

**Fundamental Issues in the Study of *Tanakh***  
**By Rav Amnon Bazak**

**Shiur #08a: *Tanakh* and Literature of the Ancient Near East**

**a. Background**

Starting in the mid-19<sup>th</sup> century, scholars began studying the Ancient Near East – the cultural, social, and religious world within which the personalities of the *Tanakh* were active. It gradually became apparent that the nations of this region, who lived hundreds of years prior to the giving of the Torah at Sinai, followed well-organized and clearly defined systems of law, and also created literary works expressing their religious world-views. *Inter alia*, certain similarities were discovered between the laws of the Torah and other legal systems among the nations of the Ancient Near East.<sup>1</sup> In addition, works were discovered with numerous parallels to the stories of Creation in the first part of *Sefer Bereishit* (chapters 1-11), especially the Enûma Eliš - the Babylonian story of creation, and the Epic of Gilgamesh, which shows striking similarities with the story of the Flood and Noah's Ark.<sup>2</sup>

These discoveries produced two opposite reactions: at first, many people viewed these data as confirmation of the validity of the biblical account, and as a blow to Wellhausen's theory,<sup>3</sup> for it was now clear that the narratives of the *Tanakh* were written against this real background and were not a later development.<sup>4</sup> Thus, for example, Simon Bernfeld, a well-known German Jewish publicist, asserted in 1907 that the discoveries from Assyria and Babylon had brought about

"the collapse of the biblical criticism that had been adhered to by Jewish and gentile critics alike, all of whom had expressed the same idea – that the narratives of the Torah were written at a much later

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<sup>1</sup> Among the legal systems featuring parallels with Torah laws we can list a. the Hammurabi Code; b. the Laws of Eshnunna (a small kingdom in the north-eastern part of today's Baghdad), written in Akkadian and dating to the 18th century B.C.E. (i.e., predating the Code of Hammurabi; Hammurabi later conquered Eshnunna); c. the Middle Assyrian Laws, dating to the 11th century B.C.E.; and d) the Hittite laws, from the second half of the 2nd millennium B.C.E. The parallels with the Torah, along with prefaces and comments, are treated in M. Maloul, *Kovtzei ha-Dinim ve-Osafim Mishpatiim Acherim min ha-Mizrach ha-Kadum*, Haifa 5770.

<sup>2</sup> For an anthology of Mesopotamian works on different topics, some similar to biblical literature, see S. Shifra and Y. Klein, *Ba-Yamim ha-Rechokim ha-Hem – Antologia mi-Shirat ha-Mizrach ha-Kadum*, Tel Aviv 5757.

<sup>3</sup> We addressed this theory of biblical source criticism in a previous lecture.

<sup>4</sup> A description of these reactions amongst Jewish and Christian scholars is to be found in Y. Shavit and M. Eran, *Milchemet ha-Luchot – Ha-Hagana al ha-Mikra be-Mea ha-19 u-Pulmus Bavel ve-ha-Tanakh*, Tel Aviv 5764, pp. 81-86.

date, and had been composed for a specific purpose. We now know that the stories of the Torah are altogether genuine historical documents from a very ancient period."<sup>5</sup>

Similar conclusions were expressed by many at the end of the 19<sup>th</sup> century.

At the same time, an opposing trend developed. Its most prominent spokesman was Friedrich Delitzsch, a German Assyriologist who argued that the strong similarity between Babylonian culture and the *Tanakh* proved that a large portion of the biblical narratives were in fact borrowed from Babylonian sources; he also maintained that Babylonian culture occupied a higher spiritual and moral level than the Torah.<sup>6</sup> In a series of lectures that Delitzsch delivered between 1902-1904, he ignited the "Babel and Bible" debate, in the wake of his book *Babel und Bibel*. He argued that even elements that had seemed unique to the Torah, such as Shabbat, had their source in Babylonian culture. This aroused extensive public debate, which included no small measure of blatant anti-Semitism expressed by Delitzsch himself.

Although the "Babel and Bible" debate receded long ago, the essence of the question continues to occupy contemporary scholars. In this chapter we will address three central perspectives on the relationship between the *Tanakh* and the literature of the Ancient Near East: first, the relationship between the commandments of the Torah and the laws of the Ancient Near Eastern peoples; second, a comparison of the stories in *Bereishit* and the parallel narratives; and third, the issue of Shabbat and whether it indeed appeared in Mesopotamian culture before it was set forth in the Torah.

## **b. The Torah and Legal Systems of the Ancient Near East**

Among the ancient codes of law, the best known is the Code of Hammurabi, discovered in 1901. It displays many parallels to the laws of the Torah. This legal system, dating to the 18<sup>th</sup> century B.C.E. (the period of the forefathers, according to the prevalent view), includes 282 laws pertaining to all areas of life and setting forth social, legal, and punitive procedures. *Inter alia*, there are laws concerning theft, slaves, pledges, adultery, divorce, damages caused by an ox, and inheritance. The following table shows some of the parallels between the Code of Hammurabi and the commandments of the Torah:

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<sup>5</sup> Cited by Shavit and Eran (above, n. 4), p. 85.

<sup>6</sup> Shavit and Eran's book is largely devoted to a detailed study of the polemic, its main arguments, and the various responses of Jewish scholars to Delitzsch's claims. The description below is based on their work.

Torah	Code of Hammurabi <sup>7</sup>
And if men strive together, and one smite another with a stone, or with his fist and he does not die, but is confined to his bed; if he rises and walks about upon his staff, then he that struck him shall be acquitted; he shall pay only for [the loss of] time, and shall cause him to be thoroughly healed. ( <i>Shemot</i> 21:18-19)	If during a quarrel one man strike another and wound him, then he shall swear, "I did not injure him wittingly," and pay the physicians. (law #206)
If men strive, and hurt a pregnant woman, such that she miscarries, but there is no further loss of life, then he shall surely be punished in accordance with what the woman's husband imposes upon him, and he shall pay as the judges determine. ( <i>ibid.</i> 22)	If a man strike a free-born woman so that she lose her unborn child, he shall pay ten shekels for her loss. (209)
But if the ox had gored with its horn in time past, and its owner had been warned, but he had not kept it in, and it [now] killed a man or a woman, then the ox shall be stoned, and its owner shall also be put to death. If a sum of money is imposed on him, then he shall give it as a ransom for his life, whatever is imposed upon him. Whether it gored a son or a daughter, according to this judgment shall it be done to him.... If the ox gores a manservant or a maidservant, he shall give to their master thirty shekels of silver, and the ox shall be stoned. ( <i>ibid.</i> 29-32)	If an ox be a goring ox, and it shown that he is a <i>gorer</i> , and he do not bind his horns, or fasten the ox up, and the ox gore a free-born man and kill him, the owner shall pay one-half a mina in money. (251) If he kill a man's slave, he shall pay one-third of a mina. (252)
If a man maims his neighbor, as he has done, so shall it be done to him: a breach for a breach, and eye for an eye, a tooth for a tooth; as he has maimed a man, so shall be done to him. ( <i>Vayikra</i> 24:19-20)	If a man put out the eye of another man, his eye shall be put out. If he break another man's bone, his bone shall be broken. (196-197) If a man knock out the teeth of his equal, his teeth shall be knocked out. (200)
If a false witness rises against any man to testify wrongly against him... then the judges shall diligently inquire, and behold, if the witness is a false witness, having lied about his fellow; then you shall do to him as he had thought to have done to his fellow, and so shall you put away the evil from amongst you. ( <i>Devarim</i> 19:16-19)	If any one bring an accusation of any crime before the elders, and does not prove what he has charged, he shall, if it be a capital offense charged, be put to death. If he satisfy the elders to impose a fine of grain or money, he shall receive the fine that the action produces. (3-4)

The Laws of Eshnunna likewise feature parallels to the laws of the Torah. For example, concerning an ox that kills another ox belonging to someone else, we find:

<sup>7</sup> *The Code of Hammurabi*, translated by L. W. King. The Avalon Project, Lillian Goldman Law Library, Yale Law School, 2008. <http://avalon.law.yale.edu/ancient/hamframe.asp>

"If one ox gores a(nother) ox and causes its death, both ox owners shall divide (between them) the price (realized from the sale) of the live ox and the value of the dead ox." (section 53)

This is strongly reminiscent of the Torah law in this regard:

"If one man's ox hurt his neighbor's ox, and it dies, then they shall sell the live ox, and divide the price of it, and they shall also divide (the value of) the dead (ox)." (*Shemot* 21:35)

It should be noted that copies of the Code of Hammurabi have been found throughout the Ancient Near East, including in the Land of Israel. The discovery of these and other sets of laws gave rise to the claim that the laws of the Torah were in fact based on these other laws – seemingly offering support for the view that the Torah laws are of human origin, having been influenced by external Babylonian sources.

What are we to make of the connections between these codes of law and the commandments of the Torah?

First, it is important to note that the existence of systems of law that preceded the Torah is a fact that the Torah itself mentions explicitly. In his speech at the beginning of *Sefer Devarim*, Moshe tells Bnei Yisrael:

"And what nation is there so great, that has statutes and judgments so righteous as all this Torah, which I set before you today?" (*Devarim* 4:8)

Moshe notes the superiority of the laws of the Torah which are more "righteous" than those of the other nations. This verse would be meaningless if it were not understood that other nations had other sets of laws.<sup>8</sup>

Laws have accompanied mankind since its earliest stages. A reading of *Sefer Bereishit* reveals an entire infrastructure of laws pertaining to all areas of life. The story of Yehuda and Tamar tells us that the accepted procedure was that a woman whose husband had died, leaving no children, could not marry someone else without conducting some form of '*yibum*' (levirate marriage) – a duty falling first and foremost to the brothers of the deceased, and even to their father. What is the source of this custom? Ramban (*Bereishit* 38:8) asserts:

"The ancient sages, prior to the Torah, knew that there is great benefit in levirate marriage by the brother, and it is proper that he be the first to

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<sup>8</sup> This understanding arises from the plain meaning of the text as well as from the commentaries of Seforno and Alshikh, among others. Ramban, however, in his treatise *Torat ha-Shem Temima (Kitvei ha-Ramban* I, Jerusalem 5723, pp. 143-144), understands from the verse that the other nations had no statutes and judgments at all. Yet as we will see, Ramban in his commentary to the Torah indicates a number of times that there were systems of law extant prior to the giving of the Torah.

uphold it, and [only] after him [i.e., if he is unable to marry the widow] then the next closest family member, for any close blood relative from his family who inherits his portion, will bring benefit. So it was customary to marry the widow of the deceased brother to the brother, or the father, or the next closest relative."<sup>9</sup>

What Ramban says accords with what we know from the laws of the Ancient Near East, which set forth explicitly the possibility of *yibum*, including a situation involving the father of the deceased.<sup>10</sup> The same applies in many other contexts: from the story of Avraham's purchase of the field containing the Cave of the Patriarchs we learn of the accepted procedures for acquisition of land;<sup>11</sup> the struggle between Yaakov and Esav indicates the existence of the concept of a "birthright" as a legal status entailing more than just the chronological order of birth;<sup>12</sup> and so on. More generally, Ramban writes that the legal system in its entirety is one of the seven Noahide Laws:

"In my view, the *dinim* (laws) requirement that is incumbent upon the gentiles, as one of their seven commandments, entails more than just the appointment of judges in each and every place. [God] commands them concerning the laws of theft, deception, oppression, and paying wages, and the laws pertaining to guardians, coercion and temptation, and the categories of damages, and injury to others, and the laws of lending and borrowing, and the laws of buying and selling, and the like, in a similar manner to the laws which Israel is commanded to observe...." (Ramban on *Bereishit* 34:13).

Moreover, the formulation of some of the commandments of the Torah indicates that these laws are based on previous knowledge assumed to be familiar to those receiving the Torah. The Torah is not formulated as a book that builds an entire system of laws and judgments from the very foundations up; rather, it is a book that adds layers onto an existing basis that does not require further elaboration. Thus, for example, the Torah does not describe how the institution of marriage between man and woman comes into being. All that Moshe says in this context, in his lengthy "speech of the commandments" in *Sefer Devarim*, appears – paradoxically enough – within the framework of the procedure for divorce:

"If a man takes a wife and has relations with her, and it comes to pass that she does not find favor in his eyes, for he has found some unseemliness in her, then he shall write her a bill of divorce, and place it in her hand, and send her out of his house. And when she has left his house, she may go and become [the wife] of another. And if the latter man hates her and writes her a bill of divorce, and places it in her

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<sup>9</sup> The same idea appears already in more concise form in the *Pesikta Zutreti (Lekach Tov)* on *Bereishit* 38:8 – "This teaches that they practiced '*yibum*' prior to the giving of the Torah, as a commandment that is logically self-evident."

<sup>10</sup> For ancient laws in this regard see Y.M. Grintz, *Yichudo ve-Kadmuto shel Sefer Bereishit*, Jerusalem 5743, p. 57.

<sup>11</sup> *Ibid.*, p. 60.

<sup>12</sup> *Ibid.*, p. 54

hand, and sends her out of his house – or if the latter husband, who took her to be his wife, dies – then her former husband, who sent her away, cannot take her again to be his wife, after she has been defiled, for that is an abomination before God, and you shall not cause the land which the Lord your God gives you for an inheritance, to be sinful." (*Devarim* 24:1-4)

It is clear, then, that the Torah assumes its audience is familiar with the concept of a man marrying a woman – since the institution of marriage had existed for hundreds of years prior to the giving of the Torah. In fact, a close look at these verses indicates that the Torah is not even introducing the idea of divorce, since this, too, would appear to have existed previously.<sup>13</sup> All that the Torah comes to introduce here is the prohibition on taking back a wife whom one has divorced, after she has been married to someone else.<sup>14</sup>

Similarly, the Torah does not state directly that a firstborn son receives a double-portion of his father's inheritance. This fact is deduced incidentally from the unit concerning the firstborn, which comes to teach a different law:

"If a man has two wives, one beloved and the other hated, and they have born him children – [both] the beloved and the hated – and the firstborn son is [born] of the hated [wife], then it shall be, when he bequeaths to his sons that which he has, he cannot give preference to the son of the beloved [wife] over the son of the hated [wife], who is the firstborn. Rather, he shall acknowledge the son of the hated [wife], giving him a double portion of all that he has, for he is the beginning of his strength; the birthright is his." (*Devarim* 21:15-17)

The entire discussion about the inheritance of the firstborn occurs within the framework of a specific reality in which the firstborn son is born to an unfavored wife. The Torah's demand is that even in such a situation, the status of the "birthright" must be reserved for the son of the unfavored wife, since "the birthright is his." This expression shows that the practice in this regard is fixed and well-known; there is no need to spell it out. The only innovation in the Torah law here is that the practice applies even in the unusual situation set forth in the text.<sup>15</sup>

(To be continued)

Translated by Kaeren Fish

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<sup>13</sup> For instance, we understand that Moshe divorced his wife, Tzipora, from the verse: "And Yitro, Moshe's father-in-law, took Tzipora, Moshe's wife, **after he had sent her away**" (Shemot 18:2); this interpretation is proposed by Ibn Ezra (in his short commentary) ad loc.

<sup>14</sup> The Code of Hammurabi likewise gives no attention to marriage and divorce per se; it addresses only certain details of the law (laws 128-143).

<sup>15</sup> A similar situation pertains with regard to the verse, "And if he designated her for his son, then he shall deal with her after the manner of daughters" (Shemot 21:9). Here, too, the Torah implies a familiar practice, which is not stated. Another example concerns the seducer of an unmarried woman, who is required to "pay money according to the marriage price of virgins" (Ibid. 22:16).