align with principles of fair trial and human rights.

The opening provisions of the Code of Hammurabi establish a principle that if someone accuses another person of a crime, such as murder, and cannot provide evidence to support their accusation, the accuser will face the death penalty. This highlights the importance of providing substantiated evidence when making serious allegations in legal proceedings. It emphasizes the value of a fair and just legal process, where accusations must be supported by concrete evidence to prevent unwarranted or baseless claims that could lead to severe consequences, including the death penalty.

These provisions were intended to prevent false accusations and ensure the reasonableness of charges. They, to a certain extent, balanced the legal system, reflecting the seriousness with which lawmakers viewed false accusations and emphasized the pursuit of justice in the Code of Hammurabi. However, compared to more lenient and reasonable punishment methods in modern legal practices, the death penalty as a punishment for false accusations can be considered harsh. Contemporary legal systems often opt for less severe consequences for false accusations while still maintaining the importance of truthful testimony and evidence in legal proceedings.

In the ancient Babylonian society, individuals were divided into three classes based on their professions, social status, and legal standing. The "Awilu" were the free citizens of Babylon, typically including nobles, high-ranking officials, military leaders, and those with wealth and social standing. The "Mushkenu" were also free citizens but had relatively lower social status. They had close ties to the royal family and received protection and limitations from the monarchy. However, the legal protection for the "Awilu" and "Mushkenu" differed. For instance, as per laws 196 and 198 in the code, if someone harmed an "Awilu", they would face an equivalent punishment. But if someone harmed a "Mushkenu", they were required to compensate the injured party. As for the lowest class in society, the slaves ("Abdu"), if they engaged in violence against a free citizen, their punishment was the amputation of their ears as a form of discipline.<sup>[3]</sup>

### **2.3. Crimes that Disrupt Marriage and Family**

The Code of Hammurabi dedicates a significant portion of its text to regulating marital and familial relationships, aiming to standardize domestic affairs, protect marital bonds, safeguard family rights, and govern property inheritance. It takes a notably different approach from modern society's use of more common means to maintain the stability of marital and family relationships.

In contrast, the Code of Hammurabi widely employs the death penalty to regulate family relationships. For instance, Articles 153 to 158 of the code provide for the death penalty as punishment for acts of incest and adultery within the family. These stringent measures were imposed to uphold the sanctity of familial bonds and to deter individuals from engaging in

behaviors that would disrupt the family structure, reflecting the severity with which the code dealt with crimes that threatened the stability of marriage and family relationships.

## **2.4. Crimes that Undermine the State System**

In the Code of Hammurabi, crimes that threatened the state system often received the harshest punishments. This approach aimed to deter individuals from engaging in actions that could destabilize the state's functioning or its security. The severe penalties in such cases were in line with the code's overarching goal of maintaining order and ensuring the well-being of the state.

Article 26 of the Code of Hammurabi stipulates that if a military officer (Litu) or soldier (Babairu) disobeys the king's orders, refuses to engage in battle, or hires someone to replace them in military service, they would face the death penalty. Articles 33 and 34 deal with those who disobey royal commands to go to war. Anyone who disobeys these orders would be sentenced to death without exception.

Articles 108 to 110 of the code regulate behaviors that could threaten social order. For instance, if a seller of alcoholic beverages fails to deliver a criminal to the palace or allows nuns to enter the tavern to drink, they would also be subject to the death penalty. These provisions emphasize the severity of punishment for actions that could undermine social security and discipline.

## **3. Trial Procedures for Death Penalty Cases**

The Code of Hammurabi outlined a series of trial procedures, including court hearings, witness testimonies, and court judgments. In death penalty cases, the evidence had to be substantial, and it often required the testimony of multiple individuals to support a death penalty verdict. This emphasized the importance of robust evidence and a fair legal process in cases where the ultimate punishment of death was at stake.

### **3.1. The Judicial Institutions in Ancient Babylon**

The administrative structure of Babylon consisted of the king, the court, and the priesthood. In ancient Babylon, the king held the highest judicial authority and was considered a divine ruler. Typically, the king promulgated laws and codes and exercised the ultimate power in judicial decision-making. The king's court comprised high-ranking officials and nobility who played a significant role in legal and judicial matters. The court could hear and resolve disputes, issue decrees, and participate in the administration of state affairs. The priesthood, on the other hand, was responsible for interpreting and enforcing laws related to religious rituals, sacred laws, and temple matters.

### **3.2. Death Penalty Trial Procedure**

Articles 1, 2, 5, 9, 10, and 13 of the Code of Hammurabi clarify that if someone believes that another person has committed a crime punishable by death, they can file an accusation and bring the accused to court. In court, the accuser is required to present evidence proving the guilt of the accused. This evidence may include witness testimonies, written documents such as promissory notes or receipts, and other forms of documentation. The accused also has the opportunity to state their case, offer a defense, or represent themselves. The accused can provide witnesses or evidence to support their defense. After hearing the evidence and statements from both sides, the judge makes a determination of guilt or innocence. If the accused is found guilty, the judge issues a death penalty verdict, and the penalty is executed immediately. This process reflects the legal procedures

established in the Code of Hammurabi for handling death penalty cases.

The relatively simple and swift death penalty trial procedures in the Code of Hammurabi may have been designed to ensure the rapid restoration of social order and to deliver retributive justice promptly. However, these procedures could also increase the risk of wrongful convictions as they are brief and may not adequately consider evidence and defense arguments. Additionally, the Code of Hammurabi does not contain provisions for an appeals process. Once a death sentence was pronounced, the accused might not have had the opportunity to appeal or petition for a review of the judgment. This lack of an appeals process makes the judgments final and leaves no avenue for correcting potential miscarriages of justice.

### **3.3. Methods of Execution for the Death Penalty**

Among the provisions in Article 34 relating to the death penalty, the majority use the general expression "shall be put to death." However, some specific provisions specify particular methods of execution.

Article 24 mentions that if someone steals from the owner of a house while attempting to save it from a fire, they will be thrown into the fire as a form of execution. Article 108 states that a seller of alcoholic beverages who accepts something other than grain as payment for alcohol shall be thrown into the water. The phrase "thrown into the water" is a form of execution that was applied in cases involving crimes that undermined marital and family relationships, as seen in Articles 129, 132, 133, and 143. For instance, women found guilty of adultery or causing their husbands shame through infidelity were subjected to being "thrown into the water." It's worth noting that the "thrown into the water" in these cases refers to the form of execution known as drowning and is distinct from the use of the phrase in Article 2. Article 2 introduces a unique trial method known as the "water ordeal" or "trial by water." In cases of witchcraft accusations, the accused would be thrown into the water and left to the judgment of the gods. If they survived by not drowning, it was considered a sign of innocence. However, if they drowned, it was taken as an indication of guilt. From a modern legal and human rights perspective, this method of determining innocence or guilt based on whether the accused floated or drowned is seen as absurd and cruel. Nevertheless, it reflects the influence of religion and divine authority in ancient Babylon and is a distinctive feature of the Code of Hammurabi.

Article 153 mentions "the punishment of impalement" as a method of execution. Additionally, Articles 190 to 205 mention punishments such as blinding, amputation of fingers, and breaking bones as part of the judicial system's penalties.

## **4. The characteristics of the death penalty system**

The characteristics of the death penalty system in the Code of Hammurabi can be understood in the context of a society with a slave-based economy over 3,000 years ago. Compared to the concurrent legal system in Western Zhou, which employed the Five Punishments, the methods of execution for the death penalty in the Code of Hammurabi were relatively moderate. In the Code of Hammurabi, the choice of the form of the death penalty was more closely tied to the nature of the offense. In contrast, the Western Zhou legal system emphasized a hierarchical approach to punishments, matching the severity of the punishment with the seriousness of the offense. It prioritized the reform of offenders and the maintenance of social order, even if the punishments themselves were more severe.

Furthermore, Legislators imposed the harshest penalties on crimes related to the infringement of property rights and the disruption of marital and familial relationships for several reasons. Firstly, in ancient societies, property ownership was typically regarded as paramount because it was closely

tied to the livelihood and survival of individuals and families. Infringing upon property rights might have been perceived as a grave threat to individuals and their families, justifying the use of extreme punishments. Secondly, ancient societies often emphasized the stability of marriage and family units as they were considered the cornerstone of the social order. Consequently, disrupting marital and familial relationships could be viewed as a severe threat to social order, necessitating stringent sanctions.

## 5. Conclusions

In the Code of Hammurabi, the death penalty was applied quite broadly. In addition to crimes that posed a threat to national security and social order, general offenses like adultery, theft, and false accusations could also result in the death penalty. However, in modern society and contemporary legal systems, the imposition of the death penalty is subject to strict limitations and is typically reserved for extremely heinous crimes, such as intentional homicide. Modern legal systems place a greater emphasis on human rights and seek to avoid cruel and inhumane punishments. Therefore, when comparing the practices of the Code of Hammurabi with modern law, significant differences become apparent.

Homonymous revenge is a legal principle in the Code of Hammurabi, which follows the principle of "an eye for an eye, a tooth for a tooth." Several factors, including societal, cultural, and legal considerations, may underlie this principle.<sup>[4]</sup>

In ancient societies, maintaining social order was of paramount importance. By making the punishment for a crime equivalent to the harm inflicted on the victim, the law may have sought to ensure fairness and equality, preventing excessive or inadequate penalties. It also aimed to prevent individuals or families from taking matters into their own hands and seeking private vengeance. This helped to avoid bloody family feuds and societal instability. Additionally, in ancient Babylon, religious and cultural factors had a significant influence on the law and society. Homonymous revenge might have been in line with the prevailing religious beliefs and moral values, seen as the will of the divine.

However, this principle could encourage vengeful emotions, leading to a vicious cycle of retaliation, where the animosity between criminals and victims escalates, without achieving the intended goal of "ending the cycle of crime."

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