Article

Delict in the Law Compendia of Mesopotamia and Hatti: Qualitative and Quantitative Analyses

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Abstract

This article surveys the statutes referring to delict in the ancient Near Eastern law collections. It presents an introductory discussion of delict and of law compendia from Mesopotamia and Hatti, and explains the complexities involved in analysing these sources. Five categories of delict are then studied from qualitative and quantitative points of view: theft, damage, homicide, injury, and perjury. Each category is surveyed and analysed separately, and, finally, several delicts that defy the strict classification to one specific category are discussed.

Keywords: Delict; ancient Near Eastern law; Mesopotamian law; Hittite law; qualitative and quantitative analysis; theft; damage; homicide; injury; perjury

Introduction

Ever since the discovery of the famous black basalt stele of Hammurabi's law collection over a century ago, Assyriologists have been fascinated by the topic of ancient Near Eastern law and legal life. In this article I offer a survey and analysis of one aspect of ancient Near Eastern law that has not been treated exhaustively to date: legal statutes referring to delict. [1]

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1 The literature on crime and delict-related matters in the ancient Near East is vast. For basic discussions, including previous literature, the reader may consult Westbrook (2003a, 70–92 (overview), 175–76 (ED and Sargonic), 219–21 (Ur III), 236–37 (Ebla), 414–24 (OB), 476–77 (OA), 515–18 (MB), 553–60 (MA), 611–14 (Nuzi), 643–53 (Hittite), 687–88 (Emar), 905–06 (NA), 961–67 (NB)), and, more recently, Tetlow (2004) and Jackson (2008). Previous literature on individual ancient Near Eastern law collections is found in Roth (1997, 255–66).

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In what follows I do not attempt to confront the question of applicability, that is, to what extent—if at all—the laws were practiced and enforced in everyday life. It is debated whether it is justified to regard these compendia as law collections, let alone "codes", in the modern sense of the word, or whether the actual background of their composition belonged in the realm of royal propaganda and idealisation, governmental justification, or even that of scribal traditions.[2] These fundamental questions remain beyond the scope of the present discussion. My intention is to survey the contents of the various ancient Near Eastern law collections and illuminate several features that characterise their relation to delict. Following a systematic analysis of the pertinent legal provisions, I discuss certain delicts that defy clear classification to specific criminal categories. In the broader sense, therefore, I seek to point out certain social notions and conventions as reflected though these criminal classifications, and to highlight certain patterns of ancient Near Eastern legal traditions. [3]

Delict

The term delict has a broad meaning, usually referring to an offense of a criminal nature. It covers different types of actions causing loss or damage, whether unwillingly (negligence) or deliberately (with malicious intent). Moreover, it can occasionally express liability resulting from the avoidance of a required action (negligence). Definitions and usages vary from one place and time to another, but typically the main categories of delict are homicide, theft, robbery, damage to property, injury, and insult. In Roman law these delicts led to a civil law liability with a penal character, where the injured party could claim damages and fines. In the ancient Near Eastern law collections we encounter various delict offenses that were sanctioned in different ways.[4]

These definitions of delict, as well as the methodological perspectives reflected in this article, follow the viewpoint assumed by scholars such as Westbrook, viewing the legal tradition of the ancient Near East as having influenced in more than one way "the two great modern Western legal systems, the Common Law and the Civil Law, and in

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2 For discussions of these questions the reader may consult Westbrook (1985; 1988, 2–3; 2003b, 6, 17), Buss (1994), Renger (1995), Roth (1997, 5–7), Wells (2008), Claassens (2010), and Peled (2017).

3 This article originated in several classes I gave as part of the course "Laws in Antiquity: Law and Legal Systems from Mesopotamia, Egypt, Rome and Byzantium" at the VU University Amsterdam Summer School during July 2016. I wish to thank my colleagues in that course, Jan Hallebeek and Hylkje de Jong for their pleasant cooperation and for our numerous discussions of the topics that stand at the centre of this article, from which I benefited a great deal. Jan Hallebeek and Kristin Kleber have kindly read early drafts of this article and made important comments; I thank them both for their time and efforts. Ultimate responsibility for the contents of the article is of course solely my own.

4 For general literature on delict see, to name but a few, Kelsen (1945, 20–21, 51–53), Frier (1989), Burchell (1993), and Saha (2010, 171–80). For a general discussion of delict in ancient Near Eastern law, see Westbrook (2003b, 70–92).

consequence of modern law in general."[5] What stands at the basis of these views is the assumption that there was a certain continuity of legal ideas—however meagre—beginning with the legal tradition of the ancient Near East, continuing through biblical, Greek, and Roman law into the legal traditions of the Mediterranean basin and later European law.[6]

Ancient Near Eastern Law Collections[7]

Though redundant for the professional reader, a few notes on the ancient Near Eastern law collections are nonetheless due. I will keep these basic and brief. Though more collections are known to have existed, scholars usually regard seven of them as the main compendia of ancient Near Eastern law: the Laws of Ur-Namma (henceforth LUN), the Laws of Lipit-Ištar (henceforth LLI), the Laws of Ešnunna (henceforth LE), the Laws of Hammurabi (henceforth LH), the Hittite Laws (henceforth HL),[8] the Middle Assyrian Laws (henceforth MAL), and the Neo-Babylonian Laws (henceforth NBL). They were written in the Sumerian (LUN, LLI), Akkadian (LE, LH, MAL, NBL) and Hittite (HL) languages, and date from as early as Ur III (ca. 2100 BCE) to as late as the Neo-Babylonian period (ca. 700 BCE, see n. 22 for dating the NBL). These collections thus reflect the extremely diverse historical reality of a mixture of periods, regions, and cultures. As such, it is perhaps somewhat naïve to treat them as a group of homogenous sources. We should bear this in mind when assessing the statutes and drawing conclusions from their analysis.[9]

Further complications in the study of the ancient Near Eastern law collections derive from the incompleteness of these sources. Most of the collections were found in several duplicate copies,[10] but these copies are almost always broken and fragmentary, and thus even when combined they do not exhibit the original collection in its entirety. The only complete collection is LE, while of LH and HL only a few provisions are missing; the number of lost provisions in LUN, LLI, MAL, and NBL is unknown, but must be significant.

In assessing delict in ancient Near Eastern law, we should address several questions. What delict felonies were documented in the law collections? What were the penalties

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5 Westbrook (2003b, 1 and n. 1).

6 On the continuity of legal traditions from Mesopotamia to the classical world, see, most recently, Westbrook, Lyons and Raaflaub (2015).

7 See details in Table 1 ("The Main Ancient Near Eastern Law Collections") below.

8 In my treatment of the HL I only refer to the older versions of the collection, and not to the Late Version, which at times specified slightly different penalties.

9 This is especially true to the HL since the Hittite culture was distinct in many respects from its neighbouring Mesopotamian civilizations.

10 The MAL and NBL are the only exceptions, with one copy of each having been found. For an explanation concerning the manuscripts of the MAL, see n. 21.

and sanctions for these delicts? Can we observe coherency and consistency between the different collections in this regard, or do they exhibit considerable discrepancies? Do coherency and consistency point to cultural homogeneity and historical continuity? Do discrepancies point to regional particularities and cultural diversity? What determined the definitions and interpretations of delict felonies according to criminal categories?

The Main Categories of Delict in the Laws[11]

Five delict felonies can be identified in the law collections: theft, damage, homicide, injury, and a combined category encompassing acts of perjury, insult, slander, and false accusations. The sanctions prescribed for these felonies varied: execution, servitude (=debt bondage), corporal punishment, or fines. Typically, only one of these sanctions was stipulated for a given offense, but occasionally the laws specified a combination of several of them for one crime. At times talionic punishment—either direct or vicarious—was applied; that is, the sanction matched the crime, such as by executing a killer (direct talion) or cutting off the hand of a thief (vicarious/indirect talion).[12]

The distribution of the pertinent provisions of each category was usually not homogenous. Rather than having consolidated sections of thematic provisions arranged in systematic order, we usually encounter scattered groups of consecutive clauses—at times even isolated ones—that belong to the same category, ordered randomly throughout a given law collection. The only exception to this pattern of apparent coincidence is found in the category of injury: unlike all other categories of delict, the laws dealing with injury are always grouped together under one unified section, found in one location within the collection.

Another feature of the sequences of laws of delict is a structure in which a main clause stipulated the general rule of the provision and was followed by several variant cases that derived from it. This is especially noticeable in the laws of injury, but many other examples can be found, e.g., in a case of a wife stealing her husband's property (MAL A3–6), the various consequences of hitting a pregnant woman (LUN 33–36, LLI d–f, LH 209–214, MAL A50–52), or successful/negligent professionals such as a physician (LH 215–225), a builder (LH 228–233), or a boatman (LH 234–240).

Several social sub-divisions can be traced in the laws of delict. The most notable of these was social status. Thus, civilians were distinguished from slaves, and were

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11 For all the statutes mentioned in this article see Table 2 ("Delict Provisions in the Main Ancient Near Eastern Law Collections") below. The same table further details all quantities and percentages discussed here. "Percentages" refer to the volume of the provisions belonging to a specific delict felony in comparison to the whole of the collection they appear in, or—more often—in comparison to the full extent of the surviving portions of that collection.

12 For talion see Cardascia (1979) and Westbrook (2003b, 74–75).

considered superior to them. In the LE and LH we encounter two categories of civilians: the higher-class *awīlum* and the lower-class *muškēnum*, and in the MAL we find prostitutes as another distinct social category. The differences between the social classes were especially apparent in the sphere of punishment: the penalties differed between free civilians and slaves, and between lower and higher ranks of civilians. This was true to both culprit and victim; a higher-class perpetrator was punished less severely (if at all) than a lower-class perpetrator who performed the same crime,[13] while in case of a higher-class victim, the penalty was harsher than if the victim was of a lower class.[14] Rare exceptions, however, did exist. LUN 25 and 26 appear to decree a harsher punishment for a civilian who hit a slave than for the latter hitting the former, and several statutes in HL specify half the fine for theft committed by slaves compared to that committed by civilians (HL 94–97, 101).

Assessing the gravity of felonies can be based on the frequency of provisions pertaining to them. Arguably, abundant provisions that referred to a specific crime marked the high importance ascribed to that misdemeanour among the people who produced the laws. Conversely, the scarcity of such provisions may have signified the relative lesser significance of the said act. However, when assessing these issues, we must take into account the incompleteness of our sources. As mentioned above, only LE, LH, and HL are relatively complete, the latter two with a few lacunae, and while the number of missing clauses in LUN, LLI, MAL, and NBL cannot be determined, most of the original content of the latter two—especially of the NBL—is presumably lost. Moreover, in such assessments the number of provisions should not be taken as the sole factor to be considered, since it produces a distorted picture. To give but one example, we may look at the attitude to theft in LH and MAL. Though the number of provisions relating to theft in each of the collections is similar (LH: 27; MAL: 25), the overall number of preserved provisions in each collection is very different: 282 in LH, but only 125 in MAL. In this case, therefore, the crucial factor is not the absolute number of relevant provisions, but rather their percentage within the whole collection. This latter factor indeed reveals a major difference: 9.5 percent in LH, 20 percent in MAL. Hence, if we are to compare these two collections, and make any assumptions, for example, concerning Babylonian as opposed to Assyrian attitudes to theft, our conclusions must be cautious. Furthermore, the incompleteness of MAL makes such comparisons even more problematic, because the unknown number of relevant provisions that may—or may not—have existed in the original collection would obviously radically change our conclusions. Ultimately, we can only base our assumptions and deductions on the extant material.

13 See, e.g., LH 203 compared to 205 and HL 98 compared to 99.

14 See, e.g., LUN 33 compared to 35, LLI d compared to f, LH 207 compared to 208, and LH 116; numerous other examples exist in this regard.

If we are to assume that the frequency of provision attestations indeed reflected the importance or severity ascribed to the felonies, we can recognise a hierarchy between the five delict categories of the ancient Near Eastern law collections. Three main groups can thus be discerned: the first includes theft and damage, the second homicide and injury, and the third, perjury. The two leading categories—theft and damage—include the highest extent of provisions (126 and 91 respectively). The categories of homicide and injury follow, with an almost identical number (40 and 39 respectively), while the last category—perjury—has the lowest number of provisions (18). Naturally, individual collections may exhibit occasional deviations from this general pattern. We will now discuss each of these categories separately.

Category 1: Theft

The highest number of provisions referring to acts of delict in the law collections is found in the category of theft. This category has the highest number of provisions among the delict crimes of LE (9; 15 percent), HL (59; 29.5 percent), and MAL (25; 20 percent), and the second highest in LLI (3; 7 percent) and LH (27; 9.5 percent). In LUN, conversely, it is found to be the least documented category of all delict felonies (3; 3.5 percent). This inconsistency seems somewhat odd, given the otherwise strong similarities between the older collections—especially LUN and LLI—that were compiled in relative chronological and geographical proximity. As with many other peculiarities discussed in this article, this anomaly might be attributed to the incompleteness of the sources; it is possible that the complete LUN included additional provisions pertaining to theft. However, until new manuscripts of LUN—that reveal the complete collection—are found, this suggestion will remain conjectural.

Types of Theft

The felony of theft included the stealing of objects, domestic animals, and human slaves. However, it also included acts that at first glance do not seem to properly belong in this category, such as the selling of the same slave to two different persons (LH 279–281). Kidnapping a person—whether free (HL 19a, 19b) or slave (LE 22, 49, 50, HL 20, 21)—was also regarded as an act of theft, and so was the harbouring or detaining of escaped slaves (LLI 12, 13 and LH 19, 20). For the latter felony, LLI required the culprit to give away a slave for a slave (LLI 12) or pay a fine of fifteen shekels of silver (LLI 13). Selling a free person who resided in one's home also belonged in the category of theft (MAL C2, 3).

Sanctions for Theft

The sanctions on theft varied. LUN 37 imposed on a thief a fine of fifteen shekels of silver, LLI 9 prescribed a fine of ten shekels of silver for stealing from an orchard, while LE 6 prescribed a fine of ten shekels of silver for stealing a boat. LE distinguished between theft from a field or a house during daylight (LE 12: fine of ten shekels of

silver) or night-time (LE 13: execution). LH prescribed the death penalty (LH 7, 8, 9, 25) or fines (LH 8, 106, 107, 112, 113, 120, 124, 241, 254, 255, 259, 260, 265) for different cases of theft, and rarely the talionic corporal punishment of cutting off the thief's hand (LH 253). Theft or embezzlement of palace or temple property resulted in execution according to LH 6.

Domestic Theft

According to the MAL, theft of domestic property by one's wife was punished by death (MAL A3) or bodily mutilation (MAL A4, 5). The receivers of the stolen property were liable too, and faced execution (MAL A3), bodily mutilation (MAL A4), or an unspecified punishment (MAL A6, C9).

Robbery

Violent robbery formed a distinct type of theft and was punishable by death (LH 22). If the robber was not caught, the local authority was responsible for compensating the victim (LH 23).

Theft of Domestic Animals

Theft of domestic animals formed another specific sub-category. The HL dedicated no less than twenty-five statutes to this matter, a fact that probably highlights the importance of agricultural life in Hatti.[15] The thief of a domestic animal was required to pay heavy fine, either in the form of multiple animals of the type he stole (HL 57–73), or in silver, as in the cases of stealing pigs (HL 81–83), bees (HL 91, 92), trained ducks or mountain goats (HL 119), birds (HL 120), and an ox or a horse (HL 130). The penalty in the MAL for stealing domestic animals was harsher: rod-lashing, forced labour and a fine (MAL C4, 5, 8, F1, 2).[16]

Category 2: Damage

Damage is the second most documented category of delict. In LUN (6; 7 percent) it was second to injury, in HL (26; 13 percent) and MAL (7; 5.5 percent) it was second to theft. In LLI (10; 23 percent) damage was by far the largest delict category, and it was also the largest in LH (36; 13 percent). Only in LE (4; 6.5 percent) was damage the least documented category of delict, and came after theft, homicide, and injury (no perjury laws existed in this collection). As with theft, damage to property could relate to objects, animals, and humans (both slaves and free persons).

15 Other provisions in this collection pertaining to theft in relation to agriculture are HL 101–103, 108, 109, 121, 162, 166–9.

16 Other provisions in this collection pertaining to theft in relation to agriculture are MAL B4, 8–10, 13–5, 20.

Damage Caused by Hitting a Pregnant Woman

Hitting a pregnant woman and causing her to miscarry belonged in the realm of damage, rather than homicide or injury, and required the payment of a fine (LUN 33, 35, LLI d, f, LH 209, 211, 213, MAL A21, 50–52, HL 17–18). If she died, the definition of the crime changed from damage to homicide (LUN 34, 36, LLI e, probably also g, LH 210, 212, 214, MAL A50; see further discussion below).

Damage while Detaining

Detaining another person's slaves without grounds and causing their death was regarded as causing damage rather than homicide, and the culprit was required to pay the slave owner twofold the value of the slave (LE 23). If a person was justifiably detained—e.g., because of an unpaid debt—but killed by his detainer, the killer's punishment was either a fine of twenty shekels of silver and losing his loan—in cases where he has killed his debtor's slave—or the execution of his son, in cases where he has killed his debtor's son (LH 116).

Damage to Domestic Animals

Many laws were dedicated to different types of damage caused to domestic animals. Killing or injuring domestic animals that belonged to another person was regarded as causing damage and fined according to the type of injury and worth of the animal (LLI 34–37, HL 72, 74–77, 84–89). Killing or injuring rented oxen or donkeys was paid in accordance with the severity of the situation (LH 245–248, HL 78), but the renter was exempt from liability in cases where the animal he had rented was killed by a wild animal (LH 244) or died from natural causes (*ilum imhassuma imtūt*, "a deity strikes it to death", LH 249; *INA QATI* DINGIR-*LIM ākiš*, "it died by the hand of a deity", HL 75). Loss of domestic animals by the person who was responsible for it (e.g., a shepherd) required the replacement of the animal by the person who lost it (LUN C3–5, LH 263, 264, 267). If an ox killed another ox that belonged to a different person, the two owners were to divide between them the value of both oxen (LE 53).

Agricultural Damage

Agricultural damage—to fields, orchards, or fruit trees—necessitated the payment of compensation, depending on the type and extent of the damage (LLI 10, LH 59, HL 104–107, 113, NBL 3).

Arson/Demolition

For arson of a house or a shed the culprit had to pay for everything that was lost (HL 98–100). If the perpetrator was a slave, his owner had to pay for the damage, and the slave's nose and ears were cut off; if the slave owner refused to pay, his slave was lost (HL 99). The punishment in MAL was harsher in similar circumstances: a person

responsible for demolishing a house was required to pay twofold its value, received five rod-blows, and performed one month of the king's service (MAL B7).

Damage Caused by Witchcraft

A different kind of damage to property was caused by a woman who performed witchcraft against one's field, boat, or belongings of any kind, for which she had to pay threefold the loss; if, however, the sorcery was aimed at a person's house, the woman who performed it was to be executed (NBL 7), presumably as a talionic punishment, because these acts were perceived as threatening the lives of the victim's family members.

Damage Caused by Negligence

Negligence formed a specific type of damage. Occasionally it was caused by non-action, that is, a required measurement was not taken, and as a result a certain damage was caused. A few relevant examples can be noted: damage to a neighbouring field as the result of flooding (LUN 40, LH 53–56, NBL 3), fire (HL 106), or grazing animals (LH 57–58, HL 107), and damage to one's household caused by trespass that occurred because the adjacent land plot was neglected and left unfenced by its owner (LLI 11, LH e).

Negligent Professionals

Extreme negligence could lead to severe forms of punishment. For example, a guard who failed to prevent house burglary was executed (LE 60) and a wet-nurse who concealed the death of the child in her care was to have her breast cut off (LH 194).

Other professionals received rewards for successful performance but faced harsh sanctions for malpractice. Thus, a physician who killed or blinded his patient because of unprofessional treatment had his hand cut off (LH 218). If he caused the death of a slave, he was required to give a slave in return (LH 219). If he blinded a slave, he had to pay half the slave's worth (LH 220) and if he caused the death of an ox or a donkey, he had to pay one-quarter of the animal's worth (LH 225).

Talionic measurements are especially apparent in the case of a negligent builder. If the house he constructed collapsed and killed its owner, the builder was to be executed (LH 229). If the house owner's son died, the builder's son was to be killed (LH 230). If a slave died, the builder was to give a slave in return (LH 231). If property was lost, the builder was to replace it (LH 232). Furthermore, the builder was to rebuild the house at his own expense (LH 232), and similarly, if a wall collapsed, he was to rebuild it at his own expense (LH 233).

A negligent boatman was to repair a boat he had previously repaired unsuccessfully (LH 235) and replace at his expense a hired boat he had caused to sink and/or its lost cargo (LLI 4, 5, LE 5, LH 236, 237, 240, MAL M1). However, if he managed to retrieve the sunken boat, he was only required to pay half its worth (LH 238).

Category 3: Homicide

The third category of delict, which included forty provisions, was homicide. The act of killing was regarded differently in different collections and circumstances, as evidenced by the prescribed punishments: execution or fines. Several factors were taken into account at times, such as the social status of the culprit and his victim, and whether the act was premeditated or unintentional.

Conflicting Statutes in LUN

The opening provision of the first ancient Near Eastern law collection—LUN—is dedicated to homicide. It declares the general paradigmatic talionic ruling that a person who commits murder is to be killed (LUN 1). Further provisions, however, specify different sanctions for more complicated legal circumstances. For example, a groom who kills his betrothed fiancé after she has cheated on him was exempt from punishment (LUN 7).

Homicide Caused by Hitting a Pregnant Woman

A man who hit a pregnant woman and caused her death was to be executed if she was a civilian (LUN 34, LLI e, MAL A50; according to LH 210 his daughter was to be killed), but if she was a slave her killer was only required to give a slave in her place (LUN 36), or to pay a fine of twenty shekels of silver (LH 214). Had she belonged to the lower *muškenum* class, her killer was required to pay thirty shekels of silver (LH 212).

Homicide while Detaining

According to LE, a person who detained without cause the wife or son of a *muškenum*, and subsequently killed them, was to be executed (LE 24). But according to LH, even if the detention was justified it did not allow murder. Thus, if a person justifiably detained the son of another man, but caused his death, the killer's son was to be killed (LH 116). This statute highlights yet again the talionic nature of many statutes in this collection.

Unintentional Homicide

Unintentional killing, however, was only sanctioned by the payment of a fine. Killing a person during a brawl was fined by forty shekels of silver (if the victim was of the higher *awīlum* class, LE 47a), thirty shekels of silver (if the victim was of the higher *awīlum* class, LH 207) or twenty shekels of silver (if the victim was of the lower *muškenum*

class, LH 208), or by covering the funerary costs and the payment of slaves, which number depended on the social status of the deceased (HL 1–4, 174).

Goring Ox

A specific case of killing was the so-called goring ox theme: the owner of an animal—frequently an ox, occasionally a dog—that killed a man could have been held liable for paying compensation if he did not take due precautions (LE 54–57, LH 251–252). If the animal was not a known hazard, and it killed its victim while regularly walking the street, its owner was exempt from liability (LH 250).

Homicide Caused by Negligence

Death caused by negligence constituted a distinct case of homicide. If a person neglected to maintain his wall in spite of warnings from the local authority, and as a result the wall collapsed and killed another person, this called for death penalty (LE 58). Similarly, a negligent builder who constructed a building that collapsed and killed a person was to be executed (LH 229), but if the casualty was the house owner's son, the builder's son was to be executed (LH 230). These two provisions were discussed under the category of damage since it is unclear whether they reflected offenses of damage or of homicide.

Specific Types of Homicide

Several specific cases of homicide can be mentioned. A woman who had an extra-marital affair and caused the death of her husband was to be impaled (LH 153), while identical punishment was prescribed for a woman who willingly aborted her foetus (MAL A53). The MAL allowed the head of a murdered person's household to decide whether the killer was to be executed or pay a fine (MAL A10, B2). Lastly, if a person was killed during a robbery and his murderer was not caught, the local authorities were to financially compensate the deceased person's family (LH 24).

The HL specified several unique statutes of homicide, such as the fine of 4,000 shekels of silver for killing a merchant (HL 5), giving a land plot to the son of a person killed in another city (HL 6), and the exemption from liability if a person was killed during a chase (HL 37) or while fighting during a lawsuit (HL 38). Further, a killer who pushed his victim into the river was to be enslaved to his victim's heirs (HL 43), and a killer who pushed his victim into a fire was to give his son in return, presumably for enslavement at the victim's household (HL 44a).

Category 4: Injury

The fourth category of delict—injury—included thirty-nine provisions. As with the case of homicide, injury could have been sanctioned by a talionic punishment or by the payment of a fine. Surprisingly, this category is utterly missing from the extant portions of LLI. Given the fragmentary state of this collection, however, it is certainly possible

that a group of provisions referring to injury originally existed in what is now one of the numerous gaps in the text. The same applies to NBL, a collection of which only one small fragment was found to date, that includes merely fifteen statutes. Such speculations, of course, cannot be proven.

All the collections that address the theme of injury (LUN, LE, LH, HL, and MAL) exhibit a strikingly consistent pattern, markedly distinct from any one of the other categories. It therefore seems conspicuous and leads to the suggestion that one origin—LUN, the first law collection in the ancient Near East—was repeated in all subsequent collections. This pattern involves one homogenous block of consecutive provisions listing various injuries, with no further reference to the category in other parts of the collection. Hence, injury constitutes the best delict category for assessing questions of origins, transmissions, historical developments and interrelations between the various law collections.

Because of this homogeneity and consistency, we will survey the category of injury according to the law collections, one after the other. In each case, we will present the extent statutes, and discuss where possible a reoccurring feature in most collections: social status and its reflection in the laws of injury.

Injury in LUN

The group of statutes in LUN 17–24 lists injuries of several body parts: bone, nose, skull, eye, and tooth. All these injuries were punished by a fine besides the breaking of the skull during a brawl (LUN 22), for which the penalty was 180 lashes. A distinction was made twice between injury caused with bare hands or by using a weapon. Breaking bones using a weapon (LUN 18) led to a fine six times larger than using one's bare hands (LUN 17), while the use of a weapon in breaking a skull (LUN 21) was sanctioned differently than if using one's bare hands (LUN 22): a fine in the former case, whipping in the latter.

The last two statutes in the cluster—LUN 25 and 26—exhibited different cases: a person hitting another. The difference between the two rulings was based on social status. A slave who hit a civilian was to be publicly humiliated, being paraded across town with half his head shaved (LUN 25), while a civilian who hit a slave was to be whipped 120 times (LUN 26). It seems that in this case a civilian was punished more severely than a slave who committed the same crime.

Injury in LE

In LE, the first statute in the group—LE 42—specified injuries to several organs and their associated fines: nose and eye (sixty shekels of silver), tooth and ear (thirty shekels of silver), and a slap on the cheek (ten shekels of silver). Four statutes follow, each mentioning the injury of one organ and the fine to be paid: finger (twenty shekels of

silver), hand, foot (thirty shekels of silver in each case), and collarbone (twenty shekels of silver). The final statute in the cluster—LE 47—states that any injury inflicted during a brawl is to be fined by ten shekels of silver.

Injury in LH

The most notable feature of the eleven injury provisions in LH is the emphasis put on social differentiation: all these statutes explicitly specify the social status of both culprit and victim. In this sense, the term *awīlum*, "man", was not used in these contexts merely as referring to a male person, but more specifically to "civilian", the highest social rank. The term *muškenum*, commonly translated by scholars as "commoner", designated a lower social rank, while the lowest rank was that of slave.

This cluster includes provisions referring to injuries of the eye (LH 196, 198, 199), bone (LH 197–199), tooth (LH 200, 201), and slapping someone's cheek (LH 202–205). It concludes with a general ruling that if a civilian has wounded another civilian during a brawl, the offender was required to cover the costs of his victim's medical treatment (LH 206).

The fact that the highest number of provisions in the group referred to slapping someone's cheek, rather than to a physical injury, hints that this whole cluster had more to do with the setting up of social boundaries than with stipulating compensations for cases of injury. Civilians who injured equal civilians faced talionic punishment: the phrase "an eye for an eye and a tooth for a tooth" derives from this rationale, as exemplified in LH 196 (eye) and 200 (tooth). A third provision—LH 197—prescribed as punishment the breaking of a civilian's bone had he broken the bone of another civilian. Unintentional injury during a brawl, however, only required the offender to pay for the injured person's physician costs (LH 206).

Social inequality was apparent in the sanctions for the various injuries. Thus, instead of being talionically punished, a civilian who injured a lower-rank *muškenum* was only required to pay a fine (LH 198: sixty shekels of silver for eye or bone injury; LH 201: twenty shekels for tooth injury). If the victim of an eye or bone injury was a slave, his civilian offender paid half the slave's worth (LH 199).

The four statutes that referred to slapping of the cheek perfectly demonstrate notions of social differences: a civilian slapping a higher-rank civilian (*awīlim ša elišu rabû*) was to receive 60 lashes (LH 202), while slapping an equal civilian (*mār awīlim ša kīma šuāti*) would have been satisfied by paying the fine of sixty shekels of silver (LH 203). A *muškenum* who slapped another *muškenum* had to pay a fine of ten shekels of silver (LH 204), while a slave who slapped a civilian would have his ear cut off (LH 205).

Injury in HL

The ten provisions in HL dedicated to injury also exhibit clear concern for social differentiation, distinguishing two ranks: a free person and a slave. The punishments were all financial, none were talionic. The fines were always higher in cases where the victim was a civilian rather than a slave. These statutes deal with injuries of the tooth (HL 7, 8), head (HL 9), arm and leg (HL 11, 12), nose (HL 13, 14), and ear (HL 15, 16). HL 10 differs from all other statutes, since it rules that injuring a civilian and rendering him temporarily dysfunctional necessitated his attacker to pay for the medical care, supply a person to work in his victim's stead until his recovery, and pay an additional fine of six shekels of silver.

Injury in MAL

The MAL was distinct from the other law collections in its attitude to injury. It only dedicated two statutes to this topic, and these are different to the statutes of injury attested in the other collections discussed above. A woman who hit a man was to pay 1,800 shekels of lead and be whipped with twenty rod-blows (MAL A7), while crushing a man's testicles would result in her bodily mutilation (MAL A8). These two statutes seem to be concerned with gender differentiation more than with injury per se, since they only refer to female culprits and male victims.

Category 5: Perjury, Insult and Slander

The last category includes several acts that were regarded similarly: perjury, insult, slander, and false accusations. These misdemeanours were regarded as serious crimes, and a person who could not prove an accusation he made was subject to harsh sanctions. These punishments varied between talion—compared to the unsubstantiated accusation—and the payment of a fine.

LUN: False Accusations or Claims

Three provisions in LUN prescribed financial penalties for false accusations of performing witchcraft (LUN 13) or sleeping with a betrothed woman (LUN 14), and for giving false testimony in a trial (LUN 38). A false claim of financial loss, however, was punished by death (LUN C6).

LLI: False Accusations

LLI 17 stipulated a general ruling that false accusation is to be fined in accordance with the nature of the accusation. According to LLI 33, a person who wrongfully blamed a man's virgin daughter for having sexual intercourse was to pay a compensation of ten shekels of silver.

LH: False Claims or Testimonies

The highest number of statutes in this category—eight—is found in LH. LH 4 supplied a general ruling concerning false testimony, according to which the accuser's penalty was to be equivalent to his accusation. The death penalty was prescribed for a person who wrongfully accused another of committing a murder (LH 1) or practicing witchcraft (LH 2), for giving false testimony in a case of capital offense (LH 3), or deceptively claiming that his property was stolen (LH 11). If a person deceitfully blamed his neighbourhood for loss of property, he was to pay a fine twice as much as what he claimed was lost (LH 126). If a man could not prove his accusation against an *ugbabtu*-priestess or a married woman, he was to be whipped and have half his head shaved (LH 127). A person who sold stolen property without being able to prove his ownership of it was to be considered a liar, and his penalty was to be decided (LH 13).

MAL: False Accusations

Three consecutive statutes in MAL relate to false accusation of sexual misbehaviour. MAL A17 ruled that accusing one's wife of being unfaithful was to be tested through the "(divine) river ordeal".[17] If the accusation was disproved, the accuser faced harsh punishments: forty rod-blows, performance of one month at the king's service, cutting off his hair and beard, and a fine of 3,600 shekels of lead (MAL A18).

False accusation of conducting homosexual relations was sanctioned by fifty rod-blows, performance of one month at the king's service, cutting off the accuser's hair and beard and a fine of 3,600 shekels of lead (MAL A19).

According to a fourth statute in this collection, false accusations of blasphemy or embezzlement of temple property resulted in sanctions of rod-blows and the one-month performance of the king's service (MAL N2). The text is broken at this point, and we are therefore ignorant as to the exact extent of the punishments.

Shifts between Categories

In contrast with what might be inferred from the above presentation of the five delict categories, ancient Near Eastern legal traditions were hardly strict and solid. In the realm of delict, this can be demonstrated most clearly by assessing case studies of crimes that shifted between the categories.

In what follows, therefore, I apply an inversed rationale to that employed in the above discussions and contrast their neat compartmentalisation. The examples discussed below present varying interpretations and definitions of crimes that were regarded differently when the circumstances changed. The change of circumstances changed the

17 For this term see Roth (1997, 272) and Westbrook (2003b, 34).

association of the act to a criminal category. These shifts are best exemplified by the different sanctions the act necessitated in the varying cases.

Hitting a Pregnant Woman and its Consequences

One of the cases discussed above was the hitting of a pregnant woman, an act to which several different statutes were dedicated in several law collections. The consequences of the act defined the criminal category to which it belonged: if it resulted in miscarriage, it was regarded as belonging to the category of damage, but if the woman died it was regarded as homicide.

A different factor that occasionally determined the category to which this crime belonged was the social status of the victim: had she belonged to the high social class of civilians, her killer (LUN 34, LLI e, MAL A50) or his daughter (LH 210) were to be executed. If she belonged to the lower class of *muškenum*, her killer was to pay a fine of thirty shekels of silver (LH 212). If she was a slave, her killer was to give her owner a slave in her place (LUN 36) or pay a fine of twenty shekels of silver (LH 214).

Theft, Damage or Homicide in the Laws of Ešnunna and Hammurabi

Three consecutive statutes in LE interpreted differently cases of detaining a person without reasonable cause—that is, an outstanding debt. In all cases the criminal was a civilian, and his victims belonged to inferior social ranks, either the lower *muškenum* class, or slaves.

In the first case, a slave-woman was detained by a civilian, which was regarded as a case of theft, punished by paying her value to her owner (LE 22). The second case was similar, but in its aftermath the slave-woman was killed by the civilian who detained her, and hence the crime was viewed as a case of damage for which the culprit was to give her owner two slave women (LE 23).

In the third case, a civilian detained and killed the wife or son of a *muškenum*. This act belonged to the category of homicide, despite the low social status of the victims, and the perpetrator—albeit being a civilian—was to be executed (LE 24).

The act of detaining a person—with or without legal grounds—features in three consecutive statutes in LH. In the first case, a civilian detained without cause the family members of another civilian, which was regarded as an act of theft for which the culprit was fined twenty shekels of silver for each person he detained (LH 114).

In the second case, a civilian had a justified cause for detaining the family members of another civilian, but they died from natural causes while being detained; this case was not deemed illicit (LH 115). The third case is identical to the former, but in this variant provision the death of the detainees came as a result of beating or abuse by their detainer.

In this case the culprit was liable for one of two possible crimes, depending on the social status of his victim. If the victim was a civilian's son, his death was regarded as homicide and the killer's son was to be executed. If the victim was a slave, his death belonged to the category of damage, and thus his killer was to pay his owner twenty shekels of silver and lose the loan he originally gave (LH 116).

Theft and Perjury in the Laws of Hammurabi

Five statutes in LH relate to a situation in which three parties were involved in a possible case of theft: a thief stole property from its legal owner and sold it to a third person (LH 9–13). The first three of these statutes are relevant to our discussion. If either the seller or the buyer could not prove their innocence, they would have faced execution for theft (LH 9, 10). However, if the alleged owner of the property could not prove his charges, he was to be executed for making false accusations (LH 11). In these cases, therefore, the burden of proof determined the difference between criminal and victim, but it also determined the exact delict category to which the crime in question belonged.

Conclusions

We have seen that five categories of delict existed in the ancient Near Eastern law collections of Mesopotamia and Hatti: theft, damage, homicide, injury, and perjury. We have also seen that these categories were not strict, and a given felony could be regarded as belonging to different categories when the circumstances changed. Why did these shifts between the delict categories occur? The most notable trigger behind these shifts appears to have been the social status of the victim: the higher the status was, the harsher the punishment was, and the category of the crime was changed accordingly. Additionally, free persons (whether belonging to the higher *awīlum* or to the lower *muškenum* classes) were always favoured over slaves, which also caused crimes to shift from lighter to harsher categories in cases where the victims were free persons rather than slaves.

These observations shed light on social notions and conventions in ancient Near Eastern legal life. They demonstrate that legal notions were not strict and allowed some juridical flexibility in accordance with social differentiation and hierarchy. Criminal acts were not regarded solely on the basis of the factual event, and in this sense the law collections reflect, at least to a certain degree, ancient Near Eastern social reality. The persons that stood behind the formulation of the laws obviously belonged to the higher social echelons. As such, it was in their best interest to defend existing social structures and stratification, and to perpetuate them. This was reflected in the fact that shifts between delict categories resulted from factors of social inequality no less than from contexts of actual criminal occurrences.

Whether the ancient Near Eastern law collections were indeed used as obliging legal directives, in the modern sense of the term, is probably questionable. However, they do

seem to have strong relevance to social norms and people's daily life. These collections were not required to be used literally when legal matters were decided, in order to truthfully reflect the social and legal attitudes that prevailed in the ancient Near East. If this article contributes anything to our understanding of legal life in the ancient Near East, it should be this insight.

Table 1: The main ancient Near Eastern law collections

Collection	Date	Language	Provisions	Copies
LUN	ca. –2100	Sumerian	88 preserved	6
LLI	ca. –1930	Sumerian	44 preserved	17
LE	ca. –1770	Akkadian	60	3
LH	ca. –1750	Akkadian	282 preserved	52
HL	ca. –1650?[18]	Hittite	200	28+12[19]
MAL	ca. –1350 / –1075[20]	Akkadian	125 preserved	14x1[21]
NBL	ca. –700?[22]	Akkadian	15 preserved	1

All provision numbers in Table 2 follow Roth (1997) except LUN, which follow Civil (2011), and HL, which follow Hoffner (1997). The calculation of percentages is distorted by the incompleteness of the sources. As mentioned above, only LE is known in its entirety. LH and HL have several lacunae, while LUN, LLI, MAL, and NBL lack significant portions, the exact extent of which is unknown.

18 The date of HL's composition is disputed. Opinions range between 1650 and 1500 BCE; see Hoffner (1997, 229–230, with previous literature).

19 The HL were originally inscribed over two tablets, each containing 100 provisions. We have 28 copies of tablet I, which contained statutes 1 to 100, and 12 copies of tablet II, which contained statutes 101 to 200.

20 The MAL was originally compiled around 1350 BCE, but the surviving copies we have of it are later, and date to ca. 1075 BCE; see Roth (1997, 154).

21 The MAL was inscribed over at least fourteen tablets dubbed "A" to "O", each of which contained different provisions (with a few clauses from tablet B repeated in tablet O). Other than tablet A, which has one later highly fragmentary copy, only one copy of each of these tablets has been found to date; see Roth (1997, 153).

22 The date of NBL's composition is unknown. Roth (1989, 29 n. 89) tentatively assigned it to the early seventh century. See further discussion in Oelsner (1997).

Table 2: Delict provisions in the ancient Near Eastern law collections

	Theft	Damage	Homicide	Injury	Perjury	Total
LUN (88)	37, 39, E3b (3; 3.5%)	33, 35, 40, C3–5 (6; 7%)	1, 7, 34, 36 (4; 4.5%)	17–26 (10; 11%)	13, 14, 38, C6 (4; 4.5%)	(27; 30%)
LLI (44)	9, 12, 13 (3; 7%)	d, f, 4, 5, 10, 11, 34–37 (10; 23%)	E (1; 2%)	–	17, 33 (2; 4.5%)	(16; 36%)
LE (60)	6, 12–13, 22, 36–37, 40, 49–50 (9; 15%)	5, 23, 53, 60 (4; 6.5%)	24, 47a, 54–58 (7; 11.5%)	42–47 (6; 10%)	–	(26; 43%)
LH (282)	6–10, 12, 19–23, 25, 106–107, 112–114, 120, 124–125, 241, 253–255, 259–260, 265 (27; 9.5%)	53–59, e, 116, 194, 209, 211, 213, 218–220, 225, 229–233, 235–238, 240, 244–249, 263–264, 267 (36; 13%)	24, 116, 153, 207–208, 210, 212, 214, 229–230, 250–252 (13; 4.5%)	196–206 (11; 4%)	1–4, 11, 13, 126–127 (8; 3%)	(96; 34%)
HL (200)	19–21, 45, 49, 57–73, 81–83, 91–97, 101–103, 108–110, 119–122, 124–133, 142–143, 162, 166–169 (59; 29.5%)	17–18, 72, 74–78, 84–90, 98–100, 104–107, 113, 144, 164–165 (26; 13%)	1–6, 37–38, 43, 44, 174 (11; 5.5%)	7–16 (10; 5%)	–	(106; 53%)
MAL (125)	A1, 3–6; B4, 8–10, 13–15, 20; C2–5, 8–11; F1–2; M3; N1 (25; 20%)	A21, 50–52; B7; M1–2 (7; 5.5%)	A10, 50, 53; B2 (4; 3%)	A7–8 (2; 1.5%)	A17–19; N2 (4; 3%)	(42; 33.5%)
NBL (15)	–	3, 7 (2; 13%)	–	–	–	(2; 13%)
Total	126	91	40	39	18	314

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