

Modern Scholarship
in the
Study of Torah /
Contributions and Limitations

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Study of Bible in Light of Our Knowledge of the Ancient Near East

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Today with the advent of archaeology as a full-fledged discipline and the subsequent rediscovery of the pre-Classical ancient world, the opportunity now exists to gain a richer appreciation of the content, nature, and message of the Bible in relation to this ancient world. Knowledge of the ancient Near Eastern context in which the Bible may now be studied has resulted mainly from the disciplines of Egyptology and Assyriology.

Assyriology is the study of the civilization created by those people who inhabited the fertile crescent of Mesopotamia—the lands of the Tigris and Euphrates rivers, corresponding to modern-day Iraq. Although this area had been inhabited by many different peoples, including the Sumerians, Akkadians, Assyrians, Babylonians, Amurrites, and Arameans, these people created and shared a common cultural heritage, which may be called Mesopotamian civilization. This civilization played a vital role in the formative period of the history of the Jewish people during the biblical period. Abraham was born there. It gave Isaac Rebecca, his wife. Jacob fled there to escape the wrath of Esau and he married Mesopotamian women, Leah and Rachel. During the period of the Divided Monarchy, both the kingdom of Israel and the kingdom of Judah interacted

with Mesopotamian political, cultural, and religious influences. The kingdom of Israel paid heavy tribute to the Mesopotamian political state of Assyria which eventually destroyed that kingdom, deporting and dispersing the Ten Tribes within its far-flung empire. The kingdom of Judah fell to the Mesopotamian political state of Babylonia and with the destruction of the First Temple and exile, Jews found themselves again in Mesopotamia. And it was from Mesopotamia under the leadership of Ezra and Nehemiah that Jews returned to the land of Israel.

Mesopotamian civilization flourished for more than 2,500 years until the rise of Hellenism a few centuries before the beginning of the Common Era. The task of the Assyriologist is to reconstruct Mesopotamian civilization on the basis of clay tablets inscribed with cuneiform writing, which have continued to be unearthed by archaeologists for the last one hundred years. The major Mesopotamian languages written in cuneiform are Sumerian (a non-Semitic language) and Semitic Akkadian with its Babylonian and Assyrian dialects. With the discovery and decipherment of these and other ancient Semitic languages such as Ugaritic, Amurrite, and Eblaic, new insights have been gained in Hebrew grammar and lexicography which help elucidate the biblical text. The nearly 500,000 cuneiform tablets now housed in museums around the world have also brought to light the history and culture of ancient Mesopotamia and its surrounding civilizations. With the illumination of this historical backdrop against which the Torah was given, the relationship between ancient Israel and its neighbors, as well as the cultural and social institutions of the Bible, can now be viewed from new perspectives.

At the very onset, we should bear in mind that the use of such disciplines as comparative Semitic linguistics, ancient cultures, and even archaeology, for the study of the Bible is neither foreign nor really new to traditional Jewish scholarship. Throughout the long history of Jewish biblical exegesis, many of our *Rishonim* utilized these disciplines in their attempt to fathom the plain sense of the biblical texts and to interpret the message of Scripture. We need pause only to mention a few examples:

Rabbi Saadya Gaon of the early tenth century is considered by many to be the father and founder of Hebrew philological science. His treatises in the field of Hebrew grammar and lexicography make use of his knowledge of other Semitic languages, chiefly Arabic. To Rabbi Saadya, Hebrew philology was the necessary scientific apparatus for the main

objective of interpreting Scripture. Subsequent Spanish Jewish grammarians and exegetes further refined this discipline.

Maimonides in the twelfth century was one of the first to advocate the study of ancient cultures for a deeper appreciation of biblical truths. In Part III of his *Moreh Nebuchim*, in his discussion of the Divine Commandments, the Rambam utilized the ancient chronicles of the idolatrous tribes known as the Sabeans, which were extant in Arabic translations, in order to gain insights into biblical precepts. Maimonides believed that many of the laws of the Torah were given to cure mankind of idolatrous practices. Thus, for example, the Rambam sought to comprehend the Torah's injunction against the eating of blood (Leviticus 17:10) by referring to the Sabean practice of eating blood in order to commune with the spirits. This practice was based on the Sabean belief that blood was the food of the spirits. In his *Moreh Nebuchim* (Part III, end of chapter 49), the Rambam lamented the fact that his knowledge of Sabean doctrines was not complete since they had been extinct for almost 2,000 years. The Rambam then went on to assert that if the rules of the Sabeans and the events of those days were better known, it would be possible to see plainly the reason for most of the practices mentioned in the Torah.

Nachmanides (Ramban) of the thirteenth century gives testimony to the use of archaeological survey, albeit primitive, as a means of ascertaining the correct interpretation of biblical texts. Genesis 35:16 states that Benjamin's birth and Rachel's tragic death took place while Jacob and his family were still *kibrat ha-aretz* from Ephrat. Does this expression denote that the tragedy occurred at a great distance from Ephrat and hence Jacob could not bring her into the city for burial; or does the expression denote a short distance from Ephrat regardless of which Jacob chose not to bury her within the city? In his commentary the Ramban addresses this problem, cites the opinions of Menahem ben Saruk, the Midrash, Rashi, and Radak, and accedes to the opinion of the Radak. But subsequently he adds the following remarks: "This I originally wrote while still in Spain, but now that I was worthy and came to Jerusalem . . . I saw with my eyes that there is not even a mile between Rachel's grave and Bethlehem. This explanation of R. David Kimchi has thus been refuted as have the words of Menachem—" The Ramban also realized that archaeological data may answer certain queries while at the same time giving rise to other problems. He therefore goes on to state,

I have also seen that Rachel's grave is not in Ramah nor near to it [as the plain meaning of the verse in Jeremiah 31:15 would seem to indicate: "A voice is heard in Ramah . . . Rachel weeping for her children"]. Instead, Ramah which is in Benjamin is about four Persian miles distant from it, and Ramah of the hill-country of Ephraim is more than two days' travel from it. Therefore, I say that the verse stating "A voice is heard in Ramah" is a metaphor, in the manner of rhetorical expression, meaning to say that Rachel wept so bitterly that her voice was heard from afar in Ramah, which was on top of the mountain of [the territory of] Benjamin.

From the above references, it is clear that the study of Torah in light of our knowledge of the ancient Near East is definitely in keeping with the spirit of traditional Jewish exegesis. And if so, the imperative to such study should not be limited to the category of *da' mah shetāshiyv* but rather include the positive aspect of providing new opportunities to appreciate the biblical text and its message.

In an attempt to give tangible expression to the positive results which can be achieved through the application of new data gleaned from the world of the ancient Near East to the biblical text, brief examples will be cited below from the areas of grammar, lexicography, history, and culture:

1. Grammar

It is commonly recognized that the *hitpa'el* verbal form imparts a reflexive meaning (*hitqaddesh* "sanctify oneself"), middle meaning (*hithannen* "implore favor for oneself"), or reciprocal meaning (*hitra'ah* "look at one another") to the verb. However, there are a number of *hitpa'el* forms in biblical Hebrew in which the infixed t-morpheme does not impart a reflexive, middle, or reciprocal meaning. These atypical forms appear to have the same meaning as their corresponding stems without the t-morpheme (cf. *'bl* "to mourn" in Amos 9:5 with *ht'bl* in 1 Samuel 15:35; *'wh* "to desire" in Deuteronomy 12:20 with *ht'wh* in Proverbs 21:26; *hlk* "to walk" in Genesis 12:4 with *hthlkn* Genesis 5:22). On closer examination of the biblical contexts, all the atypical *hitpa'el* forms seem to connote repeated, continuous, or habitual action. Knowledge of Akkadian grammar has allowed a verification of this observation concerning the meaning of these atypical *hitpa'el* forms. Akkadian, unlike Hebrew, exhibits a more extensive class of infixed t-morphemes, including a *tn-morpheme* which at times is reduced to a t-morpheme. The *tn-morpheme* imparts an iterative, habitative, or durative meaning to the

verbal form. Thus in Akkadian, the *tn*-forms of the verb *alāku* "to walk" bear the meanings: "to walk about, to walk to and fro, to wander, to walk with on a regular basis or to commune with." Hence it seems proper to separate the atypical *hitpa'el* forms in Hebrew from the normal *hitpa'el* forms and to identify the former with the Akkadian *tn*-forms. A further appreciation of the biblical use of *hithallek* as an expression of man's intimate association with a deity (for example, Genesis 5:22 *wayyithallēk hanok 'et-ha 'elokim*) is gained from the following Akkadian passage which uses the *tn*-form of the verb "to walk": "[If he rejected sin,] his god will continually walk with him (*iššu ittišu ittanallak*)."¹

2. Lexicography

In Semitic languages, the basic semantic unit is a root, usually comprised of three sounds, or radicals, whose meaning is modified by the various verbal and nominal patterns into which it is formed. Semitic lexicography attempts to determine the common semantic denominator of a particular root in a particular language in order to understand the semantic development of the root and its full range of meanings. In Hebrew, the common semantic denominator of the root *spt* is usually understood to be "judging," with the verb meaning "to judge" and its nouns, *sopet* "a judge" and *mispal* "judgment." A close analysis of all the biblical occurrences of this root indicates that a judicial meaning is too limited in scope to allow for a semantic development which would encompass its occurrence in such phrases as *mispal hammelek* in 1 Samuel 8:11 and *mišpat haggoyim* in 2 Kings 17:33 where a translation "judgment" is contextually inappropriate, and in the occurrences of *šopetim* in the Book of Judges, designating leaders whose main activities described therein were not primarily judicial. Based on the use of the verb in 1 Samuel 8:5 (*simah-lānu melek lešāpṭēnu kekāl-haggoyim*) in which the people demand a king who will govern them, the semantic denominator "to exercise authority" suggests itself. The noun *sopet* would thus be understood as "the one who exercises authority" and the term *mispal* would thus denote "an authoritative procedure." The judicial aspect would represent a secondary and tangential development based on the fact that a judge does exercise authority in rendering decisions. The use

¹E. A. Speiser, "The Durative *Hitpa'el*: A *tan* Form," reprinted in *Oriental and Biblical Studies: Collected Writings of E. A. Speiser*, ed. J. J. Finkelstein and M. Greenberg (Philadelphia: University of Pennsylvania Press, 1967), pp. 506-514.

of the term *mišpātim* in a legal sense may not necessarily be rendered "judgment" but may rather indicate the authoritative or prescribed mode of behavior and thus best translated as "norms, regulations." The occurrences of the root *spt* in Akkadian supports such a semantic understanding. In the Akkadian texts from Mari, the term *sapitu* (cognate of Hebrew *sopet*) designates the highest functionary in the regional administrative bureaucracy and is translated as "governor." He issues *šiptū*, disciplinary warnings and punitive measures designed to enforce his authority over the governed territory. This term is a cognate of Hebrew *sapet*, (pl. *šepātim*) describing the plagues in Exodus 6:6 and 7:4, and allows the translation of the Hebrew term as "disciplinary or punitive measures" rather than "judgments."²

3. History

The last years of the Assyrian empire are documented in the Mesopotamian cuneiform sources. Within a decade after the death of Assurbanipal in 627 B.C.E., Nabopolassar, founder of the Neo-Babylonian dynasty joined with the Medes in a final offensive against Assyria. He devastated Nineveh in 612 B.C.E. and defeated the Assyrian forces which had regrouped at Harran in 609 B.C.E. His son, Nebuchadrezzar who had been appointed coregent, was responsible for the final victory over Assyria at the Battle of Carchemish in 605 B.C.E. The Egyptian army under the leadership of Necho II marched through Israel and Syria in an attempt to aid Assyria in its fateful confrontation with Babylonia. Against this historical backdrop, one is to read 2 Kings 23:29, which states that Pharaoh Necho *'alah 'al melek 'aššur*. The parallel passage in 2 Chronicles 35:20 correctly connects this episode with the Battle of Carchemish but does not indicate on whose side Necho would fight. Radak as well as most exegetes translate *'alah 'al* "to march against" Assyria. However, in light of the above historical realities, one must translate this expression as "set out to" the king of Assyria. Note that *'al* may interchange with *'el* in these texts as evidenced by comparing the text of 2 Kings 18:27 with the text of Isaiah 36:12. Thus, the correct meaning of the biblical verse is firmly established through an awareness of Mesopotamian history.

²E. A. Speiser, "The Manner of the King," in *Judges: The World History of the Jewish People*, ed. B. Mazar, vol. 3 (New Brunswick, NJ: Rutgers University Press), pp. 280-287.

4. Sociolegal Institutions

The ancient city of Nuzi has yielded thousands of Akkadian legal texts, dating to the second half of the fifteenth century B.C.E., which document many sociolegal institutions of ancient Mesopotamian society. Among these institutions is the sale of freeborn daughters which can be reconstructed from over forty legal contracts that bear the superscription *tuppi martuti u kallatuti* "documents of daughtership and daughter-in-lawship." According to these contracts, a father or a mother and brother (presumably upon the death of the father) may sell a daughter to another person for the eventual purpose of matrimony. The sold daughter becomes a member of the purchaser's household and she is subject to certain conditions, depending upon the stipulations of the specific contract. The documents specify that, under such an arrangement, the purchaser may have the right to take her as his own wife or to give her in marriage to a natural son, an adoptive son, or an outsider, or to designate her as the wife of one of his slaves. In the latter case, she remains permanently bound to the purchaser's household, and upon the death of her husband-slave, she is to be redesignated as the wife of another slave. Any children of these slave unions remain the property of the purchaser as does any property which the sold daughter may eventually acquire. These Nuzi documents allow us to view a social practice in which an indigent parent may provide for the welfare of a young daughter by attaching her to the home of a more prosperous patron who will secure her well-being by obligating himself to arrange for her future marriage in accordance with certain contractual stipulations. This Mesopotamian practice is reminiscent of the biblical law of *amah 'ivriyah* in Exodus 21:7-11: "When a man sells his daughter as a slave, she shall not be freed as male slaves are. If she proves to be displeasing to her master, who designated her for himself, he must let her be redeemed; he shall not have the right to sell her to outsiders, since he broke faith with her. And if he designated her for his son, he shall deal with her as the practice of free maidens. If he marries another, he must not withhold from this one her food, her clothing, or her conjugal rights. If he fails her in these three ways, she shall go free, without payment." In viewing this biblical law against the backdrop of the Mesopotamian sociolegal institution of the sale of freeborn daughters, it is apparent that slave laws in the ancient Near East were in part a response to pressing economic distress and which in many ways served

as an ancient form of welfare. An indigent father who sold his daughter in a *martūti u kallatūti* arrangement could not only receive needed cash but also could save his daughter from present deprivation and secure her future economic well-being by ensuring her eventual marital status. The biblical legislation also allows the Israelite father this right but, when contrasted with the Mesopotamian legal documents, seems to limit the specific contractual stipulations which are allowable. The sold daughter explicitly may not be sold to an outsider and implicitly may not be married to the purchaser's slave. Furthermore, the Torah legislation is concerned also with her rights subsequent to her marriage.³ This is but one example of the way in which the biblical message can be newly appreciated by studying the Bible in the light of ancient Near Eastern culture.

If, from the above discussion, one is convinced that such scholarship is in keeping with traditional Jewish exegesis of the Bible and that the scholarly results of the application of newly acquired knowledge from the ancient Near East positively enhances our understanding of the Bible, it then behooves us to comprehend fully the nature of the challenges that such knowledge presents to Orthodox Judaism and to confront these challenges forthrightly.

Even without the application of knowledge recovered from the ancient Near East, any serious study of the Bible will arouse certain tensions. These tensions are inherent tensions within the biblical text which for the most part result from seeming inconsistencies and contradictions. *Hazal* and traditional Jewish exegetes have noted and discussed such tensions, offering various interpretations in an attempt to resolve them, usually by harmonizing the texts. In bringing ancient Near Eastern archaeological and epigraphic knowledge to bear on the biblical text, it is inevitable that new tensions will arise. Some of this new knowledge will result in the need to reassess previously held interpretations which no longer seem plausible in light of new awareness. As the Ramban noted above, "archaeological" determination of Rachel's

³I. Mendelsohn, "The Conditional Sale into Slavery of Free-Born Daughters in Nuzi and the Law of Exodus 21:7-11," *Journal of the American Oriental Society* 55 (1935): 190-195.

burial place necessitated a new understanding of Jeremiah's use of the place name Ramah. More serious tensions stem from historical and chronological issues. Seeming anachronisms, such as the use of the term "Philistines" in the Patriarchal Period, and seeming contradictory historical reconstructions, such as archaeological data associated with the Israelite conquest and settlement of Canaan that do not corroborate certain accounts in the Book of Joshua, may be viewed as challenging the historicity and validity of the biblical account. By and large, however, knowledge gleaned from ancient Near Eastern sources tends to support the biblical accounts in general terms and most of the existing discrepancies can be tolerated.

Furthermore, one should not lose sight of the fact that, despite great advances in the field, interpretation of ancient finds is still and will always be more of an art than a science. Current scholarly knowledge will always be dependent upon the accident of the spade and new discoveries and new perceptions are constantly forcing reevaluations of currently held positions. It is this state of flux which helps alleviate such tensions to a certain degree by allowing discrepancies and contradictions to stand while awaiting further clarification and future reassessment. However, the most serious tensions to be faced stem from the undeniable commonality of cultural and literary motifs that the Bible shares with the civilizations and literatures of the ancient Near East. To be sure, these tensions are not unlike those found stemming from such disciplines as anthropology, sociology, and folklore, in which cultural norms of primitive and ancient societies, similar to those of the Bible, are understood in purely humanistic terms. In the case of biblical and ancient Near Eastern parallels, however, it is not only the uniqueness of biblical norms which is brought into question but also the willingness and tolerance of Orthodox Judaism to comprehend "divine texts" in the context in which they were given. In order to appreciate these tensions by removing them from the abstract level of thought to a concrete level of empirical reality, one example of parallel texts will be presented in great detail. The parallel chosen for discussion stems from the realm of law since Torah law is the very foundation and source of authority of Jewish religious and legal practices. The most closely related and widely discussed Mesopotamian parallel to the laws of the Torah are those rules concerned with the case of an ox goring a person to death.

THE LAWS OF ESHNUNNA (C. 1800 B.C.E.)

54. If an ox was a habitual gorer, the local authorities having so duly notified its owner, yet he did not keep his ox in check and it then gored a man and caused his death, the owner of the ox shall pay two-thirds of a mina of silver.

55. If it gored a slave and caused his death, he shall pay fifteen shekels of silver.⁴

THE LAWS OF HAMMURAPI (C. 1750 B.C.E.)

250. If an ox, while walking in the street, gored a person and caused his death, no claims will be allowed in that case.

251. But if someone's ox was a habitual gorer, the local authority having notified him that it was a habitual gorer, yet he did not have its horns screened nor kept his ox under control, and that ox then gored a free-born man to death, he must pay one-half mina of silver.

252. If [the victim was] someone's slave, he shall pay one-third mina of silver.

THE BIBLICAL LAWS (MOSAIC PERIOD C. 1300 B.C.E.)

i. If an ox gores a man or woman to death, the ox shall be stoned to death, its flesh may not be eaten, but the owner of the ox is innocent.

ii. But if the ox was previously reputed to have been a habitual gorer, its owner having been so warned, yet he did not keep it under control, so that it killed a man or a woman, the ox shall be stoned to death and its owner shall be put to death as well. Should a ransom be imposed upon him, however, he shall pay as the redemption of his life as much as is assessed upon him. Whether it shall have gored a son or daughter [i.e., a minor], this same rule shall apply to him.

iii. If the ox gore a slave or slavewoman, he must pay thirty shekels of silver to his owner, but the ox shall be stoned to death. [Exodus 21:28ff.]

⁴Translations of the Ancient Near Eastern legal material render my understanding of the cuneiform texts. Useful translations of the law collections in their entirety may be found in J. B. Pritchard, ed., *Ancient Near Eastern Texts Relating to the Old Testament* (2nd ed., Princeton, NJ: Princeton University Press, 1955), pp. 161-180.

Apart from the obvious similarities in content, style, and phraseology that exist between the laws of the Torah and the Mesopotamian law corpora, the following legal comparison may be noted:

1. Where there is no premonition of existing danger—the ox is not known to be a gorer—there is no liability in both the Mesopotamian and biblical rules. However, in the Torah, the ox is to be stoned.

2. Where liability exists—the owner of the ox was forewarned but he did not take the necessary precautions to guard against the existing danger, the Mesopotamian sanction for such culpable negligence is pecuniary, while the Torah views the case as criminal and capital, but allows for the acceptance of ransom instead. Again the Torah demands that the ox be stoned.

In both the Mesopotamian rules and the Torah, recognition of the category of negligent homicide is clearly reflected. But how does one view the relationship between the Mesopotamian and Biblical rules, accounting for both their similarities and divergencies?

Many of the readers may be familiar with some of the scholarly literature written on this subject, and especially with the articles of M. Greenberg.⁵ Professor Greenberg, understanding that law is an aspect of culture, sought to understand the Mesopotamian and biblical rules within the context of their own cultural value-systems, which reflect their differing cosmological ideologies.⁶ The fundamental differences between the Mesopotamian and Biblical cosmological views stem from differences in the very conception of the nature of divinity and the definition of the godhead. Mesopotamian polytheism defines the gods as having emerged from a preexistent primordial realm which preceded them in time and transcended them in power. Hence, the Mesopotamian gods are not

⁵Moshe Greenberg, "Some Postulates of Biblical Criminal Law," *Yehezkel Kaufmann Jubilee Volume*, ed. M. Haran (Jerusalem: Magnes Press, 1960), pp. 5-28; "Crimes and Punishments," *Interpreter's Dictionary of the Bible*, vol. 1 (Nashville: Abingdon), pp. 733-37; "More Reflections on Biblical Criminal Law," *Scripta Hierosolymitana* 31 (1986): 1-17.

⁶Y. Kaufmann, *The Religion of Israel*, trans. and abridged by M. Greenberg (Chicago: University of Chicago Press, 1960), pp. 21-101. Cf. J. J. Finkelstein, "Bible and Babel," *Commentary* (1958): 431-444.

ultimately sovereign or all powerful. Man was created from a god and thus the primordial watery mass, the gods, the earth, and man are part of an unbroken continuum. The task of man is to be a slave of the gods, providing the gods with their daily needs.

In contrast, the biblical God did not emerge from a preexistent primordial realm and hence God is free from all the primordial forces of the cosmos—both natural and supernatural, and His will is transcendent and sovereign over all. Thus, the essence of the biblical conception is not merely the belief in the existence of one God but rather in the absolute freedom of the godhead. Man was formed from the dust of the earth and received the breath of life from God. Man is discontinuous from the rest of nature in that he was created in the image of God, yet he is in no way comparable to God who is wholly other. His task is to be fruitful and to inhabit the earth. Man is to exploit nature for his own benefit. Yet despite his mastery of the earth, man is to be ever mindful of his true status as a creature of the Creator whose command he must obey.

From each of these contrasting cosmological ideologies stems a different series of implications and corollaries, which are reflected in each society's culture and are intrinsic to each of their value-systems. Recognizing this premise, Greenberg distinguished fundamental differences between the biblical and Mesopotamian conception of law. In Mesopotamia, law is an aspect of the cosmic order—one of the forces of the universe, which existed prior to the creation of the gods, the earth, and mankind. Law as the embodiment of this cosmic principle is called *kittum*, "truth." Since *kittum* is eternal and universal, it could never originate with the gods or man. Shamash, the Mesopotamian god of justice, was not the source of *kittum* but only its patron or guardian. In order to enable the Mesopotamian king to fulfill his obligation to establish equity within his realm, Shamash inspired the king with the perception of *kittum*. Thus the function of the king was confined to the just and equitable implementation of *kittum*. Although the Mesopotamian king was not the source of law—*kittum*—but only its agent, he nevertheless claimed the actual authorship of the laws in his law corpora and rendered the final decision as to their applicability.

This idea of the transcendence of the law expressed in terms of a cosmic principle that is above the gods as well as man is incompatible with the biblical cosmological ideology. According to the Bible, law is the command of God. God is not merely the custodian of justice but the

ultimate source of the law, which is a statement of His will. Violation of the law is a rebellion against God's will, an absolute wrong, transcending the power of man to pardon.

In light of these basic differences between the Mesopotamian and biblical conceptions of law, Greenberg sought to explain the divergent elements existing between the Mesopotamian and biblical rules of the goring ox as arising from very different underlying principles, which stem from their contrasting cosmological ideologies and conceptions of law.

In Mesopotamia, the king was entrusted with the implementation of justice and establishment of equity in his realm. This obligation was conceived basically in terms of the economic security and well-being of his subjects. The economic foundation of the law is evident from the concern of Mesopotamian law with safeguarding property rights and compensating for loss of property. The sanctity of private property is a pervading consideration within Mesopotamian law and an offense against private property can escalate to a capital crime. In Mesopotamian law there is evidence of an economic valuation of human life which reflects the Mesopotamian conception of man's place and role in the cosmos. Even the intentional killing of a human being is viewed as an economic loss for which monetary compensation may be paid, with the consent of the aggrieved family.

However, in the Bible, it is God who promulgates the law and thus a religious evaluation permeates biblical law. One of its basic postulates is the invaluableness of human life. Murder is viewed as an absolute wrong, a sin committed against God, which is not subject to human arbitration. Hence for murder there is only the death penalty. According to the rule in Numbers 35:31: "You shall not take a ransom for the life of a manslayer who is guilty of death; he shall surely be put to death." Ransom may be accepted only for negligent homicide not personally committed, as in the case of the goring ox.

The biblical postulate of the invaluableness of human life is set forth in Genesis 9:5 ff.: "For your own life-blood I shall require a reckoning: of every beast I shall require it; of man, too, will I require a reckoning for human life, of every man for that of his fellow man. Whoever sheds the blood of man, by man shall his blood be shed, for in the image of God, did He make man." Note the cosmological reference to the biblical conception of man. Because of this sanctity of human life, the Bible views every innocent shedding of human life as a criminal act. Even a beast

that kills a man destroys the image of God and must give a reckoning for it. Thus in the case of a goring ox, the ox must be stoned.

The prohibition of eating the flesh of the ox is a clear indication of the religious rather than utilitarian evaluation inherent in the law which requires the destruction of the ox. Another principle evident in biblical law is that of individual culpability, which does not recognize the Mesopotamian practice of vicarious punishment. Hence should the ox gore a minor to death, the owner of the ox and not his son or daughter is to be punished. In this way, Greenberg argues, the divergence of law between the Mesopotamian and biblical rules of the goring ox "reflects a basic difference in judgments of value, rather than stages in a single line of development."⁷

Although one may agree that Greenberg's approach prevents the application of extrabiblical parallels from becoming superficial or tendentious, nevertheless the important issue of the interrelationship of Mesopotamian and biblical law has not been resolved. Are the similarities of stylistic formulation and categorization in the biblical and Mesopotamian rules concerning an ox that gored a person to death to be understood as signs of borrowing or interdependence? Or, are their divergencies to be taken as proof of their unrelatedness?

In order to bring the issue into sharper focus, the Mesopotamian and biblical rules of an ox goring an ox need be compared.

Laws of Eshnunna (c. 1800 B.C.E.)

53. If an ox has gored another ox and caused its death, the owners of the ox shall divide between them the sale value of the living ox and the carcass of the dead ox.

The Biblical Laws: Exodus 21:35-36 (Mosaic Period c. 1200 B.C.E.)

i. If an ox belonging to one man gores to death the ox of his fellow, they shall sell the live ox and divide the proceeds and they shall divide the dead one as well.

⁷Greenberg, "Some Postulates of Biblical Criminal Law," 5-28.

ii. But if the ox was previously reputed to have been a habitual gorer and its owner has not kept it under control, he shall make good ox for ox, but will keep the dead one for himself.

In the laws of an ox goring an ox where there is no awareness of a vicious predisposition on the part of either animal, the Torah rule is identical with the Mesopotamian rule in legal substance and formulation. In such a case where neither owner is at fault, both the Mesopotamian and biblical rules invoke the principle of "equitable distribution of loss," which both phrase in an identical manner. How is this similarity to be understood? Is the biblical rule of an ox goring an ox an example of direct borrowing from the Mesopotamian law corpora?

The determination as to whether a given parallel found in two sources represents either a direct borrowing, a mediated connection, or a codependency upon a specific common source or more general common cultural tradition is based on probability and hence will always be a subjective judgment. Nevertheless, certain principles of the comparative method have been enunciated to help determine a high probability of relatedness.⁸ First and foremost, one must be able to establish the possibility of both a chronological and geographic linkage between the two parallels. The Bible attests to strong linkage between Mesopotamia and Israel during the biblical period, from Patriarchal times to the end of the Babylonian exile. Throughout this period, Mesopotamian civilization was a potent cultural force in the ancient Near East. Its language was the lingua franca of the civilized world as attested by the diplomatic correspondence and international treaties found in Egypt, Syro-Palestine, Asia Minor, and Elam. The influence of Mesopotamian law and its scholastic traditions was also widespread. Certain ethnolinguistic groups including the people of Ugarit in Syria, who had their own native language and script, nevertheless chose to write their legal documents in Akkadian, using Mesopotamian legal formulary. Others such as the Hittites wrote their law in their own native language but closely followed Mesopotamian literary-legal traditions.

As for the chronological issue, the Mesopotamian scribes preserved Mesopotamian legal literature within the scholastic traditions of its

⁸M. Malul, *The Comparative Method in Ancient Near Eastern and Biblical Legal Studies* (Alter Orient and Altes Testament, 227), (Neukirchener-Vluyn: Butzon & Bercker Kevelaer, 1990).

cultural legacy. Thus the Laws of Hammurapi, for example, were copied and recopied by Mesopotamian scribes for over a thousand years together with legal textbooks such as model contracts and legal formularies. Especially noteworthy is the discovery of Akkadian cuneiform tablets including diplomatic, literary, and scholastic texts found at archaeological sites in Israel dating from the second millennium B.C.E.

On the basis of the above, it is reasonable to conclude that there is good probability for possible linkage between Mesopotamian and biblical law. But in order to further strengthen the probability of linkage, one must ascertain uniqueness rather than coincidence. Is the parallel noted in the two sources unique to the two cultures involved, thereby suggesting a connection; or is the parallel also present in other cultures that fall outside of the sources' historic stream, thereby suggesting parallel yet independent development?

The legal solution of "equitable distribution of loss" in the case of an ox goring an ox is not found in either Roman or Germanic law where a beast which causes damage is surrendered in toto to the injured party. Today, the principle prevalent in common law in the realm of torts is that of "letting the losses fall where they may." The absence of this solution in other legal systems heightens the uniqueness of this principle and further strengthens the probability of linkage. The strongest argument for linkage, however, stems from identical terminology which would not only support a cultural linkage but a literary one as well.

In comparing the biblical terminology used in the cases of an ox goring an ox with that of the the biblical cases of an ox goring a person, a clear dichotomy is found. In the cases of an ox goring a person the verb *ngh* is used to describe the action of the ox and the verb *ʿwd* is used to describe the warning given to the owner; while in the cases of an ox goring an ox, the verb *ngp*, which does not bear the meaning "to gore" in Hebrew, is used to describe the action of the ox and the verb *yd'* is used to describe the warning given to the owner. In the Mesopotamian rules of an ox goring an ox and an ox goring a person, the Akkadian verb used to describe the action of the ox is *ngp*, which, unlike the Hebrew, has the primary meaning "to gore" in Akkadian; and the verb used to describe the warning given to the owner is *yd'*. A comparison of terms yields the following results: the biblical rule of an ox goring an ox uses the same verbs as the Mesopotamian rules, while the biblical rule of an ox goring a person uses a different set of verbs. Based on all the above observations

one must conclude that there exists a very strong probability that the biblical rule of an ox goring an ox, which is identical in legal substance and formulation to the Mesopotamian rule, shares a common Mesopotamian literary tradition. How disconcerting is such a conclusion?

It needs to be said that, despite the identity of the Mesopotamian and biblical rules of an ox goring an ox, the biblical perception is markedly different from the Mesopotamian. To the Israelite, the rule is an expression of the divine will, while to the Mesopotamian, it is a human attempt to mirror the cosmic principle of truth. Furthermore, in the Laws of Eshnunna, the rule of an ox goring an ox immediately precedes the rule of an ox goring a person. Both rules in Eshnunna treat the injuries as private wrongs whose remedies are pecuniary. Thus in Mesopotamian law, whether the ox gores a person or another ox, the wrong constitutes an economic trespass against the kin of the victim or the owner of the dead ox. However, unlike the Laws of Eshnunna, the Torah separates the biblical rules of an ox goring an ox from the rules of an ox goring a person, despite the similarity of subject matter. The latter rules occur in the context of crimes against a person, while the former rules occur in the context of wrongs against property. This discontinuity in the biblical sequence of the laws of the goring ox eloquently underscores the disparity in ideological outlook that exists between the biblical and Mesopotamian rules of the goring ox in which the victim was a human being. Nevertheless, those similarities which the biblical rules do share with the Mesopotamian law corpora seem to attest to the simple fact that the Israelites, however much they departed from neighboring cultures in their ideological orientation, stood with them culturally speaking as members of an interrelated complex, which spanned almost all of Western Asia. The shared features, such as the laws of an ox goring an ox, seem to represent those common elements that are not inimical to the biblical worldview.

But can Orthodox Judaism tolerate the strong probability that the biblical rule of an ox goring an ox shares a common literary tradition with the Mesopotamian rule? To be sure, approaches may be found within Jewish tradition to accommodate such probabilities. These probabilities would add new dimensions to the rabbinic concept of *yeshivat shem ve'eber* or to the Ramban's position that

the meaning of the "Laws" which the Rabbis have counted among the seven Noahide commandments is not just that they are to appoint judges in each

and every district, but that He commanded them concerning the laws of theft, overcharge, wronging, and a hired man's wages; the laws of guardians of property, forceful violation of a woman, seduction, principles of damage and wounding a fellowman; laws of creditors and debtors, laws of buying and selling and their like, similar in scope to the laws with which Israel was charged (Genesis 34:13).

But the more basic issue is whether or not Orthodox Jewry, believing in the divine origin of the Torah and in the eternity of its message, can tolerate the idea that the Bible when studied in the context of the ancient Near East seems to strongly attest to the fact that it bears the cultural imprints of the times in which it was given. These imprints are evident not only in its history and historiography but also in its temple architecture, its cultic practices, its sacred psalms and liturgy, its modes of divine communication, and even in its divinely given law. Thus the major challenge that such an approach to the Bible presents is the need to define the uniqueness of Torah in more subtle yet possibly more profound ways. The Bible when studied in the context of the ancient Near East also seems strongly to suggest that the "Jews" of ancient Israel were part of a cosmopolitan cultural complex with which their Torah interacted. The challenge of acknowledging such interaction comes at a time in which large segments of Orthodox Jewry advocate total separation from Western civilization whose culture is as morally bankrupt as the Torah's depiction of much of the ancient world; at a time in which large segments of Orthodox Jewry are rejecting science and the humanistic ideals of Western thought; at a time in which large segments of Orthodox Jewry are encouraging their young to withdraw from intercourse with the modern world around them. This is not to minimize the tensions that do exist between Orthodox Judaism and the modern world, which are, in many ways, similar to tensions that existed between biblical Israel and the other ancient Near Eastern civilizations. But despite these tensions, the Bible when studied in the context of the ancient Near East suggests that Torah rejects only those cultural aspects of civilization that are hostile to its worldview and indeed encourages *yapyuto shel yepet be ohelay shem*.

From the above discussion, it is clear that the study of the Bible in light of our knowledge of the ancient Near East has a much broader impact than merely on the meaning of the biblical text alone. The issues raised affect all of those who are committed to the ideals of Orthodox

Judaism and are concerned with its future. They are especially significant in addressing the role of the study of Tanach within Orthodox Jewish education.

Although all Orthodox Jewish educators would acknowledge the importance of teaching Tanach in Jewish schools, the goals of such study are often nebulously conceived, ill-defined, and poorly articulated. This is especially true of secondary- and college-level education where the need to transmit factual knowledge of the biblical tradition is no longer the primary consideration. At this juncture, emphasis is usually placed upon the acquisition of textual skills to enable the student to study Tanach independently as a lifelong *mitzvah* from which he is to gain both instruction and inspiration. The student improves his ability to read and understand the classical medieval exegetes who, in the main, confront the text personally in an attempt to determine the "plain sense of the text" and the message of Scripture. But educators must ask whether the Orthodox Jew today may still be trained to confront personally the biblical text and to wrestle with its meaning.

Today, in the modern period, when the intellectual climate is no longer dominated by religious dogmas, and humanism is the primary virtue, is it too dangerous to allow an Orthodox Jew to rely on his own intellectual resources in understanding the biblical text even when halachic issues are not involved? Do the times require a uniformity of thought that allows only authoritative understandings of the biblical text that are sanctioned by tradition? Must the Tanach be read today with reverent inattention so that internal inconsistencies and divergent tendencies remain unnoticed and unappreciated? If so, it is obvious that there is no place in the Orthodox Jewish curriculum for the study of the Bible within the context of the ancient Near East, for such study informs the student of the possibility of new insights and new appreciations of the text.

But even if one were to respond in the negative to the above questions, such study must be handled with great sensitivity, for there is potential danger in this approach. When viewing Torah against the backdrop of ancient Near Eastern culture, there is always the danger that the more impatient student may not make the effort to appreciate the subtle differences which allow one to view the unique worldview and message of Torah. In its stead, he may be left with a diminished belief in the uniqueness of Torah and a lessened sense of *yirat shamayim*. But again this is an ever-present danger in the teaching of Torah. Is this any

different from introducing a difficult midrash in class whose literal sense seems incomprehensible to the student and which, if not properly presented, may leave the student with a lessened appreciation of Torah and rabbinic thought? Thus, great sensitivity must always be present in the teaching of Torah for the teacher's responsibility in properly communicating the truths of Torah is indeed awesome.