

## שמות פרק טו:כב-כו

ויסע משה את ישראל מים סוף ויצאו אל מדבר שור וילכו שלשת ימים במדבר ולא מצאו מים:  
ויבאו מרתה ולא יכלו לשתת מים ממרה כי מרים הם על כן קרא שמה מרה:  
וילנו העם על משה לאמר מה נשתה:  
ויצעק אל יקוק ויורהו יקוק עץ וישלך אל המים וימתקו המים שם שם לו חק ומשפט ושם נסהו:  
ויאמר אם שמוע תשמע לקול יקוק אלהיך והישר בעיניו תעשה והאזנת למצותיו ושמרת כל חקיו  
כל המחלה אשר שמתני במצרים לא אשים עליך כי אני יקוק רפאך: o

## רמב"ן שמות פרק טו פסוק כה

(כה) שם שם לו חק ומשפט ושם נסהו - במרה נתן להם מקצת פרשיות של תורה שיתעסקו בהם, שבת פרה אדומה ודינין. ושם נסהו, לעם, לשון רש"י. והיא דעת רבותינו (סנהדרין נו ב). ואני תמה, למה לא פירש כאן החקים האלה והמשפטים ויאמר "וידבר ה' אל משה צו את בני ישראל" כאשר אמר בפרשיות הנזכרות למעלה דברו אל כל עדת בני ישראל וגו' (לעיל יב ג), וכן יעשה בכל המצות באהל מועד, בערבות מואב, ופסח מדבר (במדבר ט ב). ולשון רש"י שאמר פרשיות שיתעסקו בהם, משמע שהודיעם החקים ההם ולימד אותם עתיד הקב"ה לצוות אתכם בכך, על הדרך שלמד אברהם אבינו את התורה, והיה זה להרגילם במצות ולדעת אם יקבלו אותם בשמחה ובטוב לבב, והוא הנסיון שאמר ושם נסהו, והודיעם שעוד יצוו במצות, זהו שאמר אם שמוע תשמע לקול ה' אלהיך והאזנת למצותיו אשר יצוה אותך בהם:  
ועל דרך הפשט, כאשר החלו לבא במדבר הגדול והנורא וצמאון אשר אין מים שם להם במחייתם וצרכיהם מנהגים אשר ינהגו בהם עד בואם אל ארץ נושבת, כי המנהג יקרא "חק", כענין הטריפני לחם חקי (משלי ל ח), חקות שמים וארץ (ירמיה לג כה), ויקרא "משפט" בהיותו משוער כהוגן, וכן כה עשה דוד וכה משפטו כל הימים (ש"א כז יא), כמשפט הראשון אשר היית משקהו (בראשית מ ג), וארמון על משפטו ישב (ירמיה ל יח), על מדתו. או שייסרם בחקי המדבר, לסבול הרעב והצמא, לקרוא בהם אל ה', לא דרך תלונה. ומשפטים, שיחיו בהם, לאהוב איש את רעהו, ולהתנהג בעצת הזקנים, והצנע לכת באהליהם בענין הנשים והילדים, ושינהגו שלום עם הבאים במחנה למכור להם דבר, ותוכחות מוסר שלא יהיו כמחנות השוללים אשר יעשו כל תועבה ולא יתבוששו, וכענין שצוה בתורה (דברים כג י) כי תצא מחנה על אויביך ונשמרת מכל דבר רע:  
וכן ביהושע נאמר ויכרות יהושע ברית לעם ביום ההוא וישם לו חק ומשפט בשכם (יהושע כד כה), אינם חקי התורה והמשפטים, אבל הנהגות ויישוב המדינות, כגון תנאים שהתנה יהושע שהזכירו חכמים (ב"ק פ ב), וכיוצא בהם.

### **Shemot 15:22-26**

Mosheh moved Israel away from the Reed Sea, and they went out toward the Shur Wilderness; they went three days in the wilderness, and did not find water. They came to Bitterness, but they were unable to drink waters from Bitterness, because they were bitter; therefore it was named Bitterness.

The people whined to Mosheh, saying “What will we drink”?

He cried out to Hashem; Hashem showed/threw him a tree; he threw toward the waters; the waters sweetened. There he/He was *sam* for him a *chok* and *mishpat* and there he/He tested him/Him.

He said: If you will well obey the voice of Hashem your G-d, and if you will do the straight in His eyes, and if you will heed his commandments, and if you observe all his *choks*, all the illness which I was *same* in Egypt I will not *sam* on you, because I am Hashem your healer.

### **Nachmanides to Shemot 15:25**

“There He *sam* for him a *chok* and *mishpat*” – In Marah He gave them some units of Torah for them to engage with: Shabbat and the Red Heifer and civil law. “and there He tested him” – the nation.

This is the language of Rashi, and it is the opinion of our Teachers.

But I am astonished – Why does it not explicate here which *choks* and *mishpats*, and (why does it not) say “Hashem spoke to Mosheh: ‘Command the Children of Israel’ . . . ?

Now the language of Rashi, saying “units for them to engage with”, implies that he informed them of those *choks* and taught them that in the future the Holy Who is Blessed would command them about such, in the manner that our ancestor Avraham learned the Torah, and this was so as to accustom them to the commandments and to know if they would receive them with joy and cheerfulness, which is the test referred to by “and there He tested him”, and he informed them that He would give them further commandments, which is the meaning of “If you will well obey the voice of Hashem your G-d . . . and if you will heed his commandments” about which He will command you.

But in the way of pshat:

When they began to enter the great and awesome wilderness, and the thirst, there being no water, He was *sam* for them, for their survival and needs, customs which they would practice until they reached a settled area, for customs are called *chok* . . . and they were called *mishpat* since they were measured appropriately . . . or he disciplined them to the *choks* of the wilderness, to endure hunger and thirst, and to respond to these by calling toward Hashem, not in the manner of whining, and *mishpats*, for each man to love his fellow, and to practice according to the advice of the Elders, and to go modestly in their tents with regard to wives and children, and that they should behave peacefully with those who came into their camp to sell them things. This was ethical discipline that they should not be like camps of bandits who do all abominations without shame, along the lines of the Torah’s command (Devarim 23:10) “When you go out to warcamp against your enemies, you must ward yourself against doing any evil”.

Similarly in Yehoshua 24:25, when it says “and Yehoshua cut a covenant with the nation on that day, and he was *sam* for them a *chok* and *mishpat* in Shekhem”, this does not refer to the *choks* and *mishpats* of the Torah, but rather to the customs and settlements of states . . .

The narrative of Marah is among the best evidence we have that G-d has a sense of humor, and that He especially enjoys teasing linguists. My teacher Dr. Moshe Bernstein used “vayoreihu” = showed/threw to raise the question of whether the Torah contains meaningless puns – imagine Hashem and Mosheh playing “hot tree”, k'b'yakhol, tossing the tree from One to the other to the water. I actually prefer the consecutive “sham sam” to illustrate that issue. But the key play-with-words here is probably the string of pronouns with ambiguous antecedents: who gave whom a *chok* and *mishpat*, and especially, who tested whom?

In a contemporary text, we would certainly assume that the ambiguity is deliberate, and therefore legitimate each combination and permutation of antecedents. But we should be aware that such writing is in a sense anti-grammatical, a if not the chief function of grammar being disambiguation. The deconstructionists have shown us that grammar can never succeed fully at that task, and midrash presumes that the Perfect Author, as part of His decision to communicate Revelation in human language, integrated those ambiguities into His communication, so that every thought that plausibly enters our mind when reading the Torah must legitimately be a part of its meaning.

The question of who tested whom is certainly central to understanding this narrative, as nisayon is a leitmotif of the parashah – G-d subsequently uses the mannah to test whether the Jews will follow His Torah; then Israel tests whether G-d will adequately provision them, and finally the altar Mosheh builds after the battle with Amalek is named “Hashem nisi”. As well, I’ve always liked to translate the opening of the Akeidah as “G-d was tested with Avraham”, and in a ver real sense all tests of the sort are mutual – if, for example, one tests a friendship by asking for a large favor, the friend may be deliberating, watching, and perhaps delaying to see if your friendship would survive his refusing the favor.

But my focus this week is on the deliberate ambiguity of *chok* and *mishpat* – as Ramban, asks, why are the specific rules, regulations, or standards not identified? And can we nonetheless recover what they were?

Ramban cites Rashi as saying that Shabbat, Parah Adumah, and Dinim were given at Marah, and that is our text of Rashi as well. Neither he nor Rashi here explains how these three were derived, or for that matter how *chok* *umishpat* produce three; my suggestion would be that Shabbat was the nisayon, as shown in the next episode regarding the mannah; *dinnim* = *mishpat*, which leaves *parah adumah* as the classic *chok*, if *chok* is understood per Rashi, albeit against the Spanish tradition, as being a law whose rationale is humanly incomprehensible.

Torah Temimah, however, contends that Ramban is citing a typo – Rashi actually cited honoring parents rather than the red heifer. This occurs, he suggests (and *barukh shekivanti*), because *kibbud av/em* was abbreviated as *khaf aleph*, which was mistaken for *pay alef* and then expanded out to *parah adumah*. He notes that Talmud Sanhedrin 58b has this text as well, as do many parallel midrashim, and I will add that all ms. of the Talmud confirm this reading.

Rabbi Elchanan Adler, in his thorough and highly enjoyable book Mitzvat HaShabbat tracing the development of Shabbat from Marah through Alush to Sinai, cites Seder Olam Zuta as supporting the Parah Adumah text. (He cites Rav Kasher as apparently disputing this evidence, but I don’t have that volume of Torah Shleimah.) I will add that Or Zarua cites the same text of Rashi as Ramban.

The situation is actually more complicated. Rashi himself to Devarim 5:11 says that *kibbud av/em* was given at Marah, and gives the standard rabbinic derivation – the Devarim version of the Ten Commandments add to *kibbud av* and Shabbat the phrase (as Hashem your G-d has commanded you), which must mean that they were given before Sinai. Rashi to Shemot 24:3 cites four commandments given at Marah, including both *kibbud av/em* and *parah adumah*! Furthermore, Ramban identifies Rashi’s explanation as that of the Rabbis, and he can’t possibly say that with regard to a position found in Seder Olam Zuta that disagrees with the Talmud! (He also ignores the position found in many midrashim that *chok* = laws forbidding particular sexual unions and *mishpat* = civil laws that require particularly expert judges.) So while I still think that Torah Temimah is likely correct, the typo must be very old, and have infiltrated Ramban’s text of the Talmud as well as his text of Rashi. Vetzarikh iyyun.

Now Ramban argues compellingly that Rashi implies that these laws were given at Marah for educational purposes rather than as law. (Ironically, though, midrashim have Moshe forgetting to teach the Jews about Shabbat until 16:23, when in response to the leaders telling

him about double-mannah Friday he says “That’s what Hashem said!”) But why was it necessary for these laws in particular to be studied before Sinai? And why should kibbud av/em be described as a chok, however one translates the term?

Ramban himself suggests that these refer specifically not to laws that will subsequently be formalized or regiven at Sinai, but rather to either practical or ethical principles specifically for wilderness life. This seems part of the same approach as his famous thesis that law is necessarily an insufficient guide for proper behavior, that one can be a disgusting and crooked person while observing all of formal Halakhah. But it is not merely another instance of that approach, as here he explicitly presents it not as the interpretation of a deliberately vague Biblical standard but rather as directly derived from a priori ethical principles. Furthermore, while his references to modesty and ethics of war are paralleled in his commentary elsewhere, and his encouragement of obedience to authority is conventional, I would be very interested in hearing about parallels to his demand that the Jews treat trading partners well, and either suggestion or evidence as to how he rooted it in specific texts.

Shabbat Shalom!