The Laws of Delict in the Hebrew Bible and Their Ancient Near Eastern Forerunners: Analysing and Comparing Social Attitudes to Crime

Ilan Peled
https://orcid.org/0000-0002-2335-662X
Universiteit van Amsterdam, Netherlands
i.peled@uva.nl

Abstract

This article compares the ancient Near Eastern and biblical laws pertaining to delict. Since I offer an in-depth study elsewhere (Peled, forthcoming) of delict-related felonies attested in the different ancient Near Eastern law collections, the present article only touches upon this issue in brief, while focusing on the pertinent biblical laws. The main questions addressed here therefore relate to the manner in which biblical law treated different delicts, and to how similar or different the attitudes to delict were in the extant ancient Near Eastern and biblical legal corpora.

Keywords: Biblical law; ancient Near Eastern law; delict; legal history; crime in antiquity

Introduction: Delict and Law in the Ancient Near East and the Hebrew Bible[1]

The topic of crime and punishment in the ancient world has always been—and still is—captivating. In this article I aspire to add another dimension to the decades-long

[1] Abbreviations: HL: Hittite Laws; LE: Laws of Ešnunna; LH: Laws of Hammurabi; LLI: Laws of Lipit-Ištar; LUN: Laws of Ur-Namma; MAL: Middle Assyrian Laws; NBL: Neo-Babylonian Laws. English translations of the ancient Near Eastern statutes mentioned in this article can be found in Roth (1997). Updated translations (and statute numbers) of LUN are found in Civil (2011) and Wilcke (2014). The most authoritative translations of HL are in Hoffner (1997).

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comparative research on ancient Near Eastern and biblical law, focusing on the statutes pertaining to delict in these two legal corpora.[2]

This article entails several methodological complexities. To begin with, the ancient Near East, and even Mesopotamia itself, hardly formed a monolithic cultural unit. The different ancient Near Eastern law collections were thus produced at different times, in different places, by different people. It is beyond the scope of this article to discuss the similarities and differences between these collections, but we should note the obvious: they reflect a diverse historical and cultural reality. It is therefore quite impossible to speak about ancient Near Eastern attitude as reflected in these sources. Nonetheless, we still have some room for making overarching assumptions, given the many historical and cultural denominators common to all the civilisations that produced these collections: the Sumerians, Babylonians, Assyrians and Hittites.[3] Taking these points into consideration, we can move on to the next step and compare these sources to the biblical ones.

It goes without saying that the ancient Israelites were influenced by their ancient Near Eastern counterparts in numerous ways, and that the long-lasting legal tradition of Mesopotamia and the ancient Near East is echoed in biblical law as well.[4] Some of the similarities between the two corpora are so close that little doubt exists as to the fact that the later corpus borrowed certain themes from the older one. Still, there are many differences between the two.[5]

Many questions still remain unresolved concerning the exact extent to which written laws—both ancient Near Eastern and biblical—were practised in everyday life, if at all.[6] This article does not aim to advance our capability to answer these questions, but rather to analyse one specific legal sphere in biblical law, and to compare it where relevant to its ancient Near Eastern forerunners: the sphere of delict.

The term "delict" requires clarification, given the pivotal role it plays in this article. From a legal perspective, the definition may vary from one place and time to another. In essence, this term usually describes both unintentional and premeditated criminal acts that have harmful consequences of damage or loss to specific individuals. Negligence can also form a delict felony if a required action did not take place, thus causing damage. The usual felonies that belong to the sphere of delict are homicide, theft, robbery, damage to property, injury, and insult. Felonies of delict are addressed by all ancient

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[2] For previous comparative research the reader may consult, to name but a few sources, Paul (1970), Westbrook (1985; 1988), Otto (1994), Greengus (1994; 2011) and Wells (2008).

[3] See, e.g., in the introductory chapters of Roth (1997, 1–10) and Westbrook (2003, esp. 8–10).

[4] See, e.g., Paul (1970), Westbrook (1985; 1988), Greengus (1994) and Otto (1994).

[5] Some of the basic discussions are in Westbrook (1985; 1988 and 1994b).

[6] See, e.g., discussions in Greengus (1994), Lafont (1994), Otto (1994) and Westbrook (1994b).

Near Eastern law collections, and also by biblical law. The different delicts were sanctioned in various ways that could change between places and periods.[7]

The above comments lead to a final clarification due concerning the methodology applied in this article. Arguably, the analysis presented here, and the very definitions and assumptions concerning the nature of delict assumed in this article, stem from a rather contemporary Western point of view. Since we cannot actually witness the ancient societies in question, and there is no-one to ask about their prevailing legal and social perspectives, we have no choice but to resort to second-hand viewpoints. Westbrook—one of the most authoritative scholars of ancient Near Eastern and biblical law—once noted the following: "The ancient Near East also has the distinction of being the cradle of the two great modern Western legal systems, the Common Law and the Civil Law, and in consequence of modern law in general."[8] This perspective explains, in a nutshell, the methodology assumed in this article, as explained above.

Laws of Delict in the Ancient Near East[9]

The different ancient Near Eastern law collections contain over 300 statutes that address delict felonies. These delicts can be divided into five categories: theft (126 statutes), damage (91 statutes), homicide (40 statutes), injury (39 statutes), and a category that combines perjury, insult, slander, and false accusations (18 statutes).

Theft

Acts of theft as treated by the law collections could include inanimate objects, domestic animals and human beings. Several other types of felonies were regarded as theft: selling a slave to two different buyers, kidnapping free people or other people's slaves, harbouring or detaining runaway slaves, and selling free persons that resided in the seller's home.[10]

[7] For general literature on delict see, to name but a few, Kelsen (1945, 20–21, 51–53), Frier (1989), Burchell (1993) and Saha (2010, 171–180). For a general discussion of delict in ancient Near Eastern law, see Westbrook (2003, 70–92).

[8] Westbrook (2003, 1n1).

[9] A full discussion is found in Peled (forthcoming). For the pertinent statute numbers, see Table 1.

[10] See generally Westbrook (2003, 81–82).

Table 1: Delict Statutes in the Ancient Near Eastern Law Collections[11]

	Theft	Damage	Homicide	Injury	Perjury
LUN	37, 39, E3b	33, 35, 40, C3–5	1, 7, 34, 36	17–26	13, 14, 38, C6
LLI	9, 12, 13	d, f, 4, 5, 10, 11, 34–37	E	–	17, 33
LE	6, 12–13, 22, 36–37, 40, 49–50	5, 23, 53, 60	24, 47a, 54–58	42–47	–
LH	6–10, 12, 19–23, 25, 106–107, 112–114, 120, 124–125, 241, 253–255, 259–260, 265	53–59, e, 116, 194, 209, 211, 213, 218–220, 225, 229–233, 235–238, 240, 244–249, 263–264, 267	24, 116, 153, 207–208, 210, 212, 214, 229–230, 250–252	196–206	1–4, 11, 13, 126–127
HL	19–21, 45, 49, 57–73, 81–83, 91–97, 101–103, 108–110, 119–122, 124–133, 142–143, 162, 166–169	17–18, 72, 74–78, 84–90, 98–100, 104–107, 113, 144, 164–165	1–6, 37–38, 43, 44, 174	7–16	–
MAL	A1, 3–6; B4, 8–10, 13–15, 20; C2–5, 8–11; F1–2; M3; N1	A21, 50–52; B7; M1–2	A10, 50, 53; B2	A7–8	A17–19; N2
NBL	–	3, 7	–	–	–
Total	126	91	40	39	18

Damage

As with the category of theft, damage could apply to objects, animals and humans. Damage could be the result of a negligent action, or of not performing a required action and allowing different calamities to occur. A distinct type of damage was hitting a pregnant woman and causing her to miscarry, which necessitated the payment of a fine. Killing or injuring another person's livestock was also regarded as a felony of damage,

[11] All statute numbers follow Roth (1997), except those of LUN—which follow Civil (2011)—and those of HL—which follow Hoffner (1997). The reader can find the pertinent statutes in these three sources, both in their original languages (Sumerian, Akkadian, Hittite) and in English translation.

as was harm caused to one's field or crops. All these delicts required the payment of financial compensation to the owner of the damaged commodity.[12]

Homicide

Homicide could be punished by talionic execution or by the payment of fines, depending on the social status of the killer and the victim, and whether it was a premeditated murder or an unintentional killing. The significant factor in terms of social status was the rank of the victim: killing a free person could lead to execution, but not the killing of a slave or a lower-ranking free person. Unintentional killing resulted in a fine, and never in execution. If an ox or a dog killed a person because its owner did not safeguard it, the owner was compelled to pay compensation.[13]

Injury

Similar to cases of homicide, injuries caused by persons to other persons could be sanctioned by talionic punishment—matching the sanction to the crime ("an eye for an eye")—or by paying financial compensation. The latter was the common rule, but talionic injury was a frequent practice in the Laws of Hammurabi. In the Laws of Ur-Namma additional sanctions applied: whipping and public humiliation. The law collections specified the nature of the injury, the exact body part involved, the social status of both perpetrator and victim, and, of course, the penalty due.[14]

Perjury

Perjury, insult, slander, and false accusations were all grouped under one category. Making legal allegations without being able to substantiate them resulted in grave penalties, ranging from talion to financial compensation. The talion would match the punishment that the accused person would have suffered had the unsubstantiated allegation against him been accepted.[15]

Laws of Delict in the Hebrew Bible

Legal provisions referring to delict already exist in the Ten Commandments (Exod. 20:2–14; Deut. 5:6–18). These, however, should not be seen as legal statutes, but rather as ethical or moral directives that probably served for formulating certain sections in the far more elaborated biblical law collections at a later date.[16]

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[12] See generally Westbrook (2003, 82).
[13] See generally Westbrook (2003, 79).
[14] See generally Westbrook (2003, 79–80).
[15] See generally Westbrook (2003, 81).
[16] See Frymer-Kensky (2003, 975–976).

Most of the statutes pertaining to civil or criminal matters in the Pentateuch are included in two clusters, the "Covenant Code" (Exod. 21–23:19) and the "Deuteronomic Code" (Deut. 12–26, with some repetition in Deut. 27). Some issues relating to civil law are also referred to in the third large legal cluster of the Pentateuch, the "Holiness Code" (Lev. 17–26). Additional statutes of a civil character are scattered randomly throughout the Pentateuch, such as the regulations for dealing with a woman suspected of adultery (Num. 5:12–31), the rules of inheritance in the absence of male heirs (Num. 27:8–11), or the regulation of homicide and cities of refuge (Num. 35:11–34). Some of these legal provisions relate to felonies of delict.

Delict felonies are mostly addressed by the "Covenant Code," and only to a lesser extent by the "Deuteronomic Code." The "Holiness Code" does rarely refer to such acts, as seen for example in the rules of theft and perjury in Lev. 5:21–26, or the rules of homicide and injury in Lev. 24:17–21. However, even in these rare cases the focus is on holiness and godly obedience rather than on actual civil or criminal misdemeanour. Hence, these provisions do not actually pertain to delict felonies as discussed in this article.

Before discussing biblical statutes of delict, a few clarifications are due concerning those statutes that do not address acts of delict, and the differentiation between the two types of legislation. Acts of delict inherently entail harm caused by a perpetrator to a victim, whether directly or indirectly, unintentionally or in a premeditated manner. Therefore, religious felonies treated by biblical law—such as idolatry, blasphemy or divination—are not considered as delict. Even though Frymer-Kensky considered such acts as blasphemy, apostasy, idolatry, and witchcraft to belong to the sphere of "crime and delict,"[17] these acts did not in fact belong in the realm of delict. These felonies were religious in nature, and did not form civil crimes committed against persons.[18]

Additionally, crimes of a sexual nature—adultery, rape, seduction, incest, bestiality and homosexuality—form a category of their own, distinct from acts of delict, because they do not inherently entail harm caused by a perpetrator to a victim, but rather reflect prohibitions on the breaching of social norms and taboos concerning sexual conduct.[19]

At times crimes that belong to one of the delict categories were addressed by biblical law from a religious rather than civil perspective. For example, the provisions in Deut. 21:1–9 relate to a case of homicide performed by an unknown perpetrator. The aim of this passage, however, is to absolve the sinful aspects of the crime, rather than to treat

[17] Frymer-Kensky (2003, 1040–1041).
[18] See also Westbrook (2003, 76).
[19] See generally Westbrook (2003, 41, 47).

the delict involved. This passage, therefore, reflects a religious rather than civil perspective, and as such does not actually refer to delict.

Seduction of a virgin girl[20] can also be seen as an act of damage, because the criminal essence of the act involved the financial losses caused to the girl's father, by making it harder for him to give her in marriage and obtain the financial profits involved. This view of the act of seduction, however, makes the aspect of damage too indirect to be regarded similarly as clear and obvious crimes of damage, and it seems that the moral value of the act also played a significant part in defining its criminal nature. The biblical legal viewpoint concerning misdemeanours such as adultery and rape should be understood in the same way.[21]

We can therefore see that the categories of delict in biblical law were almost identical to those found in the ancient Near Eastern law collections: homicide, theft, damage, injury, and perjury/slander. The Hebrew Bible, however, introduces one type of delict that is not attested as a distinct category in the ancient Near Eastern legal corpus: kidnapping free persons for the sake of selling them. As is explained below, in ancient Near Eastern law, such acts are considered under the category of theft.[22]

In what follows, the categories of delict in biblical law are discussed and compared to their corresponding categories in the ancient Near Eastern law collections. All in all, there are between 35 to 40 statutes relating to delict in the Pentateuch. This count, however, cannot be entirely accurate, because it is not always clear whether a given provision should be regarded as a separate statute or as a secondary clause of the previous statute. At times these distinctions are clear, for example based on the difference between the use of כי ("When …") for opening a primary statute and the use of אם ("If …") or או ("Or …") for introducing a secondary clause. At other times, however, the distinction can be vague.[23]

Homicide

The first category—homicide—includes the highest number of statutes among the delict felonies: 13. Most of these statutes are found in the "Covenant Code," and even the two that are found in the "Deuteronomic Code" merely reiterate—though more elaborately—some of the previous rules. Outside of the legal clusters, we encounter an account of rules of homicide and cities of refuge in Num. 35:11–34.[24]

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[20] See, for example, Exod. 22:15–16 and Deut. 22:28–29.
[21] See Frymer-Kensky (2003, 1034–1035).
[22] See Paul (1970, 65).
[23] See, e.g., Paul (1970, 46) and Brin (1994, 16).
[24] For a thorough treatment of homicide in the Hebrew Bible, see Barmash (2005). For a structural analysis of some of the pertinent statutes, see Haas (1989).

The first reference to homicide appears in the form of three consecutive verses, the first of which stipulates the basic ruling for the crime, while the following two present variants of it. The basic ruling for homicide determines simple direct talion: he who beat a man to death was to be executed (Exod. 21:12). The following verse, however, includes a variant to the rule: if the homicide was unintentional, the killer could flee and take refuge in an unspecified designated place (Exod. 21:13). The next verse relates, conversely, to premeditated killing, stating that a murderer was to be taken from God's altar to be executed (Exod. 21:14). This statute reiterates the basic ruling of Exod. 21:12, according to which killers were to face talionic execution. These statutes, however, do not specify anything concerning the said designated place where a killer could find asylum, or why a murderer would be taken "from God's altar." The former of these issues is clarified in Num. 35:11–34 and in the later "Deuteronomic Code" (see below), while the latter is echoed in 1 Kings 2:28–34. This passage tells the story of Joab ben Zeruiah, who fled for his life after supporting Adonijah ben Haggith in his failed rebellion against Solomon. Joab seized the horns of the altar when Solomon's general, Benaiah ben Jehoiada, demanded that he surrender and leave the altar. In the face of Joab's refusal, under King Solomon's orders, Benaiah came and killed him in spite of the fact that he was holding onto the altar horns.[25] The statutes of Exod. 21:13, 14 and the story of I Kings 2:28–34 supplement each other in revealing the complete picture of the law: a killer could seek asylum by holding onto the horns of the sacred altar, as long as his act was unintentional. However, premeditated murder could not be absolved this way, and the perpetrator was to be taken from the sacred altar to face execution.

These statutes, as mentioned, have parallel rulings in the book of Numbers and in the "Deuteronomic Code." The passage in Num. 35:11–34 sets out the rules for cities of refuge, where a killer could find shelter if his crime was unintentional, so that the victim's relatives would not avenge him. These rules take the form of legal statutes, and certainly convey the same message as the pertinent clauses in Exodus and Deuteronomy, but the context of this passage is religious in nature. The explanation for these rules, as given in Num. 35:33–34, is that unjustified bloodshed contaminates the land and offends God. In this sense, it is probably inaccurate to regard this passage in the same way as the parallel civil laws of Exodus and Deuteronomy.[26] Turning to the latter, Deut. 19:2–6 elaborates on the topic of cities of refuge, which were three designated cities where a person who performed accidental manslaughter could seek asylum from blood-vengeance. This passage thus clarifies the issue alluded to in Exod. 21:13. Deut. 19:11–12, however, states that if a person who had committed premeditated murder fled to a city of refuge, he was to be taken from there and to be given to the victim's relatives to

[25] Before rebelling against Solomon, Adonijah held onto the altar horns in fear of his life, but was left unharmed (1 Kings 1:50–53). Only after trying to rebel was he killed on Solomon's orders (1 Kings 2:25).

[26] The application of these rules is mentioned again in Josh 20.

avenge the murder. This statute, therefore, elaborates on the rule of Exod. 21:14 and clarifies it.[27]

The earliest ancient Near Eastern law collection—the Laws of Ur-Namma—begins with a statute that presents the basic talionic rule for homicide: a killer was to be executed. Similar to biblical law, however, further statutes supply variant cases, in which other sanctions substituted the death penalty.[28] Other collections supply different types of punishments for different cases of homicide. The Hittite Laws, for example, do not demand the death penalty for any case of killing.

The distinction between premeditated and unintentional killing exists in some ancient Near Eastern law collections, similar to what we have seen in biblical law.[29] The Hebrew Bible is exceptional, however, in the possibility it offers for preventing potential blood-vengeance by providing for cities of refuge where the performer of an unintentional killing could seek asylum.

Turning back to the laws of homicide in the "Covenant Code," the next relevant reference is Exod. 21:20, according to which a slave owner who beat his male or female slave to death was to face an unspecified punishment. No ancient Near Eastern law collection has a parallel statute to this one, in which a master who killed his slave was held responsible for a criminal act. References to the homicide of slaves in ancient Near Eastern law[30] never mention the slave owner as the perpetrator, and usually make it explicit that the slave belonged to another person, to whom the killer was to pay compensation. This is a major difference between the attitude we find in the different ancient Near Eastern law collections and biblical law.

The next statute to mention homicide is Exod. 21:23. According to it, if two men fought and one of them accidentally hit a pregnant woman and caused her death, the killer was to be executed. This statute follows the basic ruling of Exod. 21:12 concerning cases of homicide, but since it prescribes the death penalty even though the killing is unintentional, it actually contradicts the essence of Exod. 21:13 discussed above. This statute, however, is actually a variant of a previous one that appears in the preceding verse. In Exod. 21:22 accidentally hitting the pregnant woman lead to her miscarriage rather than her death. The distinction between the victim's miscarriage and her death

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[27] For an elaborate discussion of the topic of cities of refuge in the Hebrew Bible, see Barmash (2005, 71–93).

[28] LUN 1 and 34 prescribe execution for killing, LUN 7 decrees no punishment for a groom who kills his unfaithful fiancée, and LUN 36 imposes the payment of one slave on the killer of a pregnant slave woman.

[29] See, e.g., LE 24 (premeditated; execution) compared to LE 47a (unintentional; fine), LH 116 (premeditated; execution) compared to LH 207, 208 (unintentional; fine).

[30] LUN 36, LE 55, 57, LH 214, 252, HL 2, 4.

resulted in a different categorisation of the crime as a specific delict: damage in the former case, homicide in the latter. The case of damage, therefore, is discussed below.

This theme of accidentally hitting a pregnant woman, causing her either miscarriage or death, is well-attested in ancient Near Eastern law,[31] and was undoubtedly borrowed by the biblical legislators from their ancient Near Eastern counterparts.[32] The distinction between the two categories of delict—homicide or damage—depending on whether the woman died or suffered a miscarriage, is similarly apparent in both ancient Near Eastern and biblical law.[33]

We now come to a group of five consecutive statutes, all pertaining to the much-discussed theme of the "goring ox," attested in both biblical and ancient Near Eastern legal corpora.[34] These statutes are detailed in verses Exod. 21:28–32. The first of these statutes (Exod. 21:28) stipulates a basic ruling, according to which an ox that gored a person—whether man or woman—to death was to be killed, but his owner had no liability for the case. The subsequent four statues present different variants of the basic rule. According to the first variant (Exod. 21:29), if the ox was known to be aggressive, and his owner had been warned about it and still did not take due precautions, and the ox gored a person to death, the ox owner was to be killed together with the animal. The second variant (Exod. 21:30) allowed the ox owner to redeem himself and pay compensation instead of facing execution. It is not clear who had the authority to decide whether this option was indeed to be preferred over the option of execution as specified in the preceding statutes.[35] The third variant (Exod. 21:31) states that the same ruling applied to a case in which the victim was someone's son or daughter. Presumably, the "same ruling" in question is not merely the last-mentioned statute of Exod. 21:30, but the whole set of previous statutes. The fourth and last variant (Exod. 21:32) refers to a case in which the victim was a male or female slave. In this case the ox was to be killed, and its owner was to pay the deceased slave's owner compensation of thirty shekels. This last statute, even though relating to a person's death, exists on the boundary between the legal categorisation of homicide and damage, because the victim was a slave. In legal terms, in the Hebrew Bible as well as in the broader ancient Near East, slaves were usually regarded as their owners' property rather than as human beings with equal rights as free persons. Hence, in most cases, harm caused to a slave was not

[31] LUN 33–36, LLI d–f, LH 209–214, MAL A50–52.

[32] See, e.g., Paul (1970, 70–77).

[33] Causing a pregnant woman to miscarry, category of damage: LUN 33, 35, LLI d, f, LH 209, 211, 213, MAL A21, 50–52, HL 17–18); killing the said woman, category of homicide: LUN 34, 36, LLI e, probably also g, LH 210, 212, 214, MAL A50.

[34] See, e.g., Finkelstein (1981).

[35] Brin (1994, 48, 49) surmised that these two statutes formed "double laws," that is, an occurrence of both earlier and later forms of legislation concerning the same felony. According to Brin's (1994, 20–51) analysis, such "double laws" resulted from later developments in biblical legislation that did not overrule earlier ones, but supplemented them.

perceived as a legal case of harming a person, but rather as a legal case of damaging a person's property, the victim being the slave owner.

As is well known, this theme of the "goring ox" is attested in the ancient Near Eastern law collections as well, and shows close similarities to the pertinent biblical statutes.[36] The Laws of Ešnunna and the Laws of Hammurabi state that if the owner of an ox or a dog did not take due precautions, and his animal killed a man, the owner was liable to pay compensation.[37] The owner was exempt from liability, however, if the animal was not known to be aggressive.[38] As noted by Paul, the main difference between the Mesopotamian and biblical attitudes as reflected in these statutes lies in the different perspectives that shaped these statutes in each place. While the pertinent Mesopotamian statutes were economic in nature, the biblical ones had a religious/moral essence, according to which bloodshed was polluting. This difference led to the varying rulings in each legal corpus: compensation paid by the owner of the ox in Mesopotamian law, execution for the ox and/or his owner in biblical law.[39]

The final statute referring to homicide is Exod. 22:1. This provision actually continues the theme of theft discussed at the end of the preceding chapter. It states that if a thief was caught in the act in the middle of the night and was beaten to death, his killer bore no legal liability. The rationale of this ruling is that a thief that invaded a home during the night knew that there were people inside, and hence his malicious acts might be life-threatening to his victims. This statute, therefore, reflects the right to self-defence, and overrules other statutes of homicide. This statute has a partial parallel in LE 12 and 13, where a distinction is made between stealing from a field or a house during the day—which resulted in a fine—or during the night—which led to execution.

Barmash suggested that a fundamental difference existed between ancient Near Eastern and biblical law in terms of the agents that were assigned the legal authority to retaliate to homicide: in the ancient Near East these were extra-familial institutions, while in the Hebrew Bible these were the victim's relatives.[40] The distinction, however, was not so strict: MAL A10 and B2 explicitly allow the head of the victim's household to determine the killer's punishment, while biblical law, if indeed reflecting a standardised legal system, resulted from and reflected the existence of an organised and socially accepted framework of law enforcement.

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[36] See, e.g., Finkelstein (1981).
[37] LE 54–57, LH 251–252.
[38] LH 250.
[39] See Paul (1970, 81).
[40] Barmash (2005, 8, 23).

Theft

The second delict category involves acts of theft. Here we encounter nine relevant statutes, all from one specific section within the "Covenant Code": Exod. 21:37–22:14.[41] This sequence is interrupted by two verses that contain statutes of damage: Exod. 22: 4–5.[42] The theft statutes are divided into two thematic groups, separated by the inclusion of these two statutes of damage. The first group (Exod. 21:37–22:3) includes three statutes that deal with the theft of domestic animals. The second group (Exod. 22:6–14) includes six statutes and addresses several cases of theft or loss of different types of property that were given for safekeeping or as lease.[43]

The first statute (Exod. 21:37) requires the thief of an ox or a lamb who had slaughtered or sold the stolen animal to compensate the owner with five times (in the case of a stolen ox) or four times (in the case of a stolen lamb) the number of animals stolen. The next statute in this group (Exod. 22:2) states that if the thief could not pay the compensation, he was to be sold into slavery as compensation for his crime. According to the third and last statute in the group (Exod. 22:3), if the stolen animal was found alive in the possession of the thief, he was to pay twice its value.

The theft of domestic animals is addressed by two ancient Near Eastern law collections, the Hittite Laws and the Middle Assyrian Laws. The former includes 25 statutes that specify the fines for theft of numerous types of livestock, to be paid either in multiple animals of the kind stolen, or in silver.[44] The latter presented harsher penalties: rod-lashing, forced labour and payment of a fine.[45]

The second group of theft statutes begins with the ruling that if a man had given another person silver or utensils for safekeeping, and the said items were stolen from the keeper's house, the thief would pay double their value (Exod. 22:6). This ruling is identical in its essence to the one found in Exod. 22:3: the punishment for theft was the payment of a fine double the value of the theft. If, however, the thief was not caught, the next statute (Exod. 22:7–8) determined that the keeper from whose house the property had been stolen was to swear by the name of God that he was not responsible for the theft. A person shown by God to be responsible for the theft was to pay double its value. The following statute (Exod. 22:9–10) states that if a domestic animal had been given for safekeeping and was subsequently found dead, injured or lost with no witness, the keeper was to swear by the name of God that he was not responsible for what had happened, and he was clear of any legal liability. The next statute—Exod.

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[41] Six of these statutes (Exod. 21:37, 22:2, 22:3, 22:6, 22:7–8, 22:9–10) are discussed in Jackson (1972).

[42] Another interruption—Exod. 22:1—refers to homicide, but this statute is related to the following verse, which deals with theft.

[43] Most of the statutes in this group (Exod. 22:6–12) are discussed in Westbrook (1994a).

[44] Payment in kind: HL 57–73; payment in silver: HL 81–83, 91, 92, 119, 120, 130.

[45] MAL C4, 5, 8, F1, 2.

22:11—states, conversely, that if the animal in question was stolen from its keeper, he was to compensate the owner.[46] According to Exod. 22:12, if the animal was devoured by a wild animal, its carcass was to be brought as proof of what had happened, and no compensation was to be made. The last statute in the group—Exod. 22:13–14—declares that a borrowed animal that was injured or died in the absence of its owner was to be compensated for. However, if the owner was present, no restitution was to be made. And if the animal was hired out, the wages paid for its hiring were to cover its loss.[47]

Some ancient Near Eastern law collections similarly address the issue of theft of inanimate objects or domestic animals that were given for safekeeping or as lease. Thus, a person that lost property that had been given to him for safekeeping was to replace it (LE 36). However, if his house was burglarised, and he himself lost his own property together with what had been given to him for safekeeping, he was not liable for the theft (LE 37). If a person had given precious goods to be transported to another place, but the person who was supposed to transport the goods appropriated them, the perpetrator was to pay a compensation five times the value of what he appropriated (LH 112). For appropriating another person's grain that had been given for storage in one's house or granary, the perpetrator was to pay twice the grain's value (LH 120). For appropriating precious commodities given for safekeeping a perpetrator was to pay double their value (LH 124); if the said items were stolen from the keeper's house, he was to return their value to their owner (LH 125). Interestingly, this last statute from the Laws of Hammurabi contradicts the earlier one from the Laws of Ešnunna (LE 37).

A person that killed or injured an ox or a donkey that he had hired from another person was required to compensate its owner.[48] However, if the said animal was killed by a wild animal[49] or died of natural causes,[50] the renter bore no legal liability. A distinct case existed for a person that was paid for being responsible for the domestic animal—such as a shepherd. If he lost an animal under his care, he was obliged to replace it.[51]

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[46] Several commentators have explained these conflicting rulings by assuming that in Exod. 22:9–10 the receiver kept the livestock voluntarily, while in Exod. 22:11 he received payment for it, and hence was liable if the animal was harmed; Paul viewed these differences as reflecting the contrast between negligence (theft) and *force majeure* (all other cases); see Paul (1970, 93n2).

[47] This verse is rather complicated, and can be understood in more than one way. The interpretation offered here is in line with the general consensus among biblical commentators.

[48] LH 245–248, HL 78.

[49] LH 244.

[50] LH 249, HL 75.

[51] LUN C3–5, LH 263, 264, 267.

Damage

The next category in our survey is that of damage. Six statutes, all from the "Covenant Code," belong to this category. These statutes cover damage caused to persons, livestock, and fields and crops.

The first statute in the category—Exod. 21:22—describes a quarrel between two men, during which one of them accidentally hit a pregnant woman and caused her a miscarriage. The statute rules that the woman's husband was to determine the financial compensation to be paid by the perpetrator. Since the penalty for the crime is a financial compensation rather than talionic execution, the act clearly belongs to the realm of damage rather than to homicide. The following verse (Exod. 21:23), as discussed above, presents an identical case that ended with the woman's death—in which case her killer was to face execution.

As mentioned, this theme of accidentally hitting a pregnant woman is attested in several ancient Near Eastern law collections. The case of damage, that is, if the woman miscarried but remained alive, necessitated her attacker to pay financial compensation.[52]

The next statute belongs to the sphere of negligence: if a person dug a hole and left it uncovered so that a domestic animal fell into it and died, the one who dug the hole was to pay the animal's value to its owner, and keep its carcass (Exod. 21:33–34). The following two verses take us back to the "goring ox" theme discussed above. Here, however, the victim was another ox, rather than a human being, and hence the crime was that of damage rather than of homicide. In the case of an ox that gored another ox to death there was no liability for the goring ox's owner: the live ox was to be sold and the money divided between both owners, and the dead ox was also to be divided between them (Exod. 21:35).[53] However, if the aggressive conduct of the ox was known, and his owner did not keep him from causing harm, he was to compensate the owner of the dead ox by giving him a live one; in addition to making this compensation he was also to keep the carcass of the dead ox (Exod. 21:36).

Yet again, the laws of the ancient Near East serve as clear forerunners to these biblical statutes. Thus, if someone's ox gored to death an ox that belonged to another person, the two ox owners were to divide the value of both oxen between them (LE 53)—an identical ruling to Exod. 21:35.

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[52] LUN 33, 35, LLI d, f, LH 209, 211, 213, MAL A21, 50–52, HL 17–18.

[53] The text does not state whether the carcass was to be sold and the money split between the two men, or whether the carcass itself was to be divided between them.

The last couple of statutes in this category relate to agricultural damage. According to the first statute, a person whose herds grazed on another person's field was required to compensate the field owner (Exod. 22:4). According to the second of these statutes, a person who set fire that spread and destroyed another person's crops was to pay compensation (Exod. 22:5). These two issues are treated by the ancient Near Eastern laws as well. Damage to a neighbouring field as the result of fire[54] or grazing animals[55] necessitated compensation, as did different types of agricultural damages to fields, orchards or fruit trees.[56]

Injury

The fourth category includes four or five statutes that deal with injuries a person caused to others, whether free persons or slaves. Other than the first one, all these statutes are grouped together in one section of the "Covenant Code"—Exod. 21:18–27—together with several statutes on other delict categories—homicide and damage. All the statutes in this section stem from a situation of violent conduct that leads to criminal consequences.

The first of these statutes—Exod. 21:15—is distinguishable from the rest, and perhaps should not actually be considered in the same context. As mentioned above, it is not included in the same section as the other statutes of injury, but appears three verses prior to the beginning of the section in which they are included. More significantly, it conveys a moral notion rather than a criminal one: it prescribes the death penalty for a person who hit his parents. The harsh punishment clearly distinguishes this statute from other rules on injury, and relates it to the norms of respect for parents, as already seen in the fifth commandment. It is therefore questionable whether this statute indeed belongs to the category of injury, and whether it formed a delict at all.

However, in its essence, this offence does constitute physical harm caused to another person, and in the law collections of the ancient Near East hitting another person certainly constitutes a delict that belongs to the sphere of injury. Thus, according to the Laws of Ur-Namma, a slave who hit a free person was to face public humiliation, while a free person who hit a slave was to be whipped.[57] In other collections the penalty for slapping the cheek of a person of equal social rank was financial compensation,[58] while slapping the cheek of a person of higher rank would result in whipping,[59] and a slave who slapped a free person's cheek was to have his ear cut off.[60] The most obvious

[54] HL 106: giving a good field instead of the burnt one.
[55] LH 57–58 (fine paid in grain), HL 107 (fine paid in silver).
[56] LLI 10, LH 59, HL 104–107, 113, NBL 3.
[57] LUN 25 and 26, respectively.
[58] LE 42, LH 203, 204.
[59] LH 202.
[60] LH 205.

Mesopotamian parallel, however, is LH 195, according to which a son who hit his father was to have his hand cut off. Here, similar to the biblical example, the penalty is far harsher than other penalties for cases of slapping or hitting, which might imply that in Mesopotamia, too, such an act belonged to a different sphere than injury or delict.

The rules for clear cases of injury begin with Exod. 21:18–19, where it is stated that a man who injured another man during a quarrel had to compensate the injured person for the work he lost during the time of his injury. The Hittite Laws supply a similar ruling, according to which a person that injured a free person was compelled to cover his victim's medical costs, provide a person to perform the victim's work until he recovered, and also pay a fine (HL 10).

The next statute on injury—Exod. 21:21—refers to a slave owner who hit his slave and injured him for a few days, after which the slave regained his health. In this case no punishment is specified for the slave owner, because the slave is regarded as his property. The situation is different, however, if the owner caused his slave a permanent injury: if he mutilated his slave's eye or knocked out his tooth, the slave was to be released (Exod. 21:26–27). These rules have no parallel in the laws of the ancient Near East. In the case of an injury caused to a slave, the financial compensation was given to the slave owner. From an ancient Near Eastern perspective, a slave owner could not be punished for injuring his slave, because such an act meant that the owner caused himself financial damage. Slaves were regarded as property, and no law protected them against abuse by their owners.

In between the statutes discussed above, we encounter a general ruling that states that injuries are to be punished talionically: "Eye for an eye, tooth for a tooth, hand for a hand, foot for a foot, burn for a burn, wound for a wound, bruise for a bruise." (Exod. 21:24–25). As we have seen, however, this rule did not apply to injuries caused during a quarrel, nor was it applicable to injured slaves.

Perjury and Slander

The next category includes the felonies of perjury and slander. Unlike all the other categories, it is mostly attested in the "Deuteronomic Code." The sole reference to perjury in the "Covenant Code" merely proscribes it laconically (Exod. 23:1).

The "Deuteronomic Code" contains two references to these felonies, each of them providing a lengthy account of the legal case. The first is Deut. 19:16–21: if a legal dispute broke out between two men, and one of them made a false accusation in front of the judges that decided the case, his punishment was to match the punishment his opponent would have suffered had the false accusation been accepted. The passage is concluded with an emphasis on the implementation of the principle of talion in such cases: "life for a life, eye for an eye, tooth for a tooth, hand for a hand, foot for a foot." (Deut. 19:21)

Several ancient Near Eastern law collections specify punishments for perjury. Most rulings impose the payment of fines on a person who supplied false testimony or falsely accused another person of committing a certain crime. The fine was proportional to the nature of the accusation.[61] In some cases, however, when the false allegations could have led to the execution of the accused person, his accuser was to suffer the same fate, and face the death penalty.[62]

The last statute in the category—Deut. 22:13–19—presents a case of slander: if a man loathed his newly wedded wife and falsely accused her of not having been a virgin at the time of their marriage, the local elders should judge the case and compel him to pay her father one hundred (shekels) of silver as compensation for his false allegations.[63] Furthermore, that man was forbidden from ever sending his wife away and divorcing her. The ancient Near Eastern law collections do not have a parallel statute. The closest one is LLI 33, which imposed a fine on a person who falsely accused another man's virgin daughter of having had sexual intercourse.

Kidnapping

The final category of delict in biblical law is the least-documented one. It merely includes two brief statutes which refer to kidnapping, one from the "Covenant Code," the other from the "Deuteronomic Code." In Exod. 21:16 it is stated that a person who kidnaps and sells another person (into slavery) is to be executed. The statute in Deut. 24:7 reiterates the rule in different wording, and with slight elaboration.[64] Both statutes use the word גֹּנֵב, "steals," for defining the crime, and the perpetrator is defined in Deuteronomy as a "thief" (גַּנָּב). Yet this crime is clearly distinguished from acts of theft, as can be seen in the harsh punishment prescribed for the perpetrator. In biblical law, only animals and objects could be stolen, while when human beings were involved—especially free persons—the crime had a different, much harsher, significance.[65]

In ancient Near Eastern law we encounter a more complicated attitude to kidnapping. There is no parallel statute to the above-mentioned biblical ones, in which people were kidnapped and sold into slavery. In the ancient Near East, people were occasionally kidnapped and detained because their family had an outstanding debt, and the creditor kidnapped them in order to pressure their relatives into paying off the debt. Though

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[61] LUN 38, LLI 17, LH 4.

[62] LH 1–3.

[63] It is possible that the man was also to be whipped. The phrase וְיִסְּרוּ אֹתוֹ, "they shall torment him," in Deut. 22:18 can either be understood as meaning "they shall whip him," or merely that the perpetrator was to be punished, the punishment being specified in the following verse.

[64] For a discussion of these two statutes, see Brin (1994, 24–28).

[65] Here I differ from Jackson (1972: 239n2; 1973, 18), who claimed that these rules of kidnapping actually belonged to the domain of theft.

several statutes demand compensation, and, rarely, even execution, for kidnapping free persons[66] or slaves,[67] it is never stated that the purpose of the kidnapping was to sell the abductee into slavery. Conversely, statutes that prohibit the selling of a free person who resided in one's home do not mention that the person to be sold was kidnapped.[68] All these acts were regarded as crimes of theft, and sanctioned as such.[69] In this sense, ancient Near Eastern law did not regard kidnapping as a distinct category of delict, as opposed to biblical law.

Conclusions

The parallels and similarities between ancient Near Eastern and biblical law have been the subject of numerous researches for decades. The element of delict in these legal corpora, however, has not been compared and discussed in depth. The analysis offered in this article, therefore, adds another dimension to our understanding of these parallelisms.

We should bear in mind that several factors limit the usefulness of the analysis. There are far fewer relevant statutes in the Hebrew Bible, and it is complicated at times to decide whether a given provision constitutes a statute in its own right or merely functions as a secondary clause of a primary statute. For this reason, the use of provision distribution for assessing gravity of felonies, as applied in my analysis of the ancient Near Eastern material,[70] is hardly applicable to the biblical corpus. Still, it seems clear that homicide was the delict that occupied biblical legislators the most, while their ancient Near Eastern counterparts dedicated the largest number of statutes of delict to theft, and then to damage; see further below. This basic difference already hints at a major difference between the attitudes to crime held by the people who produced the laws in the two places.

Generally speaking, ancient Near Eastern law is usually more comprehensive in its treatment of delict, and includes more specification and more provisions, while biblical law tends to be more abridged in this respect. To give but one example, biblical laws pertaining to agricultural damage include two statutes, about grazing herds and spreading fire. These two statutes have forerunners in the ancient Near Eastern law collections as well, but these collections contain additional statutes that cover many other issues relating to agricultural damage.

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[66] LH 14, 114, HL 19a, 19b.
[67] LE 22, 49, 50, HL 19–21.
[68] MAL C2, 3.
[69] See already Paul (1970, 65).
[70] Peled (forthcoming).

Comparing the statutes of delict found in these two corpora revealed that ancient Near Eastern and biblical law share almost identical categories: homicide, theft, damage, injury and perjury/slander. Kidnapping exists as a separate additional category in biblical law, while in the ancient Near Eastern collections it was included in the category of theft.

In spite of the close similarities in categorisation, each corpus exhibits a different emphasis in its attitude to similar felonies. We should consider, for example, the distribution of statutes per category. Homicide figures as the delict that occupied the largest number of statutes in the Hebrew Bible, followed by theft, while in the ancient Near Eastern sources homicide was merely in third place, following theft (three times more statutes than homicide) and damage (more than double the number of statutes of homicide).

Another important difference involves the matter of social differentiation, upon which much stronger emphasis was laid in ancient Near Eastern law than in biblical law. Slaves were also attested in biblical law, and at times were definitely treated in an inferior manner to free persons, but far less forcefully than in ancient Near Eastern law. Only biblical law held slave owners responsible for abusing their slaves to death, or decreed their release if their owner caused them permanent injury. Paul claimed that this biblical notion stemmed from the religious recognition that slaves were also created by God, and hence their lives were also sacred, even if their social status was inferior.[71] Again we witness here a major difference between biblical and ancient Near Eastern attitudes, based on the different perspectives each legal corpus reflected: civil/economic versus religious/ethical.

Penalties were another source of difference. When financial compensation is involved, ancient Near Eastern law always specifies the amount to be paid, while biblical law almost always avoids it, stating that compensation is due without detailing the fine.[72] As a rule, biblical law did not call for capital punishment for crimes against property (theft, damage), while some ancient Near Eastern law collections occasionally did decree execution for such delicts.

All this leads us to the most significant point of departure between the two corpora: the motivation for legislation. This factor explains the previously discussed differences in statute distribution, social differentiation and penalties. In the biblical laws of delict the motivation pertains not only to crime and punishment, but also to religious or moral conceptions, perceiving crimes as sinful acts that defile the land and the people, and that thus contradict holiness and are offensive to God. Such motivations are absent from

[71] "Since slaves are also created in the divine image, they, too, must be treated like human beings and not like chattels" (Paul 1970, 52).

[72] Exod. 21:32 is a rare exception.

ancient Near Eastern delict legislation, which is almost always purely civil in nature, and focuses on financial compensation or corporal retribution, but not on sanctity or moral ethics.

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