

Nidduy, Arur and Nezifah: Social Pressure

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מי שנידוהו על שאר דברים שחייבין עליהם נידוי—אפילו נידהו קטן שבישראל, חייב הנשיא וכל ישראל לנהוג בו נידוי, עד שיחזור בתשובה מדבר שנידוהו בשבילו, ויתירו לו. על ארבעה ועשרים דברים מנדין את האדם, בין איש בין אישה; ואלו הן:¹ (הל' ת"ת ו:יד)

If a *nidduy* (ban) was proclaimed upon a person for one of the things for which one is obligated to be banned—even if the smallest person in Israel proclaimed the *nidduy*, the prince and all of Israel must accept it until he repents... For twenty-four things the *nidduy* is proclaimed upon a person, whether a man or a woman.

Nidduy and Kvod HaRav

The first four chapters of *Hilchos Talmud Torah* deal with the laws pertaining to learning Torah. Chapter five and most of six deal with

¹ (א) המבזה את החכם, ואפילו לאחר מותו; (ב) המבזה שליח בית דין; (ג) הקורא לחברו עבד; (ד) המזלזל בדבר אחד מדברי סופרים, ואין צריך לומר בדברי תורה; (ה) מי ששלחו לו בית דין וקבעו לו זמן, ולא בא; (ו) מי שלא קיבל עליו את הדין, מנדין אותו עד שייתן; (ז) מי שיש ברשותו דבר המזיק, כגון כלב רע או סולם רעוע, מנדין אותו עד שיסיר היזקו; (ח) המוכר קרקע שלו לגוי, מנדין אותו עד שיקבל עליו כל אונס שיבוא מן הגוי לישראל חברו בעל המצר; (ט) המעיד על ישראל בערכאות של גויים והוציא ממנו בעדותו ממון שלא כדין ישראל, מנדין אותו עד שישלם; (י) טבח כוהן שאינו מפריש המתנות ונותן לכוהן אחר, מנדין אותו עד שייתן; (יא) המחלל יום טוב שני של גלויות, אף על פי שהוא מנהג; (יב) העושה מלאכה בערב הפסח אחר הצות; (יג) המזכיר שם שמיים לבטלה, או לשבועה בדברי הבאי; (יד) המביא את הרבים לידי חילול השם; (טו) המביא את הרבים לידי אכילת קודשים בחוץ; (טז) המחשב שנים וקובע חודשים בחוצה לארץ; (יז) המכשיל את העוור; (יח) המעכב את הרבים מלעשות מצוה; (יט) טבח שיצאת טריפה מתחת ידו; (כ) טבח שלא בדק סכיניו לפני חכם; (כא) המקשה עצמו לדעת; (כב) מי שגירש את אשתו, ועשה בינו ובינה שותפות או משא ומתן, המביאין להן להיזקק זה לזה, כשיבואו שניהן לבית דין מנדין אותן; (כג) חכם ששמועתו רעה; (כד) המנדה מי שאינו חייב נידוי.

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the respect due to one's *rebbe* and other *talmidei chachamim*. Surprisingly, however, Rambam dedicates the last part of six and all of seven to the laws of *nidduy* (נידוי), excommunication. Initially he introduces these laws because of the principle that one who shows disrespect to *chachamim* is to be banned. But in the final halachos he details twenty-four transgressions for which one is placed in *nidduy*. Why place the rest here? In fact, why detail them at all, since Rambam lists the² prohibitions individually in their appropriate places and when so doing announces that the punishment in each case is *nidduy*? In addition, why does Rambam dedicate chapter seven to laws of *nidduy* and the more severe *cherem* (חרם), whereas the laws of all other punishments are included in *Hilchos Sanhedrin*, where we would expect them? Is *nidduy* not merely another form of punishment?³

The Talmudic source upon which the above halachah is based is a *gemara* in *Berachos* (19a):

In fourteen places *nidduy* is declared for respect for the *Rav* (*kvod haRav*) and all are learned in the *Mishnah*.⁴

According to Rashi (*ibid.*), the *gemara* meant merely that in twenty-four places we have a case where someone insulted a *chacham* and was subsequently put in *nidduy*. The *Amora'im* find themselves hard-pressed to find the twenty-four and no list is ever given. Thus, Rambam's accumulation is his own, and his very understanding that there are twenty-four unique violations with this punishment related to *kvod haRav* is also his own. In fact, some commentators⁵ assume that this halachah is based on the *Yerushalmi's* (*Moed Katan* 3:1) presentation that does not relate the

² Actually a few are not listed elsewhere—which is itself another difficulty, that we shall address later.

³ Surely Ramban (*Hagabos Sefer HaMitzvos, Shoresh 1*) and Ran (*Pesachim* 50a) think so, as they feel this is a punishment to be instituted for rabbinic violations, and both are troubled by why *Chazal* punished some such transgressions with *nidduy* and others with *makkas mardus*. Quite distinctly, Rambam's list is not even limited to rabbinic violations, as some are *d'Oraissa*. (See *Kesef Mishneh Hilchos Talmud Torah* 6:14.)

⁴ ואמר ר' יהושע בן לוי בכ"ד מקומות בית דין מגדי' על כבוד הרב וכולן שנינו במשנתנו

⁵ *Avodas HaMelech*, *ibid.*

twenty-four cases to *kvod haRav*, as Rambam does not mention *kvod haRav* in relation to them nor can we easily relate all these violations to this concept. On the other hand, from the fact that Rambam brings the list here, it would in fact imply that they are related to *kvod chachamim*.

A simple explanation for Rambam's placement and his understanding of the *gemara* is that the means of enforcement of this principle is *kvod chachamim*. Whereas in all other punishments *beis din* carries out the punishment, with *nidduy* the punishment is in the hands of the people. Should a *nidduy* not be followed by the people, there is no means of enforcement. The effectiveness of the ban is dependent on *kvod haRav*, and this might be the intent of the *gemara*.⁶ This does not seem sufficient however to fully explain Rambam's understanding. As Raavad (*ibid.*) queries and Kessef Mishneh discusses at length, there are other cases of *nidduy*, that Rambam brings elsewhere—why bring these twenty-four here? A distinguishing feature between these twenty-four and those left out⁷ is that in these cases alone, do we say that the ban can be placed by anyone—“even the smallest person in Israel”—while in the other cases, Rambam requires that the ban must be placed by *beis din*.

The Curse of *Nidduy*

Yet the question remains: what is unique about these twenty-four that they be subject to this feature that allows anyone to proclaim the *nidduy*? Indeed, what kind of feature is this? In what way are our courts lacking that we would allow a public citizen to act on his own initiative? What might be wrought by individuals proclaiming bans—is this not a prescription for anarchy?

⁶ In Ramban's *Mishpat HaCherem* he has a very different perspective on this means of punishment, seeing it rooted in the Torah itself in the verse כל חרם אשר יחרם מן האדם, and we will make brief mention later of how in one way there is similarity between Rambam and Ramban's *shittos*, but in other ways they are far apart. According to Ramban, it is a punishment primarily for rabbinic violations, as we noted above (note 3). According to Rambam, it is something different.

⁷ See Kessef Mishneh, *ibid.*, who brings many answers.

An analysis of the Torah principle upon which *nidduy* is based will help us understand why it was not limited to *beis din*.

וכיצד הוא הנידוי, אומרין פלוני בשמתא. והחרם, אומרין פלוני מוחרם. וארור,
בו אלה, בו שבועה, בו נידוי. (הל' ת"ת זב)

How is a *nidduy* proclaimed? One says ‘This person is in *shamta*’... *cherem* is proclaimed with ‘This person is in *cherem*’... *arur* (curse) has within it *alah* (curse), *shavua* (oath), *nidduy*.”

Cherem is the upgraded form of *nidduy* and Ramban (*Mishpat HaCherem*) in fact felt that the concept of excommunication is rooted in the Biblical verse, “Every *cherem* that is issued on a person” (*Vayikera* 27:29),⁸ even though *Chazal* make no explicit reference to this connection, and the verse has very different connotations in halachah.⁹ However, Rambam’s construction of the above halachah¹⁰ which teaches that the word *arur* can be used to proclaim a *nidduy* along with conveying additional sentiments, suggests that the Biblical source for *nidduy* is the curses in the Torah that were commanded to be said upon Israel’s entry into the land as the tribes stood on Har Gerizim and Har Eval. While subsequently in *Navi* the term *arur* is used for a type of ban,¹¹ it is only found in the Torah text in connection with *Har Eval*. By issuing an *arur* against a person he is placed in *nidduy* and is foresworn from continuing with certain actions and under a curse should he continue. To understand the concept of *nidduy* we must study the *parashah* of Har Gerizim and Har Eval.

The Mitzvos of Har Eval

The Ba’al Halachos Gedolos (B’HaG) lists both the blessings and curses proclaimed on these mountains, and the subsequent establishing of the stones with their texts as monuments, as *mitzvos*

⁸ כל חרם אשר יחרם מן האדם.

⁹ According to the Talmud it means that if the value of a person who is subject to the death penalty is donated to *bekdesh* it has no value.

¹⁰ Based on *Shevuos* 36a.

¹¹ See *Shoftim* 5:23 (cited in *Hilchos Sanhedrin* (24:7) and *Yehoshua* 6:26.

haTorah.¹² In response to Rambam's objection,¹³ that mitzvos which do not apply for future generations should not be counted, Ramban responds that B'HaG felt they were not one-time commands but mitzvos "whose matter lasts for generations."¹⁴

Of the stones, Ramban says "they were inscribed in seventy languages to be a commemoration for generations." Abarbanel (*Parashas Ki Savo*) explains that these stones were monuments of the kind that are customarily erected by kingdoms. For Israel, these monuments contain the Laws of the Torah that announce our purpose to the world. They are the *mezuzah* of the Land of Israel. The Torah (*Devarim* 11:29-30) identifies Har Gerizim and Har Eval as being in the area of Elonei Moreh. It is there that Avraham Avinu entered the land and established his first altar (*Bereishis* 12:6-7), and this area is to be perceived as the entranceway to Eretz Yisrael. Har Eval is to the right (north) of Har Gerizim¹⁵ as one enters, comparable to the right doorpost upon which a *mezuzah* is placed and the Torah was written there in seventy languages¹⁶ to be read by all who entered. When the Jews moved to Gilgal, where the *Mishkan* was established, the monument came with them.¹⁷ Just as a Jew wears a section of the Torah on his forehead as a sign of his covenant with G-d, he writes the Torah on the entrance to his house and on the entrance to his land. The *Amora'im* of Eretz Yisrael recorded that these stones still stood in their day and they state, "How do we remain standing? Because of the stones erected by Yehoshua."¹⁸

But in what way did B'HaG consider the "blessings and curses" themselves as *mitzvos l'doros*? Ramban says they accepted the "entire Torah" upon "themselves and their descendants for generations but individually and in general with an *alah* and *shevuah*." Since our ancestors obligated future generations in fulfilling the Torah, there-

¹² See under *parshiyos* 63, 64.

¹³ *Shoresh* 3 of the *Sefer HaMitzvos*.

¹⁴ (רמב"ן סה"מ שעוועל דף נט) "שענינו קיים לנו לדורות".

¹⁵ Aryeh Kaplan's *Living Torah*.

¹⁶ *Mishnah Sotah* 32b.

¹⁷ See *Yehoshua* 4:20.

¹⁸ The *Yerushalmi* is quoted by *Tosafos Sotah* 35a.

fore Ramban considers it appropriate to count this acceptance as one of the *taryag mitzvos*.

Yet, others note that curses are proclaimed on only eleven issues on these mountains and this would seem to indicate it was not an acceptance of the entire Torah. Why are these singled out if an acceptance of the entire Torah was the purpose? Rashbam and Ibn Ezra (*Devarim* 27:15)¹⁹ explain that the curses themselves all refer to violations that people do in private. Thus, they do not speak merely of one who worships idols but “and does it in hiding” (ושם בסתר). For this reason, incestuous relationships that are generally kept secret within the family are those that are prominent in the list. Rashbam comments that when the Torah subsequently says “that which is hidden (*hanistaros*) is for G-d [to deal with], and that which is revealed (*niglos*) is for us and our sons to do” (*Devarim* 29:28),²⁰ the *nistaros* refer to these sins and the effect of *arur* is to leave to G-d the punishment for these offenses that the people of Israel do not know of. Rashi (*ibid.*), however, notes that *Chazal* (*Sanhedrin* 43b) explicitly connect the verse of *hanistaros* to *Har Eval* with a different nuance. They explain that the verse refers to *areivus* (ערבות)—the responsibility of each Jew for the actions of others—which was activated at the time the *arur* was proclaimed there. There is disagreement²¹ as to whether the *areivus* is for the *niglos* or the *nistaros* as well but the conclusion seems to be that even for the *nistaros* there is a concept of *areivus*. Ramban (*Devarim* 27:26) quotes a *Yerushalmi*²² to the effect that this oath includes an obligation to “strengthen the Torah in the hands of those who have annulled it.”²³ While the eleven curses refer to sins done in private, a final summation states “*arur* is he who does not uphold (*yakim*) the words of this Torah.”²⁴ And the *Yerushalmi* takes this as a curse on he who does not impede those bent on these private violations. According to B’HaG, the acceptance of the individual to feel responsible (מתערב) for the sins of others is the lasting mitzvah of the *para-*

¹⁹ The *pashtanim*.

²⁰ הנסתרות—לי, אלו קינו; והנגלות לנו ולבנינו, עד עולם לעשות, את-כל-דברי התורה הזאת.

²¹ Coupled with some ambiguity

²² *Sanhedrin* 30a, also noted by *Da’as Zekeinim*.

²³ מחזיק התורה ביד המבטלים אותו.

²⁴ אשר לא יקים את דברי התורה הזאת.

shah of “Blessings and Curses” (ברכות וקללות), and this responsibility extends even to those sins that are done by others privately.

Torah Enforcement

Rambam (*Sefer HaMitzvos, Shoresb* 3) criticizes B’HaG for counting these mitzvos in the *taryag* and considers them unique commands made to Israel as one-time performances. As far as an obligation to see to it that others do the mitzvos implied by the concept of *areivus*, this would be covered under the mitzvah of “rebuking sinners” (*Aseh* 205) (הרוכיה תוכיח). Yet from his description of the concept of *arur* in *Hil. Talmud Torah*,²⁵ it is clear that the *parashah* of *Har Eval* is the Biblical grounding for the concept of *nidduy*. The nation of Israel proclaimed an oath (*shevuah*) to keep the Torah, a curse (*alah*) upon those who violate it, and apparently accepted upon themselves *nidduy* of the violators. This was not the excommunication that the rabbis later defined with exact halachic parameters, but a conceptual separation and a distancing from the transgressors. Perhaps, this *nidduy* should be best labeled as “disapproval,”²⁶ and it is upon this *nidduy*, which is a function of *areivus*, that the maintenance of a Torah society depends.

The prohibitions in the Torah are for the most part unenforceable. The Torah, as interpreted by *Chazal*, made them so by requiring that no punishment be meted out by *beis din* unless there are two witnesses to the offense who had warned the offender before he had acted.²⁷ The result of this requirement is to make the myriad punishments in the Torah basically theoretical. The laws are on the books as a deterrent to public violation, and no sane person—with

²⁵ Inclusive of *nidduy*, *shevuah*, and *alah*.

²⁶ The *gemara* speaks of a step that precedes *nidduy* called *nezifah* (נזיפה), but Rambam does not bring it as a halachic state.

²⁷ Rabbeinu Nissim in *Derashos HaRan* points this out. He goes so far as to claim that the obligation to see that the Torah was generally enforced was upon the king. He posits that בית דין מכין ועונשין שלא מן הדין applies only when there is no Jewish government, but when the monarchy is in place, this power rests with the king.

the rarest of exceptions²⁸—would perform transgressions so openly as to incur punishment. Where the Torah and *Chazal* were intent on punishment, these requirements were put aside. Thus the murderer would receive a life sentence²⁹ based on circumstantial evidence or be dealt with by the king. The *massis* (מסיית) who persuades others to worship idols is subject to entrapment based on an explicit Torah command.³⁰ When a particular violation became widespread, then the principle that *beis din* has the right to take temporary extraordinary measure to curb it applies.³¹ But under normal conditions the many punishments detailed in the Torah would not be applied. Those who find that a particular punishment seems too harsh should be aware that the Torah on the one hand explains that this punishment is indeed what justice demands. On the other hand, the Torah does not want the punishment to actually be carried out.³²

The Torah did not want *beis din* looking behind closed doors and did not wish to fashion a police state. And in fact *Chazal*'s concept of *hanistaros* encompasses all that is short of committing a transgression in front of witnesses after having been warned. The non-religious in the midst of a Jewish society were tolerated as long as they did not transgress publicly. But how was a Torah society to emerge when the laws were not enforceable? Via *arur*. While the Torah states³³ that “blessings and curses” were pronounced on the twin mountains, only the curses are listed explicitly in the Torah.³⁴

²⁸ In certain instances these exceptions would qualify one as a type of heretic—עושה ביד רמה—and require the ultimate punishment of death for that reason alone. But there are some rare cases (recorded in the Talmud) where the perpetrator apparently has such a psychological need to commit the crime that he will not be deterred, no matter the consequences. The Torah does not consider this a *ptur* on the grounds of insanity.

²⁹ Of a very short life. See *Hilchos Rotzeach* 4:8–9 and *Hilchos Sanbedrin* 18:4.

³⁰ *Hilchos Avodah Zarah* 5:3.

³¹ ומכין ועונשין שלא מן הדין. See *Hilchos Sanbedrin* 24:7 and note 25 above.

³² There could be several ways to explain why the Torah does not want the punishment carried out. This is similar to how Rambam explains עין תזות עין. See *Hilchos Chovel* 1:3, *Moreh Nevuchim* 3:41.

³³ At the start of *Parashas R'eh*.

³⁴ Also, the stones were placed on Har Eval where the ארוור was proclaimed.

It is the neighbors' disapproval that is the means of enforcement—social pressure from those who are near and those who are far.

Areivus

Chazal tell us that the *arur* was a function of the *areivus* that was created when Israel crossed the Yarden and entered into Eretz Yisrael. The actual statement of *Chazal* is כּל יִשְׂרָאֵל עֲרֵבִים זֶה לְזֶה.³⁵ While we often translate this as “All of Israel is responsible for each other,”³⁶ with the word עֲרֵבִין meaning “responsible,” literally it means that “all of Israel is mixed together as if one.” John Donne expresses the sentiment well and applies it to the brotherhood of all men, while we apply it to “our brothers in Torah and mitzvos.”³⁷

No man is an island entire of itself; every man is a piece of the continent, a part of the main... any man's death diminishes me, because I am involved in mankind. And therefore never send to know for whom the bell tolls; it tolls for thee. (*Devotions—Meditation xvii*)

Each member of Israel is harmed when spiritual injury is inflicted upon his brother and he must proclaim *arur* against those who violate the Torah. In so doing he saves himself.

The Last Arur

We have established that *beis din* was not intended to enforce private observance and rather this role was given to the people. But nevertheless is not a Jewish government, the king, expected to enforce religious observance? We read in *Tanach* of how King Yoshiyahu set out to undo the harm done in the reign of his evil father and proceeded to destroy the idols that had proliferated (*Divrei HaYamim* II 34:3ff) and ordered repairs to be made to the *Mikdash*. While so doing he discovers an ancient *Sefer Torah* which spurs him on to bring about a spiritual revolution (*Divrei*

³⁵ See *Shevuos* 39a.

³⁶ Some have the *girsā* עֲרֵבִין זֶה לְזֶה.

³⁷ אֲהִינּוּ בַחֲרָה וּמִצְוֹת. To what degree Donne's principle should be applied by Jews will be the subject of a future essay.

HaYamim II 34:19). Rashi comments (*ibid.*)³⁸ that the text he found was *Mishneh Torah* (*Sefer Devarim*)³⁹ and *Chazal* say it was a verse from the *tochachah*,⁴⁰ that he had not seen before that moved him⁴¹: “G-d will take you and the king that you will appoint over yourselves to a nation you do not know” (*Devarim* 28:36.) The term *Mishneh Torah* is used in *sefer Yehoshua* (8:32) to describe the writing on the stones on Har Eval, and thus the suggestion is that he was reawakened to the message that had been inscribed on the *mezuzah* of Eretz Yisrael, and he realized that Israel’s violation of their covenant endangered their continued existence.

Elsewhere the *Yerushalmi* (*Sotah* 30a) links the *Sefer Torah* of Yoshiyahu even more directly to our *parashah*—to the very last *arur*:

‘*Arur* is he who will not establish (*yakim*) [the words of this Torah]’—it is upon me to establish it.⁴²

The *Yerushalmi* then continues:

If one learned and taught, kept and did, but had the opportunity to strengthen it and did not do so, he is in the category of *arur*.⁴³

The king is empowered to punish without witnesses or warning⁴⁴ and thus Yoshiyahu may very well have been spurred to act in that capacity to reform the nation that had been led by his wicked father. *Tanach* tells us of his reforms which reach a climax with a glorious *Pesach* sacrifice by the entire nation.

³⁸ Based on the *midrash*.

³⁹ See *Sotah* 32a that seems to imply that the entire Torah was written in 70 languages while Rav Saadia Gaon says only the *taryag mitzvos* were written. See Ibn Ezra and Ramban, *Devarim* 27:3.

⁴⁰ Moshe’s rebuke and G-d’s threat of Israel being cursed should they not obey the Torah.

⁴¹ *Yerushalmi, Shekalim* 6:1

⁴² "ארור אשר לא יקום - על הדבר הזה קרע יאשיהו ואמר עלי להקים."

⁴³ "למד ולימד ושמר ועשה והיה סיפק בידו להחזיק ולא החזיק הרי זה בכלל ארור"

⁴⁴ We have noted above (note 25) that Rabbeinu Nissim claims that this is exactly what the king’s powers are for, and *beis din* only acquires the rights of *מִן הַדִּין* when there is no king in Israel.

He then gathered (*bikbil*) the nation to bring the *Korban Pesach*, and there had been no *Pesach* like it from the days of Shmuel HaNavi. (*D.H.* II: 36)⁴⁵

Yoshiyahu's Failure and Chizkiyahu's Success

Nevertheless, he seems to have been doomed from the start, and the *Mishneh Torah* he found was not to be his salvation but an omen of his demise. In his consultation with Chuldah the Prophetess he was told:

Behold I will bring evil on this place and its inhabitants, all the curses (*alos*) that are written in the *sefer* that was read before the king of Yehudah. (*ibid.*)⁴⁶

Immediately after the mass performance of the *Korban Pesach*, Israel is invaded and defeated by the king of Egypt. *Chazal* notice a lament in the language of *Tanach* in its usage of terminology comparable to that used for the days of Chizkiyahu. The *mikra* speaks of the religious accomplishments of both and follows Chizkiyahu's with a miracle and Yoshiyahu's with tragedy.

'And after (*V'acharei*) all this that Yoshiyahu prepared the *Bayis* Pharaoh Necho went up to war etc.' The verse is lamenting and wailing over Yoshiyahu (*D.H.* II:35:19) that no miracle occurred to him as had for Chizkiyahu where it writes 'After (*V'acharei*) the words and the truth, Sancherib came upon Chizkiyahu and a miracle occurred.'⁴⁷

Why did Yoshiyahu fail? *Chazal* say⁴⁸ that that he avoided going to Yirmiyahu and chose Chuldah in the belief that women are more compassionate—he was not fully willing to hear what needed to be done. But exactly wherein lay the failure? The *gemara* in *Taanis* (22b) tells us. "He was unaware of the irreligious who gathered behind closed doors."⁴⁹ As we have seen, the *arur* lies in the sins

⁴⁵ " ואז הקהיל העם להביא (פרק לה) ק"פ ולא נעשה פסח כמוהו בישראל מימי שמואל הנביא. "

⁴⁶ "הגני מביא רעה על המקום הזה ועל יושביו את כל האלות הכתובות על הספר אשר קראו לפני מלך יהודה."

⁴⁷ Brought by Rashi to *D.H.* II:35:19.

⁴⁸ See *Taanis* 22b and Rashi to *D.H.* II:34:22.

⁴⁹ "(תענית כב): "ולא ידע בחטא ליצני הדור אשר אחרי הדלת קמו לסדור"

committed in private and thus in gathering the people to publicly bring the *Korban Pesach en masse*, the *arur* had not been addressed.

In the days of Chizkiyahu a *Korban Pesach* was also brought, and in its description and in what surrounds it we discern the reason for Chizkiyahu's success, in contrast to the failure of Yoshiyahu. First we are told that Chizkiyahu (Chapter 29) "strengthened the *Beis HaMikdash* and the Service." He "invited (*bizmin*) the entire nation to make the *Pesach*." Then (chapter 30) "He called the people to repent" (6) and the result was "there was great joy in Yerushalayim, for since the day of Shlomo b. David the king of Israel there had not been like this in Yerushalayim etc. and their prayers for His Holiness came to Heaven (26–27). (Chapter 31) "When all this was over, all of Israel went out ... and broke the *matzevos* etc. and they destroyed the *asherim* (1). "And he did what was good and right ... in Torah and mitzvos to seek his G-d, with all his heart he acted and was successful. G-d listened to Chizkiyahu and the nation was healed." (20)

Whereas Yoshiyahu "gathered" (*bikbil*) the people, Chizkiyahu "invited" (*bizmin*) them. Whereas Yoshiyahu's *Korban Pesach* is noted for its numbers, that of Chizkiyahu is noted for its joy and the spirituality of the people's prayers. Whereas Yoshiyahu broke the idols himself, it is the people in the time of Chizkiyahu who break them, and only after they have experienced the uplifting experience of *Korban Pesach* and Yerushalayim. The *mikra* testifies that the "nation was healed." In Chizkiyahu's Israel there were no idol-worshippers behind closed doors. He had fulfilled the intent of "He will establish (*yakum*) this Torah." Israel was no longer subject to "*Arur* he who makes an idol and acts in secret."

The King's Mitzvos

The last three mitzvos listed by Rambam in his *Sefer HaMitzvos* (*Lav* 363–365) are the three prohibitions that apply to the king. He is not to have too many wives, too many horses, or accumulate too much wealth. That these are the last mitzvos is significant,⁵⁰ since the order of the *Sefer HaMitzvos* is based on placing the goals of the

⁵⁰ See *Hakirah* 9, "Mishneh Torah—Science and Art."

Torah at the beginning, and the means of attaining them at the end. The first mitzvah is the knowledge of G-d which is the goal of all *mitzvos haTorah*. In order to reach this goal, a stable civil society has to be established in which man is able to devote a significant time to study. Thus the foundational mitzvos of the Torah revolve around the establishment of a Jewish government.⁵¹ Yet these mitzvos are explained by *Chazal* as not pertaining directly to the governance of the people but to the private life of the king. It is he who is prohibited from having a large harem while a wealthy private citizen is not legally prevented from doing so. It is he who personally may not have a large stable of horses, while the government is to have as large a force as the king feels is necessary for its military needs. It is the king who may not accumulate large wealth but what is taxed for government purposes is not legislated. Rambam explains the concept behind these limitations in expounding on the Torah's reason for prohibiting a harem:

ולא יסור לבבו שלבו הוא לב כל קהל ישראל. לפיכך דבקו הכתוב בתורה יתר משאר העם שנ' כל ימי חייו.

That his heart not be turned away, for his heart is that of the entire congregation of Israel. Thus the written word attached him to Torah more than the rest of the nation. (*Hilchos Melachim* 3:6)

The positive command that applies to a king is that he write a *Sefer Torah* and take it with him wherever he goes (*Mitzvas Aseh* 17). Chizkiyahu is spoken of by *Chazal* as head of the Sanhedrin. He emphasized education during his realm, and in his day all the children were expert even in the esoteric laws of *Tabaros* (*Sanhedrin* 102a). *Chazal* (ibid.) say that “he stuck a sword on the entrance of the *Beis Midrash* and said that he who does not study Torah will be stabbed with this.” It would seem that education was compulsory in his day. But as we have seen from the *mikra*, his methodology of reform was not religious compulsion (כפייה דתית) but rather educa-

⁵¹ Rambam explains this in several places. *Hilchos Teshuvah* chapter 8 is a good example.

tion.⁵² The gentle hand of his rule was the means of leadership that the Torah dictates. The means of “establishing this Torah” entrusted to the king was leadership by example and via education. The *arur* directed at the king is for a failure to teach Torah values to his nation.

The king’s authority is based on a mitzvah commanded to the people שום חשים עליך מלך—“Put a king upon yourself” (*Mitzvas Aseh* 173) and *Chazal* add in explanation of the verse that “his fear should be upon you” (*Sanhedrin* 22a, *Hilchos Sanhedrin* 2:1.) Ultimately his authority is dependent on the decision of the people to follow the laws of the Torah that commanded that he be obeyed.

Enforcing Torah in *Galus*

Now let us return to our halachah in *Hilchos Talmud Torah* with regard to *arur*: “*Arur* includes a curse, an oath, and *nidduy*.” (וארור, בו אלה, בו שבועה, בו נידוי) The *arur* of the Torah is an oath⁵³ to refrain from these practices, a curse upon those who do them, and a commitment to isolate from society the perpetrators. At *Har Eval* the nation of Israel, as a society, condemned the private transgressions of individuals, and the monuments established on that mountain attested forever to this commitment. What is despised by the general population has a penetrating effect into the private lives of all citizens. What one feels he must hide from the public carries with it shame, and it is this shame that prevents the spiritual ills that have infected part of society from rapidly spreading further, and enables a healing process to take hold. We mentioned at the onset that Raavad asked why Rambam left out other cases of *nidduy* that Rambam brings elsewhere in *Mishneh Torah* and responded with the suggestion that these twenty-four alone are eligible for any member of the public to proclaim, while the others require *beis din*. These are the *nidduy* that are a replica of the *arur* proclaimed on *Har Eval*, and are meant to emerge from the people themselves.

⁵² Most likely the statement means that he taught this rule—that if one does not study he will bring about his own doom.

⁵³ Clearly halachically נדוי is a נדר and is undone with the process of התרת נדרים. See Chapters 6 and 7 in *Hil. Talmud Torah*. One placed in נדוי is expected to adopt certain laws of *aveilus*.

On the other hand we contended that they are listed in *Hilchos Talmud Torah* because the sole means of enforcement is *kvod chachamim*, as *beis din* does not itself punish the offender and is dependent on the public's respect for the law for the enforcement of the ban. But in fact even those cases not listed here are dependent on the public to enforce the ban, and thus should they not be listed here as well? We should also question our very premise, for in actuality, as long as *beis din* is empowered to enforce punishments for public transgressions, even *nidduy* is ultimately under their domain and they can punish those who do not conform to a ban.⁵⁴ It is primarily after the dissolution of the Jewish nation and its institutions of authority that the need of *nidduy* as a means of enforcement becomes necessary. Thus it follows that another element is involved in determining the makeup of the list of twenty-four. This list constitutes what *Chazal* felt was most necessary to be enforced in *galus*. Only because of the people's *kvod chachamim* which is, of course, *kvod haTorah*⁵⁵ itself, will a Jewish society be maintained in *galus*.⁵⁶

We noted above, that the *gemara* said that the *areivus* that was created was both for the public and private *shemiras hamitzvos* of others. While a Jewish government exists, its relevance is mostly in the *arur* that society has for violation of the mitzvos committed privately. It is in *galus* that it is relevant to the public transgressions that under a Jewish government would not be tolerated. The first group⁵⁷ of the twenty-four are primarily directed against those who reject and belittle the authority of the rabbis and their courts, which in *galus* are totally dependent upon public acceptance.⁵⁸ Later entries are for the enforcement of higher standards of conduct than those of the gentiles we live amongst, with regard to such things as

⁵⁴ See *Hilchos Talmud Torah* 7:13; *Hilchos Sanhedrin* 24:7.

⁵⁵ See the last halachah in *Hil. Talmud Torah*.

⁵⁶ במו"נ ג:לו דהלכות כבוד ת"ה הוא בספר מדע יחד עם מצות ת"ה דלא ילמדו השקפותם ומעשיה בלי הדור בנפשות.

⁵⁷ 1-6.

⁵⁸ The one exception is "calling someone a slave." I believe that this is related, because just as we must keep the Torah norms of elevating *chachamim* we must not create an underclass that is treated with less respect than the norm.

preventing damage and with regard to trial evidence.⁵⁹ Higher standards of kashruth supervision were enforced in *galus* than in Israel⁶⁰ and those who swore with the name of G-d⁶¹ and public purveyors of pornography⁶² were to be ostracized. The Jewish “street” was not to be like that of the culture that surrounded them. The link to the *Beis HaMikdash* and Eretz Yisrael was to be maintained in *galus*, and thus laws and even customs related to its memory were to be harshly enforced.⁶³

As we would suspect, since the purpose is to maintain Israel in *galus*, certain cases target specifically those who would affect the public’s observance. Those who bring the public to *chillul Hashem*,⁶⁴ who prevent them from doing a mitzvah,⁶⁵ are to be banned.

The “Statement of Principles” and *Kvod HaTorah*

The “Statement of Principles on the Place of Jews with a Homosexual Orientation in Our Community,” signed by over 200 Modern Orthodox rabbis and communal leaders, contains at least two passages that may be construed as running contrary to the concept of *arur* and *nidduy*.

“We do not here address what synagogues should do about accepting members who are openly practicing homosexuals and/or living with a same-sex partner. Each synagogue together with its rabbi must establish its own standard with regard to membership for open violators of halakha. Those standards should be applied fairly and objectively...”

“Halakhic Judaism cannot give its blessing and imprimatur to Jewish religious same-sex commitment ceremonies and weddings, and halakhic values proscribe individuals and communities from encouraging practices that grant religious legitimacy

⁵⁹ 7–9.

⁶⁰ 19–20.

⁶¹ 13.

⁶² 21. Also 22 is related to higher level of *tznius*.

⁶³ 11–12, 15, 16.

⁶⁴ 14.

⁶⁵ 18.

to gay marriage and couplehood. But communities should display sensitivity, acceptance and full embrace of the adopted or biological children of homosexually active Jews in the synagogue and school setting, and we encourage parents and family of homosexually partnered Jews to make every effort to maintain harmonious family relations and connections.”

The declaration tries to draw a fine line between giving “a blessing” to open homosexual unions and any possible condemnation of the people involved. The open practice of what the Torah prohibits even to the Noahides is certainly subject to *nidduy*.⁶⁶ When a *kohen* married a divorcee in a secular ceremony, within Rambam’s community, the couple was put in *cherem* and Rambam referred to their conduct as *עושה ביד רמה* “he who acts with an uplifted hand” whom *Chazal* say are denied a portion in the World to Come.⁶⁷ Indeed we dare not make this condemnation against people who do not find themselves able to control their physical desires, but public display with the expectation of acceptance certainly cannot be condoned. *Chazal* tell us that he who cannot control his desires should go where he is not known and “do what his heart desires and not profane the Name of Heaven openly.”⁶⁸ Better yet is the hope that he will turn to family and friends for support and seek out the help of those who can help him battle his unwanted desires.⁶⁹ The Jewish society that we are commanded to maintain in *galus* calls for rejecting those who wish their flaunting of Torah law to be accepted. It is not our obligation to alleviate their discomfort, but rather to induce it. While the declaration is concerned with *kvod habriyos* it seems to do so at the expense of *kvod haTorah*.

המזלזל בדבר אחד מדברי סופרים ואצ"ל ל' המזלזל בדבר אחד מדברי תורה

⁶⁷ See *Teshuvos* Blau 349.

⁶⁸ MK 17a. Perhaps this statement was made for this very case.

⁶⁹ ומה היא תקנת חולי נפשות—ילכו אצל החכמים, שהם רופאי הנפשות, וירפאו חוליים בדעות, שמלמדין אותם עד שיחזירו לדרך הטובה. והמכירים בדעות הרעות שלהם, ואינם הולכים אצל החכמים לרפא אותם—עליהם אמר שלמה, "ומוסר, אווילים בזו" (הל' דעות ב:א) משלי א,ז.

Challenging Leadership

Interestingly, in many of the cases to which the Talmud specifically refers, we find the subjects put into *nidduy* or narrowly escaping it because of their exalted status as great rabbis and leaders. The sainted Akaviah b. Mehalalel is considered to have insulted the memory of Shemayah and Avtalyon (*Berachos* 19a). It is R. Eliezer b. Hanan who criticized the *takanah* of washing hands (*ibid.*). R. Akiva is threatened for having stopped witnesses from violating Shabbos to testify when he knew that they were not needed (*Yerushalmi* MK 3:1). Tudos the Rabbinic patron of Rome led the people in a mock *Korban Pesach* and is accused of bringing the community to eating *kodshim* outside of the *Mikdash* and only because of his stature escapes the ban (*Pesachim* 53a.) Even *Choni HaMe'agel* who forces the hand of G-d in demanding mercy for Israel is accused of risking to bring Israel to *chillul Hashem* since under other circumstances his gambit would have failed (*Yerushalmi* MK 3:1.) In all these cases, great leaders broke with the established procedures based on personal initiative and the rabbis declared that *nidduy* was called for. It was only after much debate that in Usha a *takanah* was made that if the *Av Beis Din*, the High Court's second-in-command and apparently the minority leader, caused trouble, he should only be placed in a private *nidduy*.⁷⁰ Many issues are complex with serious grounds for disagreement and yet, even when a *Gadol B'Yisrael* crossed the line, *nidduy* was called for.

Two of the cases we mentioned are especially worth examining. Tudos of Rome's greatness is attributed to two different qualities (*Pesachim* 53a.) First, he helped in the *parnasah* of the *chachamim*. Secondly, he is attributed with saying that we must learn *mesirus nefesh* from the frogs in Egypt who sacrificed themselves in the ovens of the Egyptians. With this *Chazal* describe the man who wished to bring a mock *Korban Pesach* to poke his finger in the eyes of the Romans—perhaps to announce to them that Israel will return shortly to their worship in their Temple. *Chazal* objected, perhaps feeling he endangered the people and asked too much of them in

⁷⁰ *Moed Katan* 17a. See *Hilchos Talmud Torah* 7:1 that even the *Nasi* was subject to this private ban. This probably means that the declaration would be done privately and he would put himself in self-imposed isolation.

flaunting their religion before their captors.⁷¹ They objected to Choni's approach (*Yerushalmi* MK 3:1) of demanding G-d's mercy, saying that had he lived in the time of Eliyahu he would have brought the nation to *chillul Hashem*. In the time of Eliyahu the confronting of the idolaters was necessary—the fault lay with the people entirely, and perhaps here as well they felt Choni asked too much of G-d and too little of the people and is called “arrogant before G-d.”⁷² Thus sometimes *Chazal* refrained from a ban they thought necessary because of the circumstances, and apparently merely the prominence of the person and his elevated motivation saved him. Sometimes, though, it did not help. R. Akiva backed down or he would have been banned. One of the greatest of our scholars, R. Eliezer b. Hyrkanes, died in *cherem* (*Bava Metzia* 59b).

***Nezifah* (Scorn)**

While *nidduy* often targeted the greatest in Israel, it can be proclaimed by even the smallest. It is the maid of Rabbi who sees a man striking his grown son and puts him in *nidduy*, for such conduct will lead him away from the path of Torah (*Moed Katan* 17a). From this case we learn that those who transgress the prohibition of *lifnei iver* are to be included in the list of twenty-four. The *gemara* says that the rabbis accepted her *nidduy*.⁷³ Had they felt she was being overly-intrusive into the private lives of others or did not accept her assessment of the consequences of this act, they would have ignored it and perhaps all of Israel would have as well. But they considered what she said, evaluated it, and concluded she was right and thus they were bound by her proclamation.

Sometimes leadership does not act when one of these twenty-four violations against *kvod haTorah* have been violated. There are reasons. Leaders must take much into account. Also they have great responsibilities and the priorities of leaders may make them less aware of what the common man recognizes.

⁷¹ This is perhaps called *קדשים בחוץ* in that he expected too much *kedushah* of Israel in *galus*.

⁷² מגיס דעתו כלפי מעלה.

⁷³ לא נהגו רבנן קלות ראש בנדויה.

When Jon Corzine ran against Chris Christie in New Jersey in the 2009 gubernatorial race, Lakewood Yeshivah supported Corzine despite the fact that gay marriage was high on his list of priorities—as his social programs greatly benefited the yeshivah and its *talmidim*. Other *rabbanim* objected that this issue alone mandated that Orthodox Jews not vote for him.⁷⁴ The *talmidim* of Lakewood voted overwhelmingly for Christie. In New York, Andrew Cuomo made gay marriage a priority and no major rabbinical voice opposed his election. The speaker of the Assembly, an Orthodox Jew, pushed the bill, saying it “is a matter of equity and justice” and “people should be able to marry whom they choose.”⁷⁵ There was talk in the media of how they would try to pass the bill before sundown on Friday to accommodate the Shabbos.

Another Orthodox Jewish assemblyman also supported the bill and delivered an address in which he declared: “I am an observant Jew. This is not a religious issue. I feel very strongly that this is a civil rights issue. The time has come, and I recommend that everyone vote for this bill and I will **proudly** vote for this bill.” Shortly afterwards he was chosen by the Democratic Party to run for a recently vacated seat in Congress.

What *Chazal* had to say about gay marriage is recorded in *gemara Chullin* (92ab) where a verse in Zechariah refers to the number 30 as a key to the salvation of the gentile world from destruction. This refers to the 30 mitzvos they accepted, apparently a more detailed version of the seven Noahide laws. They however only kept three, the first being that they “did not write a *kesuvah* for males,” i.e.,⁷⁶ though they had arrangements for partners in *mishkav zachar*, they did not make official marriage documents for it. *Chazal* viewed this mitzvah as part of the last bastion before the dissolution of a civil society.⁷⁷

⁷⁴ See <http://en.wikipedia.org/wiki/Lakewood_Vaad>.

⁷⁵ He backed the bill vigorously even in 2009 when the State Senate soundly defeated it.

⁷⁶ See Rashi.

⁷⁷ Of the other two merits the first was that they “gave honor to the Torah” and with such laws as this and multiculturalism’s equation of the values of all cultures this is pretty much gone. The second is that that though they

In Brooklyn, where *Hakirah* resides, there was, in fact, a quick and decisive “Torah” reaction to the passing of this law. One headline read:

Brooklyn Archdiocese Issues Ban on All State Legislators Who Voted for Same-Sex Marriage Law.

The story continued:

Bishop Nicholas DiMarzio sent a letter to diocesan schools and churches, condemning Albany’s corrupt political culture while asking they refuse any distinction of honors bestowed upon them by lawmakers who voted for same-sex marriage. Assemblyman Joe Lentol (D-Williamsburg, Green Point, Fort Green) said he voted his “conscience” and “for equality.” He then received a letter returning his annual gift to a school’s graduating class. “I actually feel sorry for the congregation,” Lentol said. “I know the church is not in the greatest financial position.”

When the special election for Congressional seat NY-9 was held,⁷⁸ perhaps the district with the largest number of Orthodox Jews in the country, the Democratic candidate received the endorsement of *The Jewish Press*. The OU sponsored an ad saying that there was no difference between the candidates on any major issue. Meanwhile, a grass roots movement collected signatures of *rabbanim* to oppose him, but none of the “Agudah *rabbanim*” in the district signed, though Rav Shmuel Kaminetzky, *sblita*, of Philadelphia and 45 other *rabbanim* did. The Orthodox community voted overwhelmingly for Republican candidate Bob Turner, who won handily in a district where no Republican had come close to winning in almost 100 years.⁷⁹

Declaring a *nidduy* is a very serious matter. The last of the twenty-four categories of those to be banned is “one who inappro-

murdered they did not sell the flesh by pound in the market. Apparently they meant they had not become cannibals.

⁷⁸ On September 13, 2011.

⁷⁹ There were other factors at play, especially the Obama administration’s treatment of Israel. Most news outlets saw it as Orthodox Jewry’s rebuke of the Israel policy, but those who dug deeper recorded that gay marriage was a major factor and perhaps the deciding one.

privately bans another.” Orthodox Jewish lawmakers are perhaps a great asset to the community—especially with regard to gaining government funding for Orthodox institutions. On the other hand, perhaps a reliance on this funding is what Rambam meant when he says earlier in *Hilchos Talmud Torah* (3:10) that when a *talmid chacham* is not financially self-sufficient and is dependent on the support of others “he is *mechalel Hashem* and denigrates the Torah, and extinguishes the light of Torah and causes evil to himself and takes his life out of *olam haba*.” The Orthodox voters of NY-9 were not willing to be bought and *chillul Hashem* was avoided.

Some argue that “this is not our community,” and what is done outside of our circle is not relevant. There is much to discuss and I hope that a variety of people will explain in the pages of *Hakirah* how they believe the Torah teaches us to react to the crumbling of Judeo-Christian values in this great country that has been a secure and benevolent haven for the Jewish people ever since its founding. Yet I don’t believe that one can deny that in this vote on the part of two Orthodox Jewish assemblymen the Jewish community has been brought to perform a great *chillul Hashem*. Certainly these men have contributed to *lifnei iver*. Certainly there is denigration of a mitzvah in the Torah⁸⁰—a mitzvah that is one of the seven Noahide laws.

Perhaps in our environment it is best that *nidduy* is not practiced, but the Talmud (*Moed Katan* 16ab⁸¹) and *Shulchan Aruch* (*Yoreh Deah* 334:14) speak of another, less formal, method of demonstrating outrage, called *nezifah* (נזיפה)—scorn.⁸² This mechanism is still in place and was demonstrated by the votes of NY-9. ❧

⁸⁰ Refer back to the list of twenty-four. With regard to the obligation on Jews to enforce the seven Noachide laws see *Hil. Melachim* 8:10.

⁸¹ See Rosh, *ibid*.

⁸² Rambam does not refer to it, apparently feeling that it is the act of shunning which does not have halachic standing.