

## *Marah: Preparing for Kabbalas HaTorah*

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### The Mitzvos of Marah

After leaving Egypt, while on the way to accepting the Torah at Har Sinai, Israel is given some preparatory instruction at a place called Marah.

שם שם לו חק ומשפט (שמות טו:כה).

There He made for them a statute and an ordinance.

Rashi, quoting a *midrash* found in *Seder Olam Zuta*, says this refers to “Civil laws, Shabbos, and the red heifer.” Alternatively, the Talmud Bavli (*Sanhedrin* 56b) lists the mitzvos as דינים, שבת, וכבוד אב, with the mitzvah of honoring parents in place of the red heifer. Since the *Seder Olam Zuta* is a somewhat obscure *sefer*, some later commentaries were unable to find Rashi’s source. Thus Rav Baruch Epstein in his *Torah Temimah* commentary (*ibid.*) argues—apparently feeling that it makes no sense that Israel would have been taught the most esoteric of mitzvos at this early preparatory stage—that the original text was the abbreviated “כ”א” and a scribal error converted it to “פ”א” and this in turn led to the error of פרה אדומה being substituted for כבוד אב.

However, a study of the Rabbinic texts<sup>1</sup> suggests that there are, in fact, two distinct midrashic explanations, based on different verses in the Torah. The first *drash* is based on the verse חק ומשפט, with דינים being the almost literal meaning of משפט which is associated with rational, understandable laws directing the smooth functioning of society.<sup>2</sup> On the other hand, חק refers to the esoteric laws of the Torah, and the prototype would, of course, be פרה אדומה, the one mitzvah that even Shlomo HaMelech did not understand.<sup>3</sup> This *midrash* contends that Israel was given a preview of the mitzvos that they were later to accept before they were shown the entire structure. We need not take literally that it was פרה אדומה that was

<sup>1</sup> The *Mechilta* on this verse brings other opinions as well, including the opinion that the word חק refers to עריות. We will return to this later in the essay.

<sup>2</sup> The *Mechilta* says it refers to דיני קנסות ודיני חבלות.

<sup>3</sup> *Midrash Rabbah, Chukas, parashah* 19.

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explained to them, but that the concept of חק was introduced to them so that their acceptance of the Torah could be a knowledgeable one. Shabbos, the third mitzvah, had certainly been taught to them before *Matan Torah* since with the descent of the מן that follows in the next chapter (*Shemos* 16:1ff) they are warned of its laws and actually experience it. Thus, Israel's preparation for accepting the Torah consisted of their introduction to the just civil laws of the Torah (משפט), its philosophical spiritual commands (חק), and their acceptance upon themselves to memorialize G-d's creation of the world on a weekly basis (שבת).

On the other hand, the Talmud<sup>4</sup> chooses כבוד אב as a preparatory command, because the text of the *Aseres HaDibros* recorded in *Sefer Devarim—Dibros Acharonos*—adds the phrase “as Hashem your L-rd commanded you” כאשר צוך ה' אלקיך to this mitzvah, and this “as Hashem your L-rd commanded you” is taken to refer to previously at Marah. Thus it is the mitzvah of honoring parents rather than the esoteric חקים that was necessary to prepare Israel to accept the Torah. The words חק ומשפט together teach דינים, and Shabbos is learned from the fact that *Dibros Acharonos* refers also to Shabbos as כאשר צוך ה' אלקיך. This set of laws cannot be viewed as a preview of the scope of the mitzvos that awaited Israel since the esoteric חקים were not part of this introduction,<sup>5</sup> so what exactly is the significance of these three mitzvos? The Talmud (*Sanbedrin* 56b) says that these three were added to the seven Noachide mitzvos that all people were already bound by and thus it would appear that this addition completed a grounding in fundamental principles that would prepare them for the totality of the mitzvos.

### Shabbos and *Yetzias Mitzrayim*

We should also note that by making the *Dibros Acharonos* the focus of this *drashah*, the inclusion of Shabbos should be considered in a different light from what we stated above. In *Dibros Acharonos*, Shabbos is presented as “In memory of taking us out of Egypt” זכר ליציאת מצרים and therefore we should interpret that the mitzvah that was taught at Marah was to commemorate Israel's redemption from Egypt. Rambam in *Moreh Nevuchim* (2:31) explains that here the Torah adds a second concept behind the mitzvah of Shabbos. Shabbos is a celebration of our freedom. “The fact that G-d has given us the law of the Sabbath and commanded us to keep it is the consequence of our having been slaves; for then our work did not

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<sup>4</sup> And *Mechilta*

<sup>5</sup> And although the Torah uses the word חק, it has a different connotation than what is often found in the *midrash*.

depend on our will, nor could we choose the time for it; and we could not rest.” Our freedom from slavery gave us control of our time and our destiny and we commemorate it by dedicating it to the remembrance of G-d’s mercy and His purpose—a life centered on the spiritual and dedicated to bringing the world to His knowledge. We can easily see why this mitzvah was given at this time. It serves as a bridge between *Yetzias Mitzrayim* and *Kabbalas HaTorah*.

### דינים of Israel

Likewise, דינים would obviously be necessary to set up the Jewish society, but with regard to the inclusion of this mitzvah we run into the problem that *Amora'im* in the Talmud struggle with. דינים already existed among the seven Noachide laws, so what did the *Beraisa* mean by adding דינים? The Gemara (*Sanhedrin* 56b) suggests several ways in which “Jewish laws” דיני ישראל are more exacting than those of *Bnei Noach*<sup>6</sup> but is somewhat vague about its conclusion. I believe that Rambam in *Hilchos Malveh v'Loveh* and in *Hilchos Geneivah* brings two other *midrashim* that were directed to answering this question.

### The Prohibition of ריבית and the Bond of Israel

With regard to Jews who involve themselves in any way with taking interest (ריבית), Rambam relates a very strong condemnation.

כל הכותב שטר ריבית, הרי זה ככותב ומעיד עליו עדים שכפר בה' אלוקי ישראל. וכן כל הלווה ומלווה בריבית בין לבין עצמן—שניהן ככופרים בה' אלוקי ישראל, וכפרו ביציאת מצריים שנאמר "את כסףך—לא תיתן לו, בנשך . . . אני, ה' אלוקיכם, אשר הוצאתי אתכם, מארץ מצריים—לתת לכם את-אֶרֶץ כְּנָעַן, לְהִיֹּת לְכֶם לְאֱלֹקִים" (ויקרא כה:לז-לח) (הל' מלוה ד:ז).<sup>7</sup>

Whoever writes a deed for ריבית, it is as if he had written and testified before witnesses that he denies *Hashem Elokei Yisrael* and all who lend and borrow with ריבית privately, are as if they had both denied *Hashem Elokei Yisrael* and denied the Exodus from Egypt, for it is written, “And you should not give your money at interest... I am

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<sup>6</sup> Such as the requirement to have courts not only in every county but also in every city.

<sup>7</sup> The *Maggid Mishneh* relates the intent here to denying השגחה—following Ramban’s famous explanation (see his commentary at the end of *Parashas Bo*) with regard to *Yetzias Mitzrayim*. According to Ramban, this is the significance of *Yetzias Mitzrayim*.

*Hashem Elokeichem* who took you out of the Land of Egypt to give you the land of Canaan, to be your G-d.”

With regard to ריבית we find this term of כופר בה' אלקי ישראל alongside the concept of “denying the Exodus,” for with the words אלקי ישראל<sup>8</sup> Moshe came to Pharaoh with the demand that he release His people so that they become a new nation.

ואחר, באו משה ואהרן, ויאמרו, אל-פרעה: פה-אמר ה'. אלקי ישראל, שלח את-עמי, ויחגו לי במדבר. (שמות ה:א)

And afterwards, Moshe and Aharon came and said to Pharaoh: ‘So says Hashem the L-rd of Israel, ‘Release my nation that they may celebrate to Me in the desert.’

Moshe came to Pharaoh in the name of G-d who had chosen Israel to live at a higher level of morality than other people. The prohibition of ריבית binds Israel with an intricate set of financial laws that not only prohibits taking interest, but limits the ways various business deals are to be made. These laws are intended to see to it that the wealthy cannot take undue advantage of their position of wealth and mandates that partnerships be made in such a way that both the rich and poor benefit. Some claim that these laws are not practical in a modern society. But in fact they certainly would have been considered an obstruction to commerce in Talmudic times as well, yet the Rabbis vastly extended the Torah prohibition, at a time when we can assume no other society would have contemplated implementing the basic Torah prohibition itself. Israel is instructed to form its own society, its own financial system based on its own laws. In international commerce, in our dealings with gentiles ריבית is allowed, but with our brothers, all sons of Yaakov (בני ישראל), it is forbidden. We are meant to be partners, working toward a common goal of success. Bankruptcy takeovers are a rare thing in the Jewish system of commerce.<sup>9</sup>

Not only is this relationship not mandated with foreigners, but according to Rambam it is in fact prohibited. “It is a positive command to

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<sup>8</sup> And it was also the name used in the call to kill the brothers who had betrayed their faith. ...פה-אמר ה' אלקי ישראל, שימו איש-תרבו, על-ירכו; עברו ושובו משער לשער, במתנה, והרגו איש-את-אחיו ואיש-את-רעהו, ואיש את-קרבו (שמות לב:כז)

<sup>9</sup> In *Hilchos Tzedakah*, Rambam considers lending money the highest form of charity. See also the opening three *halachos* of *Hilchos Maheh v'Loveh* where the moral imperative on the lender and borrower is explained.

charge interest to a gentile.”<sup>10</sup> This law is geared towards building a unique society of brotherhood. We are not intended to have this relationship with other nations. We do not believe in the “brotherhood of man,” but only in brotherhood with those who share our beliefs, as *Chazal* speak of “your brother in Torah and mitzvos” אחיך בתורה ומצוות.

### Denying *Yetzias Mitzrayim*

In addition, Rambam states that in the violation of the prohibition of *ריבית* there is also “Denial of the Exodus from Egypt” כפירה ביציאת מצרים. What is this second element? Indeed the Torah makes clear, there was a quid pro quo for the Redemption. This “deal” is explicit in the first of the *Aseres HaDibros*: “I am Hashem your G-d who took you out of the land of Egypt” אנכי ה' אלקיך אשר הוצאתיך מארץ מצרים” to which *Chazal* add an explanation: “on the condition that you will declare my unity” על מנת<sup>11</sup> “עול מלכות שמים” the acceptance of G-d’s sovereignty, ליהדני. But the Talmud notes that *Yetzias Mitzrayim* is given by the Torah as the reason for other mitzvos as well.

אמר רבא למה לי דכתב רחמנא יציאת מצרים בריבית, יציאת מצרים גבי ציצית, יציאת מצרים במשקלות אמר הקב"ה אני הוא שהבהנתי במצרים בין טפה של בכור לטפה שאינה של בכור אני הוא שעתידי לפרע ממי שתולה מעותיו <בנכרי> {בגוי} ומלוה אותם לישראל בריבית וממי שטומן משקלותיו במלה וממי שתולה קלא אילן בבגדו ואומר תכלת הוא. (ב"מ סא:)

Rava said: “Why did the Torah write *Yetzias Mitzrayim* by *ריבית*, *Yetzias Mitzrayim* by *ציצית*, *Yetzias Mitzrayim* by weights? The Holy One Blessed Be He said: “I am the one who distinguished in Egypt between a drop (of sperm) of a first-born to a drop that is not from the first-born, I will be the one to exact payment from he who charges *ריבית* through the use of a gentile, and from he who soaks his weights in salt and from he who uses the *קלא אילן* extract on his garment, claiming it is *תכלת*.”

With regard to the mitzvah of *ציצית* we readily understand its relevance, since its purpose is to remind us constantly of our contract with

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<sup>10</sup> In fact, *Chazal* forbade taking interest from gentiles unless absolutely necessary for survival lest Jews become too close to their debtors and learn from their practices. But borrowing from them is permitted. And *talmidei chachamim* who are not considered vulnerable to being influenced by their gentile business associates are permitted to take interest as well.

<sup>11</sup> See *Sefer HaMitzvos, aseh 2*, where this *midrash* is brought.

G-d and for us to declare its existence publicly by our dress. For this reason we have three chapters in שמע<sup>12</sup>, first stating the fundamental of belief in G-d, then our commitment to all the mitzvos, and then in the *parashah* of ציצית, the grounds for these obligations is given—*Yetzias Mitzrayim*.<sup>13</sup>

With regard to ריבית as well, the above analysis makes clear the uniqueness of this mitzvah which stands for the brotherhood demanded of the new nation. To deny this concept of דינים is to deny the purpose of our Redemption.

But why is weights משקלות singled out? Also, what does the *aggadah* mean to convey with its reference to G-d's distinguishing the טפה של בכור? With regard to the latter question, the thrust is certainly a demand for scrupulous honesty that should be inspired by the realization that G-d is omniscient and Israel's judgment is not dependent on the perception of man but on G-d's knowledge. The fact that these practices are undetectable and in fact blameless in the eyes of man and prevailing society is not relevant to the new nation who will be judged by Divine standards with Divine knowledge.

### Weights & Measures and Israel's Purpose

A deeper look at the mitzvah of weights and measures will clarify this concept:

א השוקל לחברו במשקלות חסרות מן המשקל שהסכימו עליו בני אותה המדינה, או המודד במידה חסרה מן המידה שהסכימו עליה הרי זה עובר בלא תעשה, שנאמר "לא תעשו עוול, במשפט, במידה, במשקל ובמשורה" (ויקרא יט:לה). ב אף על פי שהמודד או השוקל חסר גונב—אינו משלם תשלומי כפל, אלא משלם לו המידה או המשקל. ואין לוקין על לאו זה, מפני שהוא חייב בתשלומין. [ח] אחד הנושא ונותן עם ישראל, או עם הגוי עובד עבודה זרה — אם מדד או שקל בחסר, עובר בלא תעשה וחייב להחזיר. וכן אסור להטעות את הגויים בחשבון, אלא יקדק עימו: שנאמר "וחישב, עם קונהו" (ויקרא כה:נ) — אף על פי שהוא כבוש תחת ידיך, קל וחומר לגוי שאינו כבוש תחת ידיך; והרי הוא אומר "כי תועבת ה' אלוקיך, כל עושה אלה: כול, עושה עוול" (דברים כה:טז), מכל מקום [יב] קשה עונשן של מידות, יתר מעונשן של עריות, שזה בינו לבין המקום, וזה בינו לבין חברו. וכל הכופר במצות מידות — ככופר ביציאת מצריים, שהיא תחילת

<sup>12</sup> And according to Rambam all are דאורייתא — see *Hilchos Krias Shema* 1.

<sup>13</sup> ג אף על פי שאין מצות ציצית נוהגת בלילה, קוראין אותה בלילה, מפני שיש בה זכרון יציאת מצריים; ומצוה להזכיר יציאת מצריים בלילה וביום, שנאמר "למען תזכר את יום צאתך מארץ מצרים, כל ימי חייך" (דברים טז:ג). וקריאת שלוש פרשייתו אלו על סדר זה, הוא הנקרא קריאת שמע.

הציווי; וכל המקבל עליו מצות מידות—הרי זה מודה ביציאת מצריים, שהיא גרמה לכל הציוויין (הל' גנבה פרק ז) <sup>14</sup>. <sup>15</sup>

When a person weighs for a colleague using weights that are less than the weights accepted by the people in that country, or he measures using a measure that contains less than the measure used by people in that country, he violates a negative commandment, as Leviticus 19:35 states: “Do not act deceitfully with regard to a judgment concerning measures, weights and liquid measures.” Although a person who measures with an inaccurate measure or weight is a thief, he is not required to make a double payment of the stolen amount. All that is necessary is to give the proper measure of the article that was sold. Lashes are not given for the violation of this transgression, because the thief is obligated to make financial restitution ... Whether a person deals with a Jew or a gentile, if he measures or weighs with a measure that is lacking, he transgresses a negative commandment and is obligated to return the difference. Similarly, it is forbidden to deceive a gentile with regard to an account; instead, one must reckon carefully with him, as Leviticus 25:50 states: “You should reckon with his purchaser.” This applies with regard to a gentile who is under your control; surely it applies to one who is not under your control. A person who performs such deceit is included among those about whom Deuteronomy 25:16 says: “They are an abomination unto G-d, all who do these things, all who act crookedly.” The punishment for the person who uses false measures is greater than the punishment for licentious sexual behavior, for this is a sin between a person and his colleague, and this is a sin between a person and G-d. Whoever denies the mitzvah of just measures is considered as if he denied the exodus from Egypt, which is the first of G-d’s commandments. Conversely, one who accepts the mitzvah of just measures is considered as if he acknowledges the exodus from Egypt, which brought about all of G-d’s commandments.

Rambam refers here to כופר ביציאת מצרים as he does by ריבית but he does not refer to אלקי ישראל for here the motivation is not the bond of nationhood that calls on us to act with special sensitivity to our brothers.

<sup>14</sup> מספרא אלא שם ע'פ הקרא "על תנאי כך הוצאתי אתכם מארץ מצרים, ורבינו הוסיף "שהיא גרמה וכו'". ועי' מ"מ דיש כפירה בהשגחה בעושה בסתר, וכעין זה במלבי"ם.

<sup>15</sup> ויקרא יט: לג וכי יגור אִתְּךָ גֵר, בְּאֶרְצְכֶם—לֹא תוֹנוּ אֹתוֹ. לֹד בְּאֶזְרַח מִמֶּם יִהְיֶה לְכֶם הַגֵּר הַגֵּר אִתְּכֶם, וְאֶהְבֶּתָּ לוֹ כְּמוֹד—כִּי גֵרִים הָיִיתֶם, בְּאֶרֶץ מִצְרַיִם: אָנֹכִי, ה' אֱלֹהֵיכֶם. לֹא תִשְׁפֹּט, בְּמִשְׁקַל וּבְמִשׁוֹרֶה. לֹא מֵאֲזַנִּי צִדְקָא אֲבָנִי צִדְקָא, אִיפֹת צִדְקָא וְהִיוּ צִדְקָא—יִהְיֶה לְכֶם: אָנֹכִי ה' אֱלֹהֵיכֶם, אֲשֶׁר הוֹצֵאתִי אֶתְכֶם מֵאֶרֶץ מִצְרַיִם. לֹא וְשִׁמְרֶתֶם אֵת כָּל חֻקֹּתַי וְאֵת כָּל מִשְׁפָּטַי, וְעִשִּׂיתֶם אֹתָם: אָנֹכִי ה'.

Here it is the fact that we have accepted G-d's commandments that demands we live by a higher moral standard. We may not have short measures with either a Jew or a gentile, because "deceit" עוול is an "abomination" תועבה. Like ריבית, this is a category, over and above that of the Noachide laws, but this category must be practiced with all we deal with.

That משקלות is not part of the seven Noachide mitzvot but a higher standard, is clear from the fact that it is a condition of *Yetzias Mitzrayim*—something new. Moreover, in the *Sefer HaMitzvos*<sup>16</sup> and *Mishneh Torah*,<sup>17</sup> Rambam defines this mitzvah as going to extremes to produce an absolutely accurate measure, over and above what was commonly used before *Kabbalas HaTorah*. Besides the prohibition of weighing fraudulently, there is an additional *aseh* requiring that the measuring devices be exact and a *lav* prohibiting the owning of inexact measures even if they are not being used<sup>18</sup>. Rambam devotes an entire chapter<sup>19</sup> to the details included to the associated *lav* and *aseh*.

The nations of the world generally worked with the principle of *caveat emptor*, and if a seller gave poor measurements then buyers should avoid him; but of the Jewish people higher standards were demanded. This dedication to the highest standards of honesty, even with non-Jews, is the responsibility<sup>20</sup> we took for being freed by G-d's mercy, that which happened to no other people.<sup>21</sup>

Thus the דינים that were introduced at Marah are comprised of two elements: a higher level of honesty when dealing with all people, best exemplified by משקלות; and a concept of brotherhood in business dealings with our fellow Jews, exemplified by the prohibition of ריבית.<sup>22</sup>

<sup>16</sup> *Sefer Hamitzvos, aseh* 208, the term מפליג is used. And in *lav* 27 he derides the common means used for measuring land.

<sup>17</sup> The term יפה יפה is used.

<sup>18</sup> *Law* 272.

<sup>19</sup> *Hilchos Geneivah, Perek* 8.

<sup>20</sup> Thus Rambam includes here in this *halachah* the prohibition against fooling a gentile in business.

<sup>21</sup> Thus the Torah emphasizes to us צדק צדק תרדוף.

<sup>22</sup> Returning to the gemara in *Bava Metz'ia*, the בכור of Egypt, the most powerful nation in the world, was rejected on the night of the *geulah*, in favor of בני בכורי ישראל. The law that קלא אילן ציצית cannot be made of אילן means that the obligation to be a Jew transcends the superficial evaluations made by man. To the superficial observer, there is no difference, but the Torah laws are of a higher nature. In ריבית one could look for loopholes by the use of a gentile middleman to whom this is permitted, yet this also is prohibited. In measures, even the innocent storage and maintenance of weights in a way that will affect their accuracy

## מדות vs. עריות

But we should not leave this *balachab* without examining the meaning of another difficult phrase. What does Rambam mean to convey when he says “the punishment for measures is more severe than those of sexual transgressions” עריות של מעונשן של עריות? In fact, he states elsewhere<sup>23</sup> that the stringency of a prohibition can be discerned from the punishment, and the only punishment for violating measures is the requirement to pay back, while<sup>24</sup> the Torah’s punishment for עריות is the most stringent, כרת.<sup>25</sup> Let us look at Rambam’s source for this statement.

א"ר לוי קשה עונשן של מדות יותר מעונשן של עריות... מאי עודפיהו דהתם אפשר בתשובה והכא לא אפשר בתשובה (ב"מ פה:)

Rav Levi says, the punishment for measures (*midos*) is more severe than those for *arayos*... In what way does it exceed it? [*Arayos*] is subject to repentance while here [by *midos*] it is not subject to repentance.

According to Rashbam, the Talmud means that in מדות there cannot be full *teshuvah* since the many customers swindled are not identifiable and thus full restitution cannot be made, hence punishment is inescapable. But according to Rambam, the intent of the Gemara is puzzling, as he only relates the severity to the fact that it is a sin between man and man. If the issue is “sins between man and man” בין אדם לחבירו as Rambam says, then why not make this point by theft גנבה? What specifically is the relationship to מדות? And more importantly, how did Rambam get this explanation from the Talmud’s statement בתשובה? What is the meaning of equating the ability to repent with sins of man against his neighbor?

In addition, Rambam tells us that “the sanctity of Israel” קדושת ישראל is most closely related to עריות, so why is it not a condition of יציאת מצרים? The “*Book of Holiness*” ספר קדושה of *Mishneh Torah* is made up of עריות and “forbidden foods” מאכלות אסורות and Rambam tells us that

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is also prohibited. These *mitzvos* demonstrate that we are bound to act by a deeper purpose—one that transcends the value system dictated by natural law. See Rashi and *Tosafos* and the other commentaries on this *sugya*. Many difficulties exist with their interpretations.

<sup>23</sup> *Peirush HaMishnah, Avos, perek 2.*

<sup>24</sup> As is noted in the Talmudic passage that is Rambam’s source for this statement.

<sup>25</sup> With testimony and warning there is the death penalty.

<sup>26</sup> In fact, one opinion cited in the *Mechilta* does interpret חק in this way. But we are dealing with a specific stream of Talmudic thought.

these two elements are what makes Israel unique and constitutes our קדושה.

ספר חמישי. אכלול בו מצוות של ביאות אסורות, ומצוות של מאכלות אסורות— לפי שבשני עניינים האלו קידשנו המקום והבדילנו מן האומות בעריות ובמאכלות אסורות, ובשניהם נאמר "ואבדיל אתכם מן העמים" (ויקרא כ:כו), "אשר הבדלתי אתכם מן העמים" (ויקרא כ:כד). וקראתי שם ספר זה ספר קדושה. (הקדמה למשנה תורה)

The Fifth Book: I will include in it all the mitzvos pertaining to forbidden sexual acts and those mitzvos pertaining to forbidden foods, for in these two categories G-d sanctified us and separated us from the nations. With מאכלות אסורות and עריות — and with regard to both of them it says “and I will separate you from the nations.” “By which I have separated you from the nations.” And I called this book “The Book of *Holiness*.”

In fact, קדושת ישראל is the topic most closely identified with עריות in line with the midrashic comment on “Be Holy” “קדושים תהיו” “separate yourself from עריות”.<sup>27</sup> Also, the Torah refers to both falsifying מדות and עריות as abominations תועבה, in the context of תועבות מצרים from which Israel is expected to distance itself.<sup>28 29</sup>

### The Punishment for Corrupt Measures

Thus we are faced with three questions. What is meant in saying that עריות is less punished than מדות? Why are עריות not equally linked to *Yetzias Mitzrayim*? What does Rambam mean in implying sins against man are not subject to *teshuvah*?

I believe the answer to this last question is the key to answering all three and it is found in *Hilchos Teshuvah* (2:9). There, Rambam explains

<sup>27</sup> As brought by Rashi on קדושים תהיו.

<sup>28</sup> ויקרא יח כז כי את כל התועבת האל, עשו אנשי הארץ אשר לפניכם; ונתטמא, הארץ. כח וְלֹא תִקְיָא הָאָרֶץ אֶתְכֶם, בְּטִמְאָתְכֶם אֹתָהּ, פְּאֶשֶׁר קָאָה אֶת הַגּוֹי, אֲשֶׁר לִפְנֵיכֶם. כט כי כל אשר יעשה, מפל התועבת האלה—ונקרתו הנפשות העשות, מקרב עפם

דברים כה טו אָבוּ שְׁלֵמָה וְצַדִּיק יִהְיֶה לָּךְ, אִיפֹה שְׁלֵמָה וְצַדִּיק יִהְיֶה לָּךְ—למען, יֵאָרִיכוּ יָמֶיךָ, על הַאֲדָמָה, אֲשֶׁר ה' אֱלֹקֶיךָ נָתַן לָּךְ. טז כי תועבת ה' אֱלֹקֶיךָ, כָּל עֲשֵׂה אֱלֹהִים: כָּל, עֲשֵׂה עֵנָל.

<sup>29</sup> And Rambam refers to both theft גזל and עריות as הלב but with עי' סוף הלכות אס"ב - יז [יח] אין being the hardest thing for Israel to accept. אך לדבר בכל התורה כולה שהוא קשה לרוב העם, אלא לפרוש מן העריות והביאות האסורות: אמרו חכמים, בשעה שנצטוו ישראל על העריות, בכו וקיבלו מצוה זו בתרעומת ובבכייה— שנאמר "בוכה למשפחותיו", על עסקי משפחות. [יט] ואמרו חכמים, גזל ועריות, נפשו של אדם מתאוה להן ומחמדתן.

that repentance before G-d does not suffice for sins committed against man and one is required to obtain forgiveness מחילה from the wronged party. Yet this is not wholly sufficient to answer our question. If מחילה suffices to undo the sin, the sin still should be called אפסר בתשובה<sup>30</sup>. Thus, I believe Rambam has something further in mind with his statement in *Hilchos Geneivah*.

This is what Rambam writes about murder, after explaining that when we are certain one is guilty of murder but he is found innocent in court based on a loophole, he is treated in such a way as to cause him to die in a short period of time.

[ט] ואין עושין דבר זה לשאר מחוייבי מיתות בית דין—אלא אם נתחייב מיתה, ממיתין אותו; ואם אינו חייב מיתה, פוטרין אותו: שאף על פי שיש עוונות חמורין משפיכות דמים, אין בהן השחתת יישובו של עולם כשפיכות דמים. אפילו עבודה זרה, ואין צריך לומר עריות או חילול שבת—אינן כשפיכות דמים: שאלו העוונות הן מעבירות שבין אדם להקדוש ברוך הוא, אבל שפיכות דמים מעבירות שבינו לבין חברו. וכל מי שיש בידו עוון זה, הרי הוא רשע גמור; ואין כל המצוות שעשה כל ימיו שקולין כנגד עוון זה, ולא יצילו אותו מן הדין—שנאמר "אדם, עשוק בדם נפש... " (משלי כה:יז). (הל' רציחה ד:ט)

This measure is not taken with regard to other crimes punishable by execution by the court. If a defendant is liable for execution, he should be executed. If he is not liable for execution, he should be released. Although there are other sins that are more serious than murder, they do not present as serious a danger to society as murder does. Even idol worship—and needless to say, עריות or the violation of the Sabbath—are not considered as severe as murder. For these sins involve man's relationship with G-d, while murder also involves man's relationship with his fellow man. Whoever commits this sin is an utterly wicked person. All the mitzvos that he performs throughout his lifetime cannot outweigh this sin and save him from judgment. Thus, Proverbs 28:17 states: "A man weighed down with life's blood will flee to the pit."

This Rambam also needs explanation, despite the fact that murder has the harshest of punishments—the death penalty—even without witnesses, it is still not subject to כרת which Rambam says<sup>31</sup> is the ultimate punishment. What he means here is that its punishment in this world is

<sup>30</sup> Moreover, see the end of the second *perek* of *Hilchos Teshuvah* where Rambam says that if the offended person refuses to forgive after repeated apologies, then one need not continue asking for forgiveness and the offended party now becomes the sinner.

<sup>31</sup> Both in the 8<sup>th</sup> of 13 *ikkarim* and in the third *perek* of *Hil. Teshuvah*.

more stringent than for any other sin, since the harm it causes in this world is greater than that of any other transgression in that it threatens the fabric of a civil society. Likewise, faulty measurements threaten the fabric of the just society that *Yetzias Mitzrayim* set in motion. When *Chazal* say קשה עונשן שלא אפשר בתשובה it refers to the harm that society will suffer—a punishment that is in fact inflicted upon all of society. What is set in motion cannot be undone with the confession and repentance before G-d of the person who has sinned, nor even by receiving forgiveness by the person directly harmed. The harm to society is pervasive and irreversible.

The creation of a just society at the highest level was the central condition for us being granted freedom. This was even more important to the goals of the Torah than modest conduct צניעות. A society with a low level of צניעות of course lacks in קדושת ישראל, but without a high level of honesty it cannot even begin the journey to perfection. Thus Rambam's language: "It is the beginning of the commandments" שהיא תחלת הצווי—it is foundational.

When we left the slavery of Egypt, we became the servants of G-d עבדי ה' for G-d took us out of "the house of slavery" in order that we become his servants. Rambam explains what this means in *Hilchos Deos*.

[יג] משאן ומתנן של תלמידי חכמים, באמת ובאמונה: אומר על לאו לאו, ועל הין הין. מדקדק על עצמו, בחשבון; ונותן ומוותר לאחרים כשייקח מהן, ולא ידקדק עליהן. ונותן דמי הלקח לאלתר. ואינו נעשה לא ערב ולא קבלן, ולא יבוא בהרשאה. כז מחייב עצמו בדברי מקח וממכר, במקום שלא חייבה אותו תורה, כדי שיעמוד בדיבורו, ולא ישנהו. ואם נתחייבו לו אחרים בדין, מאריך להן ומוחל להן; ומלווה, וחונן. ולא יירד לתוך אומנות חברו, ולא יצר לאדם בעולם בחייו. כח כללו של דבר—יהיה מן הנרדפין, ולא מן הרודפין; מן הנעלבין, ולא מן העולבין. ואדם שהוא עושה כל המעשים האלו וכיוצא בהן, עליו הכתוב אומר "ויאמר לי, עבדי אתה—ישראל, אשר בך אתפאר" (ישעיהו מט:ג). (הלכות דעות ה:יג)

A Torah Sage [should conduct] his business dealings with honesty and good faith. When [his] answer is "no," he says "no"; when [his answer] is "yes," he says "yes." He is stringent with himself in his accounting, gives and yields to others when he buys from them, but is not demanding [about what they owe him]. He pays for his purchases immediately. He does not act as a guarantor, or accept objects for deposit, or act as a debt collector for a lender. He accepts obligations in matters of buying and selling for which the Torah does not hold him liable, in order to uphold and not go back on his verbal commitments. If others have obligations to him by law, he grants them an extension and pardons them. He lends and bestows gifts. He does not encroach upon another's occupation, nor does he ever

cause someone discomfort. The rule is that he should be among the pursued and not the pursuers, among those who accept humiliation but not among those who humiliate [others]. Whoever does all the above and their like, of him [Isaiah 49:3] states: “And He said to me, ‘You are My servant, Israel, through whom I will be glorified.’”

The conditions of *Yetzias Mitzrayim* are fulfilled with this person of exceptional character and honesty. Israel is intended to influence the rest of world<sup>32</sup> and it is only through this model of honesty that their purpose can be fulfilled.<sup>33</sup>

### Honoring Parents

And lastly we come to the third prerequisite for *Kabbalas HaTorah*—honoring parents **כבוד אב ואם**. It is interesting and people have often noted, that the classic cases in the Gemara<sup>34</sup> for **כבוד אב ואם** are attributed to a gentile, Dama ben Nethinah. The Gemara makes this point and says while we find such diligence in it amongst the nations who are not commanded in it, it is a *fortiori* ק"ו to Israel, who is commanded in it, that they must prioritize respect for parents. The Gemara gives two cases to demonstrate his respect to his parents.

שאלו את ר' אליעזר עד היכן כיבוד אב ואם אמר להם צאו וראו מה {גוי} אחד לאביו באשקלון ודמא בן נתינה שמו בקשו ממנו חכמים אבנים לאפוד בששים ריבוא שכר ורב כהנא מתני בשמונים ריבוא והיה מפתח מונח תחת מראשותיו של אביו ולא ציערו לשנה האחרת נתן הקב"ה שכרו שנולדה לו פרה אדומה בעדרו נכנסו חכמי ישראל אצלו אמר להם יודע אני בכם שאם אני מבקש מכם כל ממון שבעולם אתם נותנין לי אלא אין אני מבקש מכם אלא אותו ממון שהפסדתי בשביל כבוד אבא וא"ר חנינא ומה מי שאינו מצווה ועושה כך מצווה ועושה עאכו"כ דאר"ח גדול מצווה ועושה ממי שאינו מצווה ועושה ... כי אתא רב דימי אמר פעם אחת היה לבוש סירקון של זהב והיה יושב בין גדולי רומי ובאתה אמו וקרעתו ממנו וטפחה לו על ראשו וירקה לו בפניו ולא הכלימה. (קדושין לא.)

Rabi Eliezer was asked: How far does the honor of parents [extend]? Said he, Go forth and see what a certain heathen, Dama son of Nethinah by name, did in Ashkelon. The Sages sought jewels for the *ephod*, at a profit of six-hundred-thousand [gold denarii]. Rabi Kahana taught: at a profit of eight-hundred-thousand—but as the key was lying under his father’s pillow, he did not trouble him. The following

<sup>32</sup> See the end of *Mishneh Torah*.

<sup>33</sup> Rambam almost exclusively uses the term **לפנים משורת הדין** with regard to מצוות **בין אדם לחברו**.

<sup>34</sup> It is a commonly repeated *vort* that this comports with Esav having been so exceptional in **כבוד אב**.

year the Holy One, blessed be He, gave him his reward. A red heifer was born to him in his herd. When the Sages of Israel went to him [to buy it], he said to them, ‘I know you, that [even] if I asked you for all the money in the world you would pay me. But I ask of you only the money which I lost through my father’s honor.’ Now, Rabi Chanina observed thereon, If one who is not commanded [to honor his parents], yet does so, is thus [rewarded], how much more so one who is commanded and does so!

When Rabi Dimi came, he said: He [Dama son of Nethinah] was once wearing a gold embroidered silken cloak and sitting among Roman nobles, when his mother came, tore it off from him, struck him on the head, and spat in his face, yet he did not shame her.

In the latter story Dama ben Nethinah is dressed in gold and sitting among the Roman nobles and his mother embarrasses him, tearing his clothing; and in one version of the *midrash*, while doing this her headgear falls and he stoops to pick it up and return it to her. In the first case his father is sleeping on the keys of the cabinet where valuable stones that are being sought for the jewel stones of the *ephod* are stored, and he refuses to “trouble him.” According to the *Yerushalmi*,<sup>35</sup> his feet were on the cabinet itself. The import of these sources regarding the stones is that the father was guarding them.

Students of the Talmud who bind themselves to literal interpretations of *Aggadata* are prone to miss *Chazal*’s point. In the latter story, as clothes represent one’s identity, *Chazal* portray Dama ben Nethinah sitting with the Romans, garbed in their modern dress in the melting pot of Rome. His mother, objecting to his assimilation, tears off the clothes that were meant to give him a new identity. He understands the value of tradition and lifts her headdress, the most indicative garment of identity and that which is most closely related to dignity, and returns it to her. The **אבני אפוד** have the names of the tribes of Israel inscribed upon them—they represent the identity of the twelve tribes that are meant to be sustained for all time. Dama ben Nethinah’s father was guarding these valuable stones lest someone try to use the accomplishment of his tradition for their own advancement, lest they take what he feels is his heritage and subdue it under another culture. *Chazal* praise him for his allegiance and pride in his own tradition. A nation that has survived for centuries must have merits that sustained it and if future generations continue to respect them, the culture will survive and continue to contribute to the advancement of society. And thus he is rewarded with his nation taking a part in

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<sup>35</sup> Quoted by *Tosafos*.

the פרה אדומה, the eventual purification טהרה that Israel will bring to the world<sup>36</sup>. The Talmud says that if the nations of the world on their own can understand the value of tradition, how much more so Israel, who is the nation of the *Avos* and Moshe Rabbeinu.

The people of Israel prepared for *Kabbalas HaTorah* by studying the importance of Freedom (שבת), Justice (דינים), and Tradition (כבוד אב).<sup>37</sup>



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<sup>36</sup> This connection between the mitzvah of פרה אדומה and כבוד אב should not be lost on us. The *Seder Olam Rabbah* chose פרה אדומה as the introductory mitzvah because it represents the goal of the Torah, while the Talmud chose אב כבוד since it is the fundamental prerequisite to reaching this goal.

<sup>37</sup> The quotes from *Mishneh Torah* are taken from the Mechon Mamre website, and the translations from the Chabad.org website, sometimes modified. Translations of the Talmud are based on the Soncino translation and other translations are my own.