

Lesson 34 – Perek 21 – Vicarious Punishment and Ben Sorer Umoreh

Background:

The law of the rebellious son seems problematic to the modern sensibility. In fact, Hazal also wouldn't accept it at face value. This lesson will show how placing this law into its cultural context can help explain its motivation.

Activity:

1. Review some of the differences between the Hammurabi Code and Sefer Debarim from the previous lesson. Perhaps the most striking difference is the last case of vicarious punishment. The Torah's proclamation that one can only be punished for his own sins is obvious to us today when the spirit of individualism runs deep. But it was not always obvious.

2. *Can anyone justify or explain the assumptions behind the Babylonian law?*

In ancient times, the family, rather than the individual, was the primary unit in society. The patriarch of the family would make all decisions for his clan such that the father owned his children and could do with them as he pleased. Such a law was widespread in early Roman society and was known as *patria potestas*. Here is the Encyclopedia Britannica entry for this term:

(Latin: "power of a father"), in Roman family law, power that the male head of a family exercised over his children and his more remote descendants in the male line, whatever their age, as well as over those brought into the family by adoption. This power meant originally not only that he had control over the persons of his children, amounting even to a right to inflict capital punishment, but that he alone had any rights in private law. Thus, acquisitions of a child became the property of the father. The father might allow a child (as he might a slave) certain property to treat as his own, but in the eye of the law it continued to belong to the father.

In fact, we even find traces of this conception in Israel during the times of the Abot. Yehudah orders execution of Tamar without a trial (Gen 38:24) and Reuben tells Ya'akov "you may kill my two sons if I don't return Benjamin to you" (Gen 42:37).

Together with the worldview that allows fathers to kill children also comes the assumption that if the father sins, then he along with his entire clan can be viewed as a unit and punished all together. This is the assumption behind the Hammurabi code which rules that the most appropriate punishment for causing the death of one person's son is to kill the killer's son. Debarim 24:16 directly responds to this ancient concept by declaring in absolute terms that "children shall not be put to death for the sins of their fathers."

Seforno points out that it was the custom of ancient kings to punish anyone guilty of treason by killing not only him but also his children so that they will not try to take revenge. This pasuk would also prohibit a Jewish king from copying that ancient custom. In fact, we read that when the servants of Yoash king of Yehudah assassinated him, Amaziah the son of Yoash only took revenge on the guilty servants and not on their children because of this pasuk.

מלכים ב פרק יד

(ה) וַיְהִי כִּאֲשֶׁר חִזְקָה הַמַּמְלָכָה בְּיָדוֹ וַיִּן אֶת עֲבָדָיו הַמַּפְסִים אֶת הַמֶּלֶךְ אָבִיו :
(ו) וְאֵת בְּנֵי הַמַּפְסִים לֹא הָמִית כִּכְתוּב בְּסֵפֶר תּוֹרַת מֹשֶׁה אֲשֶׁר צִוָּה דָּוִד לֵאמֹר לֹא יוּמְתוּ אֲבוֹת עַל בְּנֵים
וּבְנֵים לֹא יוּמְתוּ עַל אֲבוֹת כִּי אִם אִישׁ בְּחַטָּאוֹ <ימות> : יומת :

