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MESOPOTAMIAN LEGAL TRADITIONS AND THE LAWS OF HAMMURABI

MARTHA T. ROTH*

I find myself, more and more frequently in recent years, asking the questions: "What are the Mesopotamian law collections?" and more broadly, "What is Mesopotamian law?" For twenty years I have wrestled with these issues, ever since my first graduate school class with Professor Barry Eichler at the University of Pennsylvania in 1974 opened my eyes to the intrigue and the soap opera of Nuzi family law. And in the last few years, as I have worked to complete new translations of all the law collections, I have found my own opinions and pronouncements shifting and changing as my editorial focus has moved from the sophisticated grandeur of Hammurabi's lapidary composition to the almost sophomoric, comical, amateurish efforts of some of the student-inscribed exercise tablets.¹

I now confess that I do not "know" what the law collections (or "codes") meant for the ancient scribes, for the judicial authorities, and for the contemporary and mostly illiterate populations; nor do I any longer think that there is a single "answer" that we ever will "know." Rather, I have become more and more convinced that the "law" and the "law collections" throughout Mesopotamia, considering the variety of social, linguistic, political, economic, and ethnic changes over three millennia, contain a rich multitude of layers of meaning. Although there are shared traditions, there is no single "common law" throughout the ancient Near East, from the Mediterranean to the Zagros Mountains, from Anatolia to the Sinai, from the third millennium to the conquests of Alexander. There is no uniform "law" of any specific legal category ("law of adultery" or "law of homicide,"

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1. Abbreviations used here to refer to publications of cuneiform texts or to compositions include: BE = BABYLONIAN EXPEDITION OF THE UNIVERSITY OF PENNSYLVANIA, SERIES A: CUNEIFORM TEXTS; CAD = ASSYRIAN DICTIONARY OF THE ORIENTAL INSTITUTE OF THE UNIVERSITY OF CHICAGO; CT = CUNEIFORM TEXTS IN THE BRITISH MUSEUM; HL = Hittite Laws; LE = Laws of Eshnunna; LH = Laws of Hammurabi; LNB = Neo-Babylonian Laws; LU = Laws of Ur-Namma. Transcription and translation of all the law collections are found in MARTHA T. ROTH, LAW COLLECTIONS FROM MESOPOTAMIA AND ASIA MINOR (1995) [hereinafter LAW COLLECTIONS].

for example²), any more than there is a single rule of royal succession, or a single procedure for animal sacrifice, or a single form of letter address. More specifically, the formal collections of legal cases (the often-called "law codes") cannot be viewed as reifications of the abstractions, devoid of the intentions and the reinterpreted readings of their drafters, of their royal sponsors, and especially of their audiences.

Today, in this forum on ancient law, speaking to legal scholars, I intend to do something verging on the heretical: I will explore some of the non-legal layers and non-judicial uses of that quintessential composition, the Laws of Hammurabi. In so doing, I hope to show that a reading of the composition that extracts the pertinent "law" from its context—by which I mean both from the composition as a whole, and from its Mesopotamian cultural milieu—risks violating both the composition and the law. For the "law collections" are not simply collections of laws; the Laws of Hammurabi, in particular, is a historical artifact, operating in and through time and space in distinctive and measured ways.³

In order to expand on this position, I will embark on two excursions. First, I draw attention to three phenomena involving the Laws of Hammurabi, proceeding chronologically: (I.A.) the relationship of the frame (the prologue and epilogue) to the contents (the law provisions), and what this might express about the immediate political and military message the composition as a whole conveyed to Hammurabi's subjects and vassals in the mid-eighteenth century B.C.; (I.B.) the influence of the composition on Mesopotamian legal thought and practice for well over a thousand years, from the mid-second until the mid-first millennium B.C.; and (I.C.) the physical monument and the political message it conveyed for almost four thousand years, through

2. I use these two examples because I myself have investigated the legal issues involving these topics for a limited chronological or geographical sphere. See Martha T. Roth, *Homicide in the Neo-Assyrian Period*, in LANGUAGE, LITERATURE, AND HISTORY: PHILOLOGICAL AND HISTORICAL STUDIES PRESENTED TO ERICA REINER 351 (American Oriental Series 67, F. Rochberg-Halton ed., 1987); Martha T. Roth, "She will die by the iron dagger": *Adultery and Neo-Babylonian Marriage*, 31 J. ECON. & SOC. HIST. ORIENT 186 (1988).

3. Although the secondary bibliography on the Laws of Hammurabi is extensive, the nature of the scholarship tends toward detailed legal analysis of specific law provisions, and very little has been published on the document as a whole. Among the notable exceptions are two outstanding articles that altered the course of all subsequent investigations. See F.R. Kraus, *Ein zentrales Problem des altmesopotamischen Rechts: Was ist der Codex Hammurabi?* 8 GENAVA 283 (1960); J. Bottéro, *Le "Code" de Hammurabi*, 12 ANNALI DELLA SCUOLA NORMALE SUPERIORE DE PISA 409 (1982), later collected in MÉSOPOTAMIE: L'ÉCRITURE, LA RAISON ET LES DIEUX (1987), and translated as *The "Code" of Hammurabi*, in MESOPOTAMIA: WRITING, REASONING, AND THE GODS 156 (Zainab Bahrani & Marc Van De Mieroop trans., 1992).

to the dawn of the twenty-first century of our own era. Through these three discussions in the first part of this Article, I will be emphasizing some of the extra-legal functions of the document as artifact through the millennia.

Second, I will focus on one set of provisions in the Laws of Hammurabi, those involving “cheek slapping.” I will (II.A.) draw attention to the category of honor as a construct in the social system; (II.B.) place these “cheek-slapping” provisions within the literary structure of the Laws of Hammurabi; (II.C.) isolate the issues deemed problematic by earlier commentators; and (II.D.) bring in additional documents that involve “cheek slapping,” both formal law collections and functional documents. Then, the offense of “cheek slapping” (II.E.) will be clarified as a social offense redressed by the legal system. This examination will draw attention to one of the many non-legal cultural assumptions informing the document, in this case one involving its social-relational elements.

I. THE LAWS OF HAMMURABI: THE “MAGNIFICENT MONOLITH”

A. *The Relationship of the Frame to the Law Provisions in the Mid-Eighteenth Century B.C.*

Although the prologue-epilogue frame and the laws themselves both have been separately studied by many,⁴ the necessary relationship of the one to the other tends to be overlooked. The external frame of the formal law collections consists of a prologue and epilogue, written in a high literary style, somewhat archaizing, with hymnic and literary allusions and syntax. On the stela inscribed with the Laws of Hammurabi, the prologue covers less than five columns (or about 300 lines) and the epilogue another five columns (or about 500 lines)⁵ of the stela’s original total of fifty-one columns (or about 4130 lines).⁶ The frame thus consumes one-fifth of the total composition,

4. In great detail and with previous bibliography, by G. RIES, PROLOG UND EPILOG IN GESETZEN DES ALTERTUMS (Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte 76, 1983).

5. The sizes of the columns on the front and back of the stela differ with the stela’s shape, resulting in columns averaging seventy lines at the beginning of the composition (near the narrower top of the front), and one hundred lines at the end (at the wider bottom of the back).

6. The actual number of columns is not certain, as there is a gap on the stela of between five and seven columns that was caused in antiquity by deliberate smoothing of a section, probably to prepare it for a rededication inscription; see my comments in the introductory paragraphs to the LH in LAW COLLECTIONS, *supra* note 1, and Prudence O. Harper & Pierre Amiet, *The Mesopotamian Presence, in THE ROYAL CITY OF SUSAN* 159 (Prudence O. Harper et al. eds., 1992); the remark on page 159 that the smoothed area is on the back of the stela is an error often repeated; the smoothed area is on the lower portion of the *front* of the stela.

an appropriate ratio in visual-display terms (a point, however, not applicable to this monument, see further below) and an appropriate proportion in dramatic oratorical construction. The prologue and epilogue making up the frame certainly functioned deliberately together with the approximately two hundred and seventy-five law provisions to present a unified message to the intended audience. The frame—ornate, formal, grandiose—and the internal construct—deliberate, matter-of-fact, sequential laws—together present a message that each alone cannot. For the listening audience, then, which also includes the literate individuals reading (aloud or silently) for their own private purposes, the distinction between the frame and the body would be obvious whether reading from the stela or from copies of the text on clay tablets.

Although there is this decisive aural break between the prologue and the laws, and later between the laws and the epilogue, there is absolutely no corresponding visual break on the stela. In the visual presentation the key break would be that between the illustration of the god and king interacting and the text (see further below). The laws themselves, each of which is introduced by the Akkadian particle *šumma*, “If,” begin without visual marking less than halfway through the fifth column. There is no special ruling, no double line, no blank space, no change of script, no italics or boldface—no visual signal, in other words, to alert the illiterate observer of the monument that we are about to move from the literary to the legal, from the introduction to the laws. The transition is seamless, reinforcing the unified message of the composition.

The seamless transition in the text, however, does not mean that there never was a seam, it simply means that the *monument*, as artifact, did not convey that seam. Both the prologue-epilogue frame and the body of laws might each have survived independently in antiquity.⁷ Does such a possible independence, however, necessarily force us to conclude that there were two compositions, with two different histories of transmission? And further, is this independent identity of the two parts a primary or secondary development? That is, was there an independent royal-literary composition that was attached to an independent body of laws to create a single new document? Or, did the

7. The prologue alone is found in sources A and B; no complete tablets with only the epilogue, or with both the prologue and epilogue only, are yet attested. The numerous fragments with parts of the laws could belong to tablets with only the laws; thus, for example, source r when complete probably began with ¶ 1 and identifies itself as the “first” tablet or chapter of its series. See *infra* note 10.

dependent parts of a single document appeal to different audiences and thus begin independent expressions?

In some ways, the identity or identities of these audiences dictate our lines of thinking about the messages that the composition conveyed. The intended audience for Hammurabi's composition probably included several groups. First and foremost, we must never forget that the composition was intended for the gods. The gods, and especially Marduk, Hammurabi's patron deity of Babylon, and Shamash, the god of justice, entrusted the king with the administration and equitable application of the principles of "truth and justice" (*kittum u mīš-aram*). It was in order to "provide just ways and appropriate behavior for the people of the land," as the prologue expresses it (v 16-19), that the gods gave into Hammurabi's hands more than a score of powerful and wealthy cities (as enumerated in the prologue). And Hammurabi erected his stela in order to memorialize his accomplishments and the fulfillment of his assigned task, and to bring honor and blessings upon himself.

This then invokes a second intended audience: the oppressed and the victims of miscarriage of justice. It would be such an individual who would find solace and comfort in Hammurabi's application of justice:

In order that the mighty not wrong the weak, to provide just ways for the waif and the widow, I have inscribed my precious pronouncements upon my stela and set it up before the statue of me, the king of justice, in the city of Babylon, the city which the gods Anu and Enlil have elevated, within the Esagil, the temple whose foundations are fixed as are heaven and earth, in order to render the judgments of the land, to give the verdicts of the land, and to provide just ways for the wronged (xlvi 59-78).

These individuals will recognize Hammurabi's humanitarian accomplishments (in addition to his military victories) and will bless his name for generations to come. More specifically, any person who has suffered personal loss because of some incompetent or corrupt application of justice will find much more that is praiseworthy in Hammurabi's correct behavior and in the examples of his law provisions. Hammurabi even provides such a person with the blessing he should utter:

Let any wronged man who has a lawsuit come before the statue of me, the king of justice, and let him have my inscribed stela read aloud to him, thus may he hear my precious pronouncements and let my stela reveal the lawsuit for him; may he examine his case, may he calm his (troubled) heart, (and may he praise me), saying: "Hammurabi, the lord, who is like a father and begetter to his peo-

ple, submitted himself to the command of the god Marduk, his lord, and achieved victory for the god Marduk everywhere. He gladdened the heart of the god Marduk, his lord, and he secured the eternal well-being of the people and provided just ways for the land." May he say thus, and may he pray for me with his whole heart before the gods Marduk, my lord, and Zarpanitu, my lady (xlvi 3-47).

A third audience for this composition is one that is not specifically mentioned in the prologue or epilogue, but that no doubt felt the impact of Hammurabi's boasts and claims most directly: the subject peoples and vassal rulers of the many cities Hammurabi conquered and subjugated during his forty-two year reign. The rhetoric of the prologue centers Hammurabi's accomplishments in Babylon, elevated along with its patron deity Marduk and his temple Esagil, to a supreme position in the land. From that center all the cities and their patron deities with their temples pledge their allegiance to Hammurabi: Nippur, Eridu, Ur, Sippar, Larsa, Uruk, Isin, Kish, Kutû, Borsippa, Dilbat, Kesh, Lagash, Girsu, Zabala, Karkara, Adab, up the Euphrates to Mashkan-shapir, Malgium, Mari, Tuttul, and finally the mightiest and most venerated cities, Babylon, Akkad, Assur, and Nineveh.

The rulers of all these cities are reminded by the imposing physical presence of the stela itself of the might of Hammurabi and of their subject status. That larger, more abstract, but essential dyadic relationship—of vassal and overlord, or of slave and master—and the allegiance owed by the subservient to the dominant party, is expressed synecdochically by the first and last law provisions of the collection, those provisions that link the prologue-epilogue frame to the law provisions' core.

The first law provision in the Hammurabi collection, immediately following the itemized glorification of Hammurabi's military might in the prologue, is: "If a man accuses another man and charges him with homicide but cannot bring proof against him, his accuser shall be killed" (LH ¶ 1). And the last provision, immediately preceding the epilogue and its curses directed against anyone who would vandalize or disrespect the stela is: "If a slave should declare to his master, 'You are not my master,' he (the master) shall bring charge and proof against him that he is indeed his slave; his master shall cut off his ear" (LH ¶ 282). Both of these laws involve verbal utterances and charges that are not substantiated: The first law deals with a false accusation of the grave offense of homicide, which in the political realm is tantamount to utterances construed as treason; the last law deals with de-

nial by a slave of the master-slave relationship, which in the political realm would be understood as rebellion. Thus, the contemporary subject audience would hear an immediately threatening political message, and would be reminded of their oath of loyalty to Hammurabi,⁸ and of the consequences of disloyal, treasonous, or rebellious behavior.⁹

The entire composition—the prologue, the series of seemingly apolitical laws (outlining the norms of behavior approved and sanctioned by the king), and the epilogue—functions to reinforce the superior position of Hammurabi among his contemporaries, both nominal equals and vassals. Thus, they are reminded by the physical stela, as well as by its contents, that they owe allegiance to King Hammurabi.

B. *The Influence of the LH from the Mid-Second Until the Mid-First Millennium B.C.*

The Laws of Hammurabi had another, and a far wider-ranging and longer-lasting impact, however, than that experienced even by its contemporary audience. The composition was “alive” for well over a thousand years, as a didactic tool in the schools and scribal centers of Mesopotamia.¹⁰ The imposing stela with which we are so familiar today is the sole surviving complete example of what was probably a set of at least three duplicate stelae, erected in the temple squares or other public gathering places of Mesopotamian cities under Hammurabi’s rule. Copies of the complete Laws, extracts of the Laws, commentaries to the Laws, and even a bilingual Sumerian-Akkadian

8. For loyalty oaths and treaty-oath terminology, see H. Tadmor, *The Aramaization of Assyria: Aspects of Western Impact*, in *MESOPOTAMIEN UND SEINE NACHBARN* 449, 455 with bibliography (Berliner Beiträge zum Vorderen Orient 1, 1982); *I TRATTATI NEL MONDO ANTICO FORMA IDEOLOGIA FUNZIONE* (Luciano Canfora et al. eds, 1990). Note the reference to a treaty between King Hammurabi of Babylon and the King of Eshnunna, *riksātīm bīrišunu iša[kkānu]* “they will establish an agreement between them.” D. Charpin, *Lettres de Yarīm-Addu*, in *ARCHIVES ÉPISTOLAIRES DE MARI* 1/2, 180 No. 372:20 (*Archives Royales de Mari* 26, 1988).

9. Certainly, however, the political message was not the only one conveyed by the position and placement of these particular laws as the opening and closing ones. It is of interest to note that the first law in the Sumerian collection attributed to Ur-Namma (r. 2112-2095 B.C.) also involves homicide: “If a man commits a homicide, they shall kill that man.” (LU ¶ 1), *LAW COLLECTIONS*, *supra* note 1. The Hittite Laws, too, open with a homicide provision, suggesting a tradition, or at least the possibility of a trend among those who compiled the law collections, of beginning with the grave offense of homicide, perhaps earlier left to the devices of self-help, and herewith firmly placed within a justice system sanctioned and imposed by the king.

10. For discussion of the Mesopotamian scribal curriculum, see Ake W. Sjöberg, *The Old Babylonian Eduba*, in *SUMEROLOGICAL STUDIES IN HONOR OF THORKILD JACOBSEN* 159 (*Assyriological Studies* 20, 1975).

extract of the Laws, were found in the scribal and cultural centers throughout Mesopotamia. Well over fifty manuscripts are known to me, coming originally from the ancient centers in Susa, Babylon, Nineveh, Assur, Borsippa, Nippur, Sippar, Ur, Larsa, and more. Some of these manuscripts are almost contemporary with Hammurabi and with the stelae he had erected; others are copies from at least a millennium later.

The epilogue begins by summing up the preceding two hundred and seventy-five law provisions as follows (xlvi 1-8): "These are the just decisions which Hammurabi, the able king, has established and thereby he has directed the land along the course of truth and the correct way of life." Hammurabi, in other words, characterizes these law provisions as "just decisions" (Akkadian *dīnāt mī šārim*). The word I translate here as "decision," *dīnu*, is a term that covers a number of aspects of a law case: the verdict rendered by judge, king, or court; the penalty or punishment (but not the acquittal or absolution) imposed by the judge or court; the pronouncement (usually with legal overtones) of a god or oracle; a specific article of law or a specific law provision in a text; a more abstract concept of "legality" or "legally valid practice or behavior"; the entire lawsuit or court case; and, broadly, the entire associated process of a lawsuit, including the physical locality of the "court" and the "procedure" involved. This same term is used in the Neo-Babylonian Laws, about one thousand years after Hammurabi, in a brief notation on an otherwise uninscribed area to indicate that the copyist did not have access to the final decision or complete provision and therefore left a blank space: *dīnšu ul qati u ul šaṭir*, "Its case (or: law, or: decision) is not complete and is not written (here)" (LNB, iii 1-2). The term also is used, at least twice, yet a few centuries later, in scholarly works in reference to the Laws of Hammurabi: in a subscript to a copy of one tablet (or "chapter") of the composition on which the last few law provisions and the entire epilogue were inscribed, the tablet is identified as [DUB].5.KAM *dīnāni [ša] Hammurabi*, "Tablet five of the laws (or: decisions, etc.) of Hammurabi."¹¹ Note that this identification is of a version of the composition that includes both law paragraphs and the literary epilogue.¹² And in another, Neo-Assyrian text, this one a fragmentary

11. CT 13 46-47 colophon (source e in the editions).

12. Compositions generally were titled in antiquity after their opening words, and the Laws of Hammurabi is so identified in one post-Old Babylonian ten-column tablet, BE 31 22 (source V), which records the laws from ¶ 145 to ¶ 179. The tablet was probably copied directly from a stela (other than the Sippar stela excavated in Susa and now in the Louvre, perhaps from a

catalogue of works (mostly as yet unidentified literary manuscripts) in the library of the seventh-century Assyrian king Assurbanipal, we find the entry: *dināni ša Hamm[urabi]*, “The laws (or: decisions, etc.) of Hammurabi.”¹³

Although Hammurabi’s court scribes and scribal schools did not originate the genre of the law collection, they did refine it to a more sophisticated and comprehensive level than it had achieved in the previous centuries. The Laws of Hammurabi then became something of the model for other later law collections (none of which attained the sophistication of Hammurabi’s), and certainly a staple of the scribal training curriculum for centuries to come.

C. *The Political Message of the Physical Monument for Four Millennia*

The third point I wish to make about the Laws of Hammurabi’s impact as an artifact involves the physical monument, the stela with which we are familiar, and the political message of that monument for what has been almost four thousand years now. The famous exemplar is a seven-foot tall black basalt stela, now housed in the Musée du Louvre, Paris, which was excavated in 1901-1902 by French archaeological teams working in Susa, the ancient Elamite capital. But the stela’s provenience is more complicated than that, for it was taken to Susa, perhaps by Shutruk-Nahhunte I, a Middle Elamite ruler, or by his son and successor Kutir-Nahhunte, as booty only in the twelfth

Nippur one) and identifies itself as: im-gid-da 4.kám-ma inu Anum širum KA^{na}na-rù-a . . . al-gub-ba lugal *Hammurabi*, “imgiddû-tablet, fourth installment (of the composition) ‘When the august god Anuk’ (after) the stela erected in(?) [Nippur(?)] by(?) King Hammurabi” (reverse, column x). See J.J. Finkelstein, *The Hammurabi Law Tablet BE XXXI 22*, 63 *REVUE D’ASSYRIOLOGIE* 11 (1969); see also for the colophon, H. HUNGER, *BABYLONISCHE UND ASSYRISCHE KOLOPHONEN* no. 9 (*Alter Orient und Altes Testament* 2, 1968). Thus, there are two titling traditions in play; one follows the ancient and well-established Mesopotamian practice of citing works after their first words, the other identifies the work descriptively by its source. It should be noted here that, contrary to what the reader might find in some of the literature, neither the composition nor the stela itself was titled *šar mišarim*, “King of Justice”; that is used in the composition rather as an epithet of King Hammurabi and not in reference to the *narû*, “stela”; see *LAW COLLECTIONS*, *supra* note 1, at 142 n.49.

13. K. 10182+ :9, in W.G. Lambert, *The Laws of Hammurabi in the First Millennium*, in *REFLETS DES DEUX FLEUVES* 95 (*Akkadica Supplementum* 6, M. Lebeau & P. Talon, eds., 1989). Note, too, however, that a colophon in a late Old Babylonian manuscript (source r) identifies the text as: dub *šimdat Hammurabi* dub 1.kam, “tablet (or: chapter) of the ‘edict’ (or: laws, enactment, etc.) of Hammurabi, first tablet (or: chapter),” using the term *šimdatu* found in the LH in ¶51 and gap ¶ u in the expression *šimdat šarrim*, “royal edict,” in reference to measures regulating interest rates. J.J. Finkelstein, *A Late Old Babylonian Copy of the Laws of Hammurabi*, 21 *J. OF CUNEIFORM STUD.* 39 (1967).

century B.C.,¹⁴ six hundred years after it was first erected (probably in Sippar) by Hammurabi. There is evidence, moreover, that there also were at least two more stelae, erected by Hammurabi in other sites under his control, including Sippar, Babylon, and probably Nippur, which were also the objects of plunder.

The Hammurabi stela now in the Louvre was found in a workroom in Susa, by the modern archaeological team, where it may have been in the process of being prepared for rededication, along with other plundered monumental pieces, for the glory of the Elamite king in commemoration of his capture of Babylonia. Seven columns toward the base of the front of the stela had been effaced and smoothed to prepare the surface for a new rededication inscription, in direct violation of the warnings issued in the stela itself:

(xlvi 59-00) Should any king who will appear in the land in the future, at any time . . . (xlix 18-44) not heed my pronouncements, which I have inscribed upon my stela, and should he slight my curses and not fear the curses of the gods, and thus overturn the judgments that I judged, change my pronouncements, alter my engraved image, erase my inscribed name and inscribe his own name (in its place)—or should he, because of fear of these curses, have someone else do so—that man, whether he is a king, a lord, or a governor, or any person at all

And here follow the elaborate curses to be enforced by the great gods Anu, Enlil, Ninlil, Ea, Shamash, Sin, Adad, Zababa, Ishtar, Nergal, Nintu, and Ninkarrak. Pity the illiterate workmen ordered to smooth the stela's surface!

There is no doubt that the risk of the curses—if he were aware of them—would have been deemed acceptable by Shutruk-Nahhunte; the stela was prized plunder. On the top, covering almost one-third of the 2.25 meter monolith, is an imposing illustration of the sun-god Shamash, god of justice, seated on his throne, and standing before him the king, Hammurabi. There are varied interpretations of this scene: that the god is dictating the laws to the king; that the king is offering the laws to the god; that the king is accepting or offering the emblems of sovereignty of the rod and ring; or—most probably—that these emblems are the measuring tools of the rod-measure and rope-measure used in temple-building (necessary for establishing the true and or-

14. Shutruk-Nahhunte defeated Babylon in 1158 B.C. His son Kutir-Nahhunte repeated the victory in 1155 B.C. Many stelae and monuments, including the cult statue of the Babylonian patron deity Marduk, were brought to Susa in this manner; the Marduk statue was restored to Babylon after Nebuchadnezzar's victory over Elam a generation later. See Matthew W. Stolper, *Political History*, in ELIZABETH CARTER & MATTHEW W. STOLPER, *ELAM: SURVEYS OF POLITICAL HISTORY AND ARCHAEOLOGY* 39-40 (1984); see also Harper & Amiet, *supra* note 6.

dailed and divinely acceptable dimensions of any new structure for the gods).¹⁵ Whatever its details, the broad message the illustration communicated to even the illiterate must have been clear: King Hammurabi and the god of justice Shamash work together to protect the people of Babylonia. Below this illustration the text of the prologue, laws, and epilogue is inscribed. Like other monumental inscriptions of its time, the text is inscribed in the direction employed earlier for archaic script (before the script was turned ninety degrees counterclockwise). I today find this orientation a minor inconvenience, and need to tilt my head to my right shoulder to read the inscription. But for both the literate and illiterate viewer of the monument, either in Babylonia or in Elam, this visual orientation, along with the deliberate archaizing, literary language used in the prologue and epilogue that frames the collection of rules, provided the authority and authenticity of preceding ages for the composition. This effect would be realized already in Hammurabi's time, and even more so in later centuries. Taken all together, the cumulative impact of the stela—the black monolith taller than any man, the illustration of the god and king interacting almost as equals for the welfare of the land, the archaic script filling up column after column—would have been a spectacular visual reminder of the Elamite king's conquests. And the literate would have learned by the contents of the inscription of the greatness of Hammurabi, making even more impressive the superseding achievements of the later Elamite conquerors. So, more than half a millennium after the Babylonian king Hammurabi sought to symbolize his political and military might with the visual impression of the stela, the Elamite king reused the stela to convey the same message.¹⁶

But then again, perhaps the curses did intimidate. The stela's rededication was never completed; the surface was effaced but a new inscription was never incised, and the stela did not leave the Elamite workroom for almost another two thousand years, until A.D. 1901, when the French Archaeological Mission, under the direction of Jac-

15. Thorikild Jacobsen, *Pictures and Pictorial Language (The Burney Relief)*, in *FIGURATIVE LANGUAGE IN THE ANCIENT NEAR EAST* 1, 4 (M. Mindlin et al. eds., 1987). The illustration at the top of the Hammurabi stela has been widely and frequently republished. See Harper & Amiet, *supra* note 6 (a fine photograph of the top of the stela is reproduced on 160 fig. 44, to be compared to similar scenes reproduced there at 170 No. 110, 171 fig. 47, and 181 No. 117).

16. Matthew W. Stolper made similar points about not only the Babylonian trophies brought from Mesopotamia to Susa, but also about monuments from other Elamite towns and of earlier Elamite rulers collected there, stressing the expression of political dominance and the embrace of Mesopotamian historical values inherent in such actions. Matthew W. Stolper, *Huteludush-Inshushinak and the Middle Elamite Twilight*, Address at the Metropolitan Museum of Art, New York (Nov. 1992), and at the Oriental Institute, Chicago (Feb. 17, 1993).

ques de Morgan, working in the Acropole in Susa, found it along with other Babylonian trophies brought there in antiquity.

For the European archaeologists working at the beginning of the twentieth century, these monuments were again viewed as "trophies" and displayed as symbols of European mastery, in this case of the Orient. There was no doubt in 1902 that the stela belonged to the excavators, and that it was to be once again transported thousands of miles for a new dedication. The stela of Hammurabi now stands in the galleries of the Musée du Louvre in Paris, a symbol again of military and cultural ascendancy.

The message the stela conveys is, in fact, so powerful that numerous casts of the Louvre stela are now prominently displayed in museums throughout Europe and America,¹⁷ just as copies were once displayed throughout Hammurabi's empire. One cast came to Chicago when James Henry Breasted was planning the dedication ceremony of the new Oriental Institute. He was eager to have a plaster cast of what he termed that "magnificent monolith" and he wrote to Paris for the cast on September 1, 1931. The cast arrived in Chicago and was released from customs and accessioned to the Oriental Institute Museum on October 26, 1931. According to museum records, the cast now on display in the Mesopotamian gallery cost the Oriental Institute 780 francs or \$92.83; the customs charges were \$56.82—less than \$150.00 in total, even in depression-era 1931, a small price indeed for this "trophy" of western conquest.¹⁸

II. THE LAWS OF HAMMURABI: BODILY INJURIES AND THE "MEASURE OF MAN"

I have been discussing some of the ways in which the Laws of Hammurabi—as monument and as document—might be understood apart from its legal impact: as war booty or trophy, as military muscle-flexing, as political propaganda. I turn now, in the spirit of this conference, to a more juridical reading of the document, but still in a way that will continue to stress a non-juridical interpretation. I will discuss the so-called rules of talio (the biblical "eye-for-an-eye") in Hammu-

17. I have not been successful thus far in my attempts to find out from the Services Editoriaux et Commerciaux, Réunion des Musées Nationaux, Paris, if there is a record of how many casts were made and might be found on display in museums throughout the world today, but the stela is often found in museums with antiquities collections.

18. This information comes from the Oriental Institute archives, and was obtained with the kind help of Karen Wilson, Curator of the Oriental Institute Museum. For comparison, note that the daily New York Times cost two cents in October, 1931, and tickets for Broadway shows cost between sixty-five cents and \$1.35.

rabi, zeroing in on the “cheek-slapping” provisions imbedded there. My focus in this discussion will be not “What is the law?” but “What are the social categories informing the law?”¹⁹

A. Shame and Honor as Social Categories

Certainly, the process of recovering Babylonian social categories is complicated by the barriers of space, time, and language. The categories of shame and honor, and the social factors that dictate their evaluations, like so much else in social categorization, are usually not explicitly expressed in our cuneiform materials. Principles or rules, whether scientific (for example, mathematical or astronomical principles) or social (for example, preferred marriage patterns, inheritance) are rarely if ever articulated but must be inferred from the example of cases. It is such an example of cases here in the “cheek-slapping” provisions that will allow us to perceive the operation of social categories in the Laws of Hammurabi.

Shame and honor are two extremes of one social continuum that has been amply demonstrated to be of paramount importance in Mediterranean cultures from antiquity through to modern times.²⁰ In the assessment of an individual’s conduct, not only the act itself but also the social standings of both the actor and the person with whom he interacts are evaluated. The assessment of these social standings are conditioned both by the value of the person in his own eyes and also in the eyes of others in the group. These assessments place the individual on the continuum which then has a tangible effect on conduct concerning the family, marriage patterns, status mobility, economic transactions, moral actions, and other matters. Honor can be, and is often conferred by birth; it can also be won by one’s own actions and

19. Earlier versions of my remarks here on the “cheek-slapping” provisions were first presented as *Shame and Honor and the Measure of Man*: LH ¶¶ 202-05, Address at the 197th Meeting of the American Oriental Society, Los Angeles (Mar. 1987) and (in more detail) to the Workshop on Symbols of Power and Legitimacy at the University of Chicago (Nov. 1987). Other recent investigations of the “cheek-slapping” provisions include R. Westbrook, *Nature and Origins of the XII Tables*, 105 ZEITSCHRIFT DER SAVIGNY-STIFTUNG FÜR RECHTSGESCHICHTE, ROMANISTISCHE ABTEILUNG 74, 103-08 (1988), and S. Greengus, *Filling Gaps: Laws Found in Babylonia and in the Mishna but Absent in the Hebrew Bible*, 7 MAARAV 149, 152-55 (1991).

20. Some literature, with further bibliography: JULIAN A. PITT-RIVERS, *THE FATE OF SHECHEM* (Cambridge Studies in Anthropology 19, 1977); RUDOLPH M. BELL, *FATE AND HONOR, FAMILY AND VILLAGE* (1979); HONOR AND SHAME AND THE UNITY OF THE MEDITERRANEAN (David D. Gilmore ed., 1987); JOHN BRAITHWAITE, *CRIME, SHAME AND REINTEGRATION* (1989); J.G. PERISTIANY & JULIAN PITT-RIVERS, *HONOUR AND GRACE IN ANTHROPOLOGY* (Cambridge Studies in Social and Cultural Anthropology 76, 1991); WILLIAM I. MILLER, *HUMILIATION AND OTHER ESSAYS ON HONOR, SOCIAL DISCOMFORT, AND VIOLENCE* (1993); FRANK H. STEWART, *HONOR* (1994).

behavior—on the battlefield or in business, for example. Members of different social status groups (with the inherent honor that status entails) can act similarly but with different consequences: for example, a nobleman, “born into” honor, can exercise certain sexual license with his honor intact that would not be permitted of a person of lower social class. And men and women have different standards and categories of honor to uphold, as do different age groups: what is permitted and expected of a man might not be allowed a woman, and certain actions by a young man might be condoned while the same actions by an older man would be condemned.

None of these observations are new to this audience, but I remind you of them as we turn to the cuneiform sources, for they have not usually been applied there.

B. *The Bodily Assault Provisions in the LH*

The bodily injury provisions in the Laws of Hammurabi are grouped within a section²¹ consisting of twenty provisions, ¶¶ 195-214, opening with the case of a son of a free man who strikes his father (the penalty for which is the cutting off of his hand) and concluding with the case in which a free man strikes²² a pregnant free woman resulting in either a miscarriage (for which he pays ten shekels of silver) or in a fatal injury to the woman (for which his own daughter’s life is forfeit).²³

The literary principles of attraction that determine the placement of this twenty-rule section are transparent. The case of the disobedient son is certainly influenced by the preceding paragraphs concerned with adoption, apprenticeship, and wet-nursing—that is, with familial and filial duties. In its turn, the provision with the son who “strikes”

21. Any discussion of “sections” in the Laws of Hammurabi is based not on divisions in the original exemplars, but is the result of modern categorizations. There are, however, three ancient manuscripts that do insert subject headings in the copies of the laws: “legal decisions (Sumerian *di.dab₅.ba*) concerning soldier and fisherman,” “legal decisions concerning field, orchard, and house,” “legal decisions concerning contracts of hire and purchase,” “legal decisions concerning removing property from a house,” “legal decisions concerning distraint and obligation,” “legal decisions concerning [. . .] and storage,” and “legal decisions concerning storage”; see the introductory comments to the LH in LAW COLLECTIONS, *supra* note 1.

22. The verb *mahāsu*, “to strike,” used to characterize the offenses here is used in LH only in this group of laws and in LH ¶ 249, in which “a god strikes down dead” a rented ox. I argue below that “striking the cheek” (*lētam mahāsu*) in LH ¶¶ 202-05 is less a physical assault than a social assault, and it is entirely possible that in the filial offense in LH ¶ 195, too, the “striking” involves a challenge or offense without a necessarily physical component.

23. LH ¶¶ 209 and 210; the variations in LH ¶¶ 211-12 and 213-14 deal with causing miscarriage or death of a pregnant woman of the commoner class or of the slave class respectively. See *infra* Appendix.

his father then attracts the bodily injury talio rules. These then are followed by situations and regulations governing physicians—whose services would have been needed in all the preceding cases, *except* in the “cheek-slapping” cases with which I am here concerned.

These two situations that bracket the section—in the first of which a father’s authority is challenged by his own son, in the second a father loses his offspring or his wife—both involve internal family matters, and the disruptive actions challenge the social and hierarchical constructs of the nuclear family. The head-of-household’s ultimate authority is challenged in both cases, and both should be remediable by private action: the challenged father should be able to do as he likes with his disobedient son, in some other societies up to, and even perhaps including, killing him;²⁴ and the man whose pregnant wife or slave was injured in such a way as to result in the death of her unborn child or in her own death also should be able to exact whatever revenge or compensation he chooses.²⁵ But by the Laws of Hammurabi limiting a head-of-household’s authority in such private matters, the state (in the person of Hammurabi) takes for itself some of that family authority.²⁶ And if the state can limit and control compensation for offenses and bodily injuries involving internal family matters in these bracketing provisions, an analogy of cases would argue that even more so (or to use one of the terms of Talmudic hermeneutics, *qal wāhomer*), it can limit and control compensation for the bodily injuries involving non-family members that are itemized in the intervening provisions.

C. *The Perceived Difficulties in the “Cheek-Slapping” Provisions in the LH*

Although the assault and bodily injury provisions in LH §§ 197-201 and 206-208—the talio rules—are some of the most widely commented upon in cuneiform law, both by cuneiformists and comparativists, the “cheek slapping” provisions in their midst, §§ 202-205,

24. Compare LH §§ 168 and 169, in which a father who wishes to disinherit his son may do so only after a judicial investigation has found that the son’s repeated actions warrant such a penalty; again, a father’s unilateral authority over his offspring is circumscribed in the LH.

25. For the other law collections’ treatment of similar circumstances, see the index entries s.v. “abortion and miscarriage” in LAW COLLECTIONS, *supra* note 1.

26. Something of the same usurpation of private remedies by the state authorities was proposed in an article treating homicide in the first millennium B.C. Roth, *supra* note 2. Some of the documents used in my arguments there have now been re-edited, and reinterpreted by R.M. Jas, Neo-Assyrian Judicial Procedures, nos. 41ff. (1995) (unpublished Ph.D. dissertation, Free University of Amsterdam).

have themselves received minimal attention. Most commentators have appeared frankly puzzled by the rules. Driver and Miles in their classic commentary described the difficulties they saw:

This group of sections is incomplete . . . [with] no logical arrangement. . . . There is apparently little principle in [the] selection of the victims, and the anomaly cannot be explained by supposing that [the drafter of the laws] has chosen typical instances. . . . There is no . . . logical principle underlying the amounts of the composition payable by the offender.²⁷

Similarly, Kraus referred to the paragraphs as "poorly thought-out, resulting in partially abstruse consequences."²⁸

Similar sentiments are echoed by many others commenting on the laws, who, although sometimes recognizing that the element of honor is involved in the "cheek-slapping" offenses,²⁹ find problems with the status groups of the offenders and victims, with the lack of physical damage in the offense, and with the choice of remedies. Before explicating these details in the "cheek-slapping" provisions in LH ¶¶ 202-205 that proved puzzling to earlier commentators, however, I want to enter into the discussion a number of additional pieces of pertinent evidence.

D. *Additional Documents that Bear on "Cheek Slapping"*

There are other places in the cuneiform law collections in which, similarly, unarticulated social categorization is important. The first of these is in the early eighteenth-century B.C. Laws of Eshnunna from northern Mesopotamia. There we find, in one concise paragraph, some of the essential features of the more elaborated Hammurabi rules.

LE ¶ 42: If a man (*awilum*) bites the nose of another man (*awilum*) and thus cuts it off, he shall weigh and deliver 60 shekels of silver; an eye—60 shekels; a tooth—30 shekels; an ear—30 shekels; a slap to the cheek—he shall weigh and deliver 10 shekels of silver.

An interesting feature here is that the injuries in this provision in LE ¶ 42 all involve parts of the face, a part of the body first presented

27. G.R. DRIVER & JOHN MILES, *Legal Commentary, in 1 THE BABYLONIAN LAWS* 401-02 (1952).

28. F.R. KRAUS, *EIN EDIKT DES KÖNIGS AMMI-SADUQA VON BABYLON* 149 (*Studia et documenta ad iura orientis antiqui pertinentia* 5, 1958); see also *KÖNIGLICHE VERFÜGUNGEN IN ALTBABYLONISCHER ZEIT* 101 (*Studia et documenta ad iura Orientis antiqui pertinentia* 11, 1984).

29. REUVEN YARON, *THE LAWS OF ESHNUNNA* 286 (2d rev. ed., 1988); Moshe Held, *mhs/mhš in Ugarit and Other Semitic Languages (A Study in Comparative Lexicography)*, 79 *J. AM. ORIENTAL SOC'Y* 169, 169 & n.10 (1959).

to others in public interaction, and a part most susceptible to shame in its mutilation: the nose, eye, tooth, ear, and cheek.³⁰ It is this feature that makes the nonmutilating slap to the cheek an offense appropriate for inclusion here.³¹

Furthermore, the circumstances of inflicting the injury in LE ¶ 42 are omitted. In contrast, the following provisions (LE ¶¶ 43-47) each involve only one body part or one type of injury, and might take into consideration also the circumstances of the event, thus introducing categories assuming premeditation or intention: the finger (LE ¶ 43); the hand or the foot injured in an encounter in the street (LE ¶¶ 44 and 45); the collarbone (LE ¶ 46); other unspecified nonfatal injuries in a fray (LE ¶ 47) or fatal injuries in a fight (LE ¶ 47A). In all these bodily injury cases in the Laws of Eshnunna, both the offender and the victim are members of the elite free class, the *awilum*.

The second example from the law collections in which social categorization is operative is found in the Laws of Ur-Namma, a Sumerian composition from about 2100 B.C. A pair of paragraphs there, LU ¶¶ 25 and 26, still not fully understood (at least by me), juxtaposes cases in which, I believe, the offenses may be social assaults against the honor of the victim rather than physical assaults.

LU ¶ 25: If a slave woman curses someone acting with the authority of her mistress, they shall scour her mouth with one sila of salt.

30. Thus the Hebrew slave who refuses to go free at the end of his term of servitude is marked with a mutilation of the ear to symbolize his denigration of status. *Exodus* 21:6; see also *supra* part I.A.

31. Westbrook, *supra* note 19. As part of Westbrook's larger thesis that finds a direct developmental link from the cuneiform materials to the Roman materials, he argues that the *iniuria delict* in the Twelve Tables (8.1-4) was originally an offense of insult (and not only one as reinterpreted by later jurists), basing his argument on the presence of the "cheek-slapping" rules in the midst of the bodily injury section in the LH. The dominant view of Roman legal historians, however, continues to insist that the Twelve Tables dealt only with physical assaults; see the context of the anecdote referred to by Westbrook on page 106 as related by BARRY NICHOLAS, *AN INTRODUCTION TO ROMAN LAW* 216-17 (1972), of the story of L. Veratius as told by Labeo, found in *THE ATTIC NIGHTS AULUS GELLIUS* 20.1.13 (John C. Rolfe trans., 1927):

[L. Veratius] followed by a slave with a purse, . . . went about slapping the faces of respectable persons and bidding the slave tender to each the statutory penalty of 25 *asses*. This, we are told, drove the Praetors to intervene. They did so by providing an action not for a fixed penalty but for damages. There was here no extension of the delict [i.e., of *iniuria*] but simply the provision of an alternative remedy, which caused the penalties of the Twelve Tables to fall into disuse.

(I thank Richard Saller for discussing this reference with me.) Whether or not the *iniuria* of the Twelve Tables involved a physical assault that resulted in an affront to honor, however, the Twelve Tables does not expressly use the "slap to the cheek"; the summary of Westbrook reported by Greengus, *supra* note 19, at 155 n.11 ("According to Westbrook . . . injury to the dignity of another person by slapping the face is also found in the XII Tables and is there also associated with breaking another person's limb or bone") is not accurate.

LU ¶ 26: If a slave woman strikes someone acting with the authority of her mistress, . . .

In these two LU provisions, a woman of subservient status acts in an inappropriate manner toward someone who is not her owner—an owner would have responded in accordance with the norms of that established relationship, the acceptable or customary terms which are outside of the law collection's concerns or jurisdiction—but who is, for purposes of this case, deemed to be of status equal to that of her mistress. In the first of the pair, the offense is a verbal one: the slave woman curses or insults the person; in the second, a possible physical element is introduced where the slave woman "strikes." In both cases, the offense is clearly one compounded by the differing statuses of the two parties, and no doubt influences, by sympathetic associative principles, the choice of remedy (preserved only in the first). It is certainly possible, furthermore, that the verb here translated in LU ¶ 26 "to strike" (Sumerian *ra*, equated with Akkadian *mahāšu*) also is intended to convey the offense of striking or slapping the cheek expressed in the Akkadian sources with the fuller idiom *lētam mahāsu*. If this should prove to be the case, the two provisions in LU both deal with social offenses to honor without necessarily involving physical or bodily injury.

The third possibly pertinent case from the law collections comes from the Hittite Laws, a collection that is written in the cuneiform script but in the Indo-European Hittite language of Anatolia.³² Two hallmark features of the Hittite Laws are the self-conscious revisions, both in the earlier and later manuscripts, and the internal references to previous and current practices. Parallels to the Hammurabi concerns with assaults and bodily injuries (LH ¶¶ 196-210) are found in the Old Hittite version of the composition (dating to the Hittite Old Kingdom, ca. 1650-1500 B.C.) in HL ¶¶ 7-18 and in the revisions in the New Hittite's "Late Parallel Version" (ca. 1500-1180 B.C.) in ¶¶ V-XVII: loss of an eye or tooth of a free person or of a slave (HL ¶¶ 7-8 and V-VII), injury to a person's "head" (HL ¶¶ 9 and VIII), arm or leg (HL ¶¶ 11-12 and X-XI), nose (HL ¶¶ 13-14 and XI-XIII), ear (HL ¶¶ 15-16 and XIV-XV), and injury resulting in spontaneous abortion (HL ¶¶ 17-18 and XVI-XVII). The pertinent paragraphs usually discussed in relation to the "cheek slapping" are those concerned with the "head," HL ¶ 9 and the revision in HL ¶ VIII.

32. Translation is that of Harry A. Hoffner, in *LAW COLLECTIONS supra* note 1.

HL ¶ 9: If anyone injures a person's head, they used to pay 6 shekels of silver; the injured party took 3 shekels of silver, and they used to take 3 shekels of silver for the palace. But now the king has waived the palace share, so that only the injured party takes 3 shekels of silver.

HL ¶ VIII: If anyone injures a man's head, the injured man shall take 3 shekels of silver.

It is not clear to me, however, that this case in the Hittite Laws involves an offense comparable to the "cheek-slapping" cases instead of a simple assault to the head.³³

Outside of the formal law compositions, there are two functional legal documents—both Old Babylonian and roughly contemporaneous with the provisions in the law collections of Ur-Namma, Eshnunna, and Hammurabi—in which the "cheek slapping" is central. The first, which comes from the Diyala region and thus in provenience is closer to the Eshnunna evidence, is a court memorandum published as UCP 9 379ff.,³⁴ which was recognized as pertinent to this discussion by J.J. Finkelstein.³⁵ The text reads:

Pir'i-ilishu, the Amorite soldier, slapped the cheek of Apil-ilishu, son of Ahushina, but then denied it, saying: "I did not slap (him)." The governor and the judges remanded Pir'i-ilishu, the Amorite soldier, to the Tishpak(?) Gate. Should he present himself to take the oath, he would depart and not pay any silver; (but since) he has not presented himself to take the oath, he will pay three and one-third shekels of silver. (Before:) Shelebu, Ili-tillati, and Shiqlum. Tablet memorandum.³⁶

This memorandum, formulated as usual from the perspective of the final or latest outcome, summarizes the situation to date. Pir'i-

33. On the *sag.du* of these Hittite Laws, see R. Haase, *Regel § 9 der hethitischen Rechtsammlung: eine leichte Leibesverletzung?* 19 BIBLIOTHECA ORIENTALIS 114 (1962); E. Otto, *Körperverletzung im hethitischen und israelitischen Recht: Rechts- und religions-historische Aspekte, in RELIGIONSGESCHICHTLICHE BEZIEHUNGEN ZWISCHEN KLEINASIEN, NORDSYRIEN UND DEM ALTEN TESTAMENT IM 2. UND 1. VORCHRISTLICHEN JAHRTAUSAND 391, 397* (Orbis Biblicus et Orientalis 129, B. Janowski et al. eds., 1993).

34. UCBC 756, published by H.F. Lutz, *The Verdict of a Trial Judge in a Case of Assault and Battery*, 9 U.C. PUBLICATIONS IN SEMITIC PHILOLOGY 379-81 and plate 4 (1930).

35. J.J. Finkelstein, *Sex Offenses in Sumerian Laws*, 86 J. AM. ORIENTAL SOC'Y 355, 358 and comments to line 25 (1966). The text was dismissed by Reuven Yaron in his first edition of the LAWS OF ESHNUNNA 191 n.86 (1969), but Yaron modified his position in the second, revised, 1988 edition of THE LAWS OF ESHNUNNA 286 n.116, after recognizing that *lētum* does indeed appear in the text (at line 2), and accepted the relevance of the court case to our discussion.

36. UCP 9 379ff.: (1) *'bi-ir-i-li-šu UKU.US MAR.TU* (2) *le-et 'a-pil-i-li-šu* (3) *DUMU <a>hu-ši-na im-ha-aš-ma* (4) *it-ta-ki-ir um-ma šu-ma* (5) *ú-ul am-ha-aš* (6) *GIR.NITÁ u da-ia-nu* (7) *'bi-ir-i-li-šu UKU.US MAR.TU* (8) *a-na KÁ 'Tišpak(?) id-di-nu-šu* (9) *iz-za-az* (10) *i-za-ka-ar-ma* (11) *it-ta-la-ak* (12) *KÜ .BABBAR ú-ul Í.LÁ.E* (13) *ú-ul iz-zi-iz* (14) *ú-ul i s-gú-ur-ma* (15) 3" *GÍN KÜ.BABBAR Í.LÁ.E* (16) (blank) (17) *'še-li-bu* (18) *'li-li-ti-la-ti* (19) *u ši-iq-lum* (20) *IM.GÍD.DA(?)*

ilishu, a man identified as an "Amorite soldier" and thus as one with diminished stature,³⁷ has slapped the cheek of another man; this much is known and (as far as the judicial authority is concerned) is no longer in dispute. But Pir'i-ilishu had denied that he had committed the offense. He therefore was sent to undergo an ordeal by oath which would exonerate him. He decided, however, not to risk divine judgment and therefore failed to show up as scheduled. By not submitting himself to the ordeal he acknowledged his guilt, and is now ordered to pay a monetary compensation (presumably to his victim).

The second functional document that involves "cheek slapping"—and the last piece of evidence that I will introduce into this discussion—is a completely unambiguous use of the term in a legal context as an idiomatic expression of humiliation. The document is a recently published testament³⁸ that probably comes from the site of Emar, from which we now possess hundreds of mid-second-millennium legal, administrative, ritual, and scholastic texts, including a number of other wills and testaments of very similar format.³⁹

The main clause and intention of the Emar testament makes the testator's wife the head-of-household (literally, the "father"). Additional clauses demand that the testator's son (who is not necessarily the woman's biological son, by the way) support her as long as she remains in that capacity, award various properties to one or the other of them, and name the secondary beneficiaries to the properties should the son die without natural heirs. For our current concerns, however, the important clauses are those that foresee repudiation by the wife or the son of their newly-created relationship: in such an event, each would be driven from the house penniless, a consequence expressed in the text with two different but equally vivid metaphors:

(11—14) Should Zu-Ba'la (the son) declare in the presence of the daughter of Ba'al-iqīsha⁴⁰ (the wife), his mother: "(She is) not my

37. Both terms, *rēdūm*, "soldier" (written here with the logogram *uku.uš*), and *amurrū*, "Amorite" (written with the logogram *mar.tu*), can refer to social inferiors. The clearest example of the latter is in a bilingual Sumerian-Akkadian proverb, the text of which is damaged, which features an *amurrū* addressing his wife; according to W.G. LAMBERT, *BABYLONIAN WISDOM LITERATURE* 230 to i 1-7 (1960), the term evokes the "perversion" of a transvestite situation. BENJAMIN R. FOSTER, *BEFORE THE MUSES* 337 (1993), finds the proverb's intention more comical than moral and translates the term "blockhead." See *infra* note 40.

38. A. Tsukimoto, *A Testamentary Document from Emar: Akkadian Tablets in the Hirayama Collection (IV)*, 16 *ACTA SUMEROLOGICA* 231 (1994).

39. The major publication of Emar texts is that of D. ARNAUD, *RECHERCHES AU PAYS D'ASTATA EMAR VI.1, VI.2, VI.3* (1986).

40. The social consequences of the naming conventions used in Mesopotamian documents are not yet well explored, and the conventions vary from site to site and from period to period. I note here, however, that it is not uncommon to find both women and male and female slaves

mother,"⁴¹ let her strike his cheek and let her drive him out through the front door!

(15—24) Should the daughter of Ba'al-iqīsha (the wife) declare to Zu-Ba'la (the son), her son: "You are not my son," and moreover should she determine to go off with another man, she shall place her cloak on the stool and she shall go where she will.

The second of these clauses is attested with minor variations in other, similar, documents. The dual intentions of the mother—repudiation of the relationship and her desire to enter into a new marriage—demand that she leave the household publicly and obviously penniless and humiliated, expressed by an image of nakedness; she would leave, for all to see, with no possessions concealed upon her person, without taking out any of the household's wealth.⁴²

The first of the clauses, and the one of importance here, deals with the corollary case in which the son disavows the relationship. His performative utterance, "(She is) not my mother," alone, and in contrast to the woman's speech plus action, is sufficient to bring down upon him the predicted consequences.⁴³ And note that it is the woman herself who is to carry out the prescribed actions: she is to "strike his cheek"—using the Akkadian idiom, *lētam mahāšu*, that we have been discussing—and then she is to drive him out of the house through the front door—literally, through the "gate." The latter action⁴⁴ almost certainly includes a public element: the "gate" represents the main doorway to the house, and she will "kick him out the front door" for all the community to witness what amounts to his public disinheritance. But the humiliation is made explicit by the first ac-

identified not by their own names but by their husbands' (or fathers') or masters' names, or if mentioned by their own names, without patronymics (thus: "the wife/daughter/slave of Mr. X," or "so-and-so, the slave"). A minimal recognition of stature involved citing by one's given name, and increased status might be indicated by the addition of one's father's, grandfather's or ancestor's name, and/or by one's profession.

41. Note that it is "mother" and not the newly-created relationship of "father" that is repudiated.

42. For placing the cloak on the stool as symbol of leaving penniless, see, e.g., ARNAUD, EMAR nos. 5, 30, 31, 32, 112, 181, 191; see also J. Huehnergard, *Five Tablets from the Vicinity of Emar*, 77 REVUE D'ASSYRIOLOGIE 11, 30-31 (1983); K. Grosz, *Daughters Adopted as Sons at Nuzi and Emar*, in LA FEMME DANS LE PROCHE-ORIENT ANTIQUES 81 (XXXIII Rencontre Assyriologique Internationale, D. Charpin & J.-M. Durand eds., 1987).

43. Unless we amend the text as does Tsukimoto, *supra* note 38, at 231f., to *ul ummī <atti> iqabbi*, "<You are> not my mother," the son's declaration may but need not be framed in direct speech in the second person, but must be uttered in the woman's presence (*ana pani*, line 11), while the mother's declaration is in the second person and spoken "to" (*ana*) her son.

44. The II-stem of the verb *kašādu* is used to express such actions as driving away or chasing persons (overthrown kings, pursued armies), animals (dogs, flies, wild game) or evil spirits, and depriving persons of legal status (disinherited sons, divorced wives). See CAD K pp. 280f. s.v. *kašādu* mng. 4.

tion, in which she slaps him—the denigration is brought about by the physical contact and his inability to restore the loss of honor suffered by the slap to the cheek.

The “slapper” (one cannot call her the “offender,” as the action is deliberately inflicted in accordance with prescribed formal actions), as the newly-installed head-of-household, is, at least in theory, more worthy along the honor-shame continuum than her husband’s son, who is her economic and legal dependent: she is superior in household position—father/mother to his son—and in age—whether in real chronological age or in implied age assumed from the mother-son relationship.

But in fact she is a woman and he is a man, and thus she cannot be his full equal, let alone his true superior. The age difference, too, will cease to imply her superior status as the son matures into full adulthood and the mother ages; in fact, the relative positions will reverse when he assumes full adult powers. But the legal deed she must perform, disinheriting him from his father’s estate, can only be accomplished by one who is his superior. Therefore, in performing the act of humiliation with impunity, she is demonstrating publicly that she possesses the legal authority that attaches to her (temporary) social and legal superior status to disinherit him. It is by slapping his cheek without risking prosecution or punishment for the breach of social norms that she demonstrates her right to disinherit.

E. Understanding the “Cheek-Slapping” Provisions in the LH

With all these texts as background, we can return to the cheek-slapping provisions in the Laws of Hammurabi. It should be clear now that there are no “anomalies” there, in the choice of offenders, victims, or penalties.

First, the anomaly of the actors: The offenders in the “cheek slapping” provisions in the LH always stand in an equal or subservient position to the victims. An *awilum* is the offender in two cases in which the act is inflicted on another *awilum* of superior status (§ LH 202) and on another *awilum* of equal status (LH § 203); a *muškēnum* is the offender only against another *muškēnum* (LH § 204); and a slave is the offender against an *awilum*. The offense cannot, it appears, be against an inferior; an *awilum* who strikes the cheek of a slave, for example, has done no injury to the slave’s honor precisely because of their relative positions in the eyes of society. (The offense, if any, is a property offense against the slave’s owner.)

The superior or equal status of the victim is also apparent in the other texts adduced. In both the Laws of Eshnunna and the Hittite Laws, only the cases of an *awilum* slapping another *awilum* are considered, in keeping with the entire sections in both on bodily assaults, which deal only with this single class of persons. In the Laws of Ur-Namma, however, the offender in the cases of verbal and possible physical acts is a slave woman—a doubly inferior person, as a slave and as a woman. Her “victim” is any person acting *in loco* her mistress, anyone—male or female—who assumes the status of that unambiguously superior position, whatever his or her own status or position might be otherwise.

In the Diyala court memorandum, the offender is identified as an “Amorite soldier”—suggesting a lack of inherited status—while the victim is a person with a full patronymic—suggesting his superior inherited social status. The necessity of asymmetrical relationships in order for the cheek-slapping event to be a socially significant phenomenon is clear too in the Emar disinheritance clause. There, the cheek slapping might be meaningless and completely unnecessary if, for example, it were the biological father rather than the woman installed as head-of-household who wished to disinherit the son.

A tangential point about the actors in the Hammurabi provisions bears on the perennial problem of the *muškēnum*. One of the ways that the Laws sketch the outline of a legal phenomenon is by providing one or more examples of the application of a principle, from which one might then infer the broader principle and its applications to variations of the situation. One might be tempted, then, to extrapolate here and to argue that the actors in these “cheek-slapping” provisions should be expanded along the lines of relative social status to include an *awilum* as the victim of a slap by a *muškēnum*, or a *muškēnum* as the victim of a slap by an *awilum*. However, the vexing question of the status of the *awilum* and of the *muškēnum*, while not definitively solved, is recast in light of these provisions if we accept that it is impossible to construct the situations I just suggested. Cheek slapping is a social offense, and the classification of an individual as a *muškēnum* (unlike the classification as slave or *awilum*) may have little to do with social concerns such as honor and dignity.

The final perceived anomaly in the LH paragraphs involves the penalties imposed, and this, too, disappears when examined in the context of honor. The four cases in LH ¶¶ 202-205 divide neatly into two groups: offenses against equals demand monetary payment, and offenses against superiors demand physical punishment, with a clear

and primary element of public humiliation. While one might survive sixty lashes or the loss of an ear, neither of these is a negligible physical mutilation. More important, though, both corporal penalties diminish the honor of the offender, and correspondingly restore the honor of the victim. It serves little purpose to compare the absolute amounts of the monetary penalties here with either the monetary penalties elsewhere in Hammurabi for different offenses, or with the monetary penalties in other documents for similar offenses (i.e., with the ten shekels for cheek slapping in LE ¶ 42 or the three and a third shekels in the Diyala court case). Possibly there is only one pertinent comparison: that between the payment of sixty shekels (one mina) in LH ¶ 203 for the cheek slapping committed by an *awilum* against another *awilum*, with the payment of sixty shekels in LH ¶ 24 by the city authorities to the kinsman of a murder victim. If any conclusions can be drawn from the identical penalties, it is that assaulting the honor of a man is as grave an offense as taking his life.

CONCLUSION

I have not answered the questions that I posed at the opening of this Article, questions dealing with grand themes and the nature of the law. Instead, I have explored a few of the many layers of meaning that we might uncover when we allow the document to function as a historical artifact, in time and space. Specifically, the apparent difficulties in the cheek-slapping provisions in the Laws of Hammurabi that have given earlier commentators pause—the lack of serious physical injury in the offense act, the variety of offenders and of victims, and the range and apparent disparity of remedies—cease to be anomalous when we look at the paragraphs without the preconceptions imposed by the context of talionic and assault provisions, and view the offense not as an assault upon the body of the person, but upon his honor. The severity of the offense is not one measured by objective factors such as work-time lost, but by the subjective assessment of humiliation suffered. Cheek slapping is not so much an offense in the legal system as in the social system. Nonetheless, and as a social offense, it is remedial by recourse to the legal machinery.

The slapping of the cheek need not, of course, always be taken literally in Akkadian any more than in English. The offense is an insult or blow to one's honor or pride, which includes the slap on the cheek as the paramount example, but is not limited to a physical assault to the face. However, the idiom "striking the cheek"—which

uses the action verb *mahāṣu*, “to strike a blow, to hit,” and the body part *lētum*, “cheek”—influenced the choice of placement of these provisions dealing with honor among the provisions dealing with assault and bodily injury.⁴⁵ By this choice of placement, the original social categories of the laws were obscured.

45. The association of the “cheek-slapping” offense with the bodily assaults did not originate with Hammurabi’s composition, of course, as that offense is already attracted to the context of assaults in the slightly earlier Laws of Eshnunna.

APPENDIX

Laws of Hammurabi ¶¶ 195-217

LH ¶ 195 If a child should strike his father, they shall cut off his hand.

LH ¶ 196 If an *awīlu* should blind the eye of another *awīlu*, they shall blind his eye.

LH ¶ 197 If he should break the bone of another *awīlu*, they shall break his bone.

LH ¶ 198 If he should blind the eye of a commoner or break the bone of a commoner, he shall weigh and deliver 60 shekels of silver.

LH ¶ 199 If he should blind the eye of an *awīlu*'s slave or break the bone of an *awīlu*'s slave, he shall weigh and deliver one-half of his value (in silver).

LH ¶ 200 If an *awīlu* should knock out the tooth of another *awīlu* of his own rank, they shall knock out his tooth.

LH ¶ 201 If he should knock out the tooth of a commoner, he shall weigh and deliver 20 shekels of silver.

LH ¶ 202 If an *awīlu* should strike the cheek of an *awīlu* who is of status higher than his own, he shall be flogged in the public assembly with 60 stripes of an ox whip.

LH ¶ 203 If a member of the *awīlu*-class should strike the cheek of another member of the *awīlu*-class who is his equal, he shall weigh and deliver 60 shekels of silver.

LH ¶ 204 If a commoner should strike the cheek of another commoner, he shall weigh and deliver 10 shekels of silver.

LH ¶ 205 If an *awīlu*'s slave should strike the cheek of a member of the *awīlu*-class, they shall cut off his ear.

LH ¶ 206 If an *awīlu* should strike another *awīlu* during a brawl and inflict upon him a wound, that *awīlu* shall swear, "I did not strike intentionally," and he shall satisfy the physician (i.e., pay his fees).

LH ¶ 207 If he should die from his beating, he shall also swear ("I did not strike him intentionally"); if he (the victim) is a member of the *awīlu*-class, he shall weigh and deliver 30 shekels of silver.

LH ¶ 208 If he (the victim) is a member of the commoner-class, he shall weigh and deliver 20 shekels of silver.

LH ¶ 209 If an *awīlu* strikes a woman of the *awīlu*-class and thereby causes her to miscarry her fetus, he shall weigh and deliver 10 shekels of silver for her fetus.

LH ¶ 210 If that woman should die, they shall kill his daughter.

LH ¶ 211 If he should cause a woman of the commoner-class to miscarry her fetus by the beating, he shall weigh and deliver 5 shekels of silver.

LH ¶ 212 If that woman should die, he shall weigh and deliver 30 shekels of silver.

LH ¶ 213 If he strikes an *awīlu*'s slave woman and thereby causes her to miscarry her fetus, he shall weigh and deliver 2 shekels of silver.

LH ¶ 214 If that slave woman should die, he shall weigh and deliver 20 shekels of silver.

LH ¶ 215 If a physician performs major surgery with a bronze lancet upon an *awīlu* and thus heals the *awīlu*, or opens an *awīlu*'s temple with a bronze lancet and thus heals the *awīlu*'s eye, he shall take 10 shekels of silver (as his fee).

LH ¶ 216 If he (the patient) is a member of the commoner-class, he shall take 5 shekels of silver (as his fee).

LH ¶ 217 If he (the patient) is an *awīlu*'s slave, the slave's master shall give to the physician 2 shekels of silver.

