



1. תלמוד בבלי מסכת יומא דף סז עמוד ב
תנו רבנן: את משפטי תעשו - דברים שאלמלא (לא) נכתבו דין הוא שיכתבו, ואלו הן: עבודה זרה, וגלוי עריות, ושפיכות דמים, וגזל, וברכת השם. ואת חקתי תשמרו - דברים שהשטן ואומות העולם משיבים עליהן, ואלו הן: אכילת חזיר, ולבישת שעטנז, וחליצת יבמה, וטהרת מצורע, ושעיר המשתלח. ושמה תאמר מעשה תוהו הם - תלמוד לומר אני ה' - אני ה' חקקתי, ואין לך רשות להרהר בהן.

2. ספרא קדושים אות כו
ר' אלעזר בן עזריה אומר מנין שלא יאמר אדם "אי אפשי ללבוש שעטנז. אי אפשי לאכול בשר חזיר. אי אפשי לבוא על הערוה" אבל "אפשי ומה אעשה ואבי שבשמים גזר עלי כך"? תלמוד לומר "ואבדיל אתכם מן העמים להיות לי" -- נמצא פורש מן העבירה ומקבל עליו עול מלכות שמים.

3. Rambam – the difference between אי אפשי and other mitzvot is chukim vs. mishpatim

4. רמב"ן ויקרא פרק יח פסוק ו
טעם איסור העריות בשאר הבשר איננו מפורש. והרב אמר במורה הנבוכים (ג מט) כי הוא למעט המשגל ולמאוס אותו ולהסתפק ממנו במעט, והנשים האלה אשר אסר הכתוב בשאר האשה הן המצויות עמו תמיד, וכן בשאר עצמו מצויות לו והוא נסתר עמהן. וכטעם הזה יגיד הרב על כולן. וכבר כתב ר"א גם כן, כי בעבור היות יצר לב האדם כבהמות לא יתכן לאסור כל הנקבות, והנה אסר כל הנמצאות עמו בכל שעה. וזה טעם חלוש מאד, שיחייב הכתוב כרת על אלה בעבור המצאן עמו לפעמים, ומתיר שישא אדם נשים רבות למאות ולאלפים. ומה יזיק אם ישא את בתו לבדה כמותר לבני נח (סנהדרין נח ב), וישא שתי אחיות כיעקב אבינו, ואין לאדם נשואים הגונים כמו ששיא את בתו לבנו הגדול ממנה וינחילם בנחלתו ויפרו וירבו בביתו, כי הארץ לא תהו בראה לשבת יצרה. ואין בידנו דבר מקובל בזה, אבל כפי הסברה יש בענין סוד מסודות היצירה דבק בנפש והוא מכלל סוד העבור שכבר רמזנו לו... והנה העריות מכלל החוקים, דברים שהם גזירת מלך, והגזרה הוא הדבר העולה על דעת המלך שהוא החכם בהנהגת מלכותו והוא היודע הצורך והתועלת במצוה היא שיצוה בה ולא יגיד אותו לעם זולתי לחכמי יועציו:

5. Rabbi Elchanan Samet

On one hand, obviously the prohibitions of arayot cannot be defined as statutes that "the nations of the world answer for them." Anthropological study reveals that "in every human society there is a prohibition of forbidden sexual relations (incest)... there is no society in which sexual relations are permitted between a man and his mother or his sister or his daughter; likewise there is no society in which the prohibition is limited only to first-degree relations. Rather, it is extended to secondary relations in different ways in each society."

On the other hand, when we attempt to indicate the reason for the prohibitions of arayot – which are so deeply rooted in human society and so close to every individual member thereof – we sense that the explanations given are generally unsatisfying.... We may assume that there is no single reason for this taboo, but rather that it is bound up with various bio-social processes and remains an enigma both in mythology and in science. (Dr. Harvey Goldberg, Hebrew Encyclopedia, "arayot, gilui" – volume 27 p. 202).

Anyone who senses that he is encountering an enigma whose solution drifts somewhere in the mists of the historical-philosophical-spiritual sphere will certainly accept a definition of the prohibitions of arayot as a "statute" – as a decree made by the King of the universe, "and HE knows the need for and the purpose of the mitzvah that he is commanding."

It seems that the distinction between those mitzvot of the Torah that are "mishpatim" and those that are "chukkim" is not as clear as we may have believed. There are mitzvot – such as arayot – which lie somewhere between the two spheres: they have aspects that attach them to the category of chukkim, while other aspects would seem to categorize them as mishpatim. There are mitzvot which one commentator or philosopher regards as chukkim while another would define them as mishpatim (again, as we have seen in the case of arayot).

The Rambam's view concerning the reason for the mitzvot (as explained in Moreh Nevukhim part 3, chapter 26) is: The mitzvot ALL have a reason, and they were commanded for their benefits... those (mitzvot) whose benefits are clear TO THE MASSES are called mishpatim, while those whose benefit is not clear TO THE MASSES are called chukkim.

To this view, the distinction between chukkim and mishpatim exists only for the benefit of the recipients of the Torah. The Torah distinguishes between these two categories only for educational reasons, because of the difficulty of observing the mitzvot and because of the need to strengthen us in our observance of those that we perceive as "chukkim."

In light of all that we have said above, the line dividing chukkim and mishpatim is dynamic in the historical sense as well: a general consensus in one generation that a certain mitzvah is a "chok" may change in a different generation, where the reason for the mitzvah is revealed, such that it is from then on considered as falling within the category of "mishpatim." This may work in the opposite direction as well: a change of perceptions and views in the course of the generations can bring about a situation in which mitzvot whose reasons were regarded as clear and obvious in earlier generations may face the "prosecution of the nations of the world" in another generation, with the accusation that the Torah of Israel does not suit the spirit and progress of the times.

6. **Chukim, Mishpatim, and Womanhood by Aryeh Klapper (also, See also: <http://torahleadership.org/categories/balak.pdf>)**
Chukim and Mishpatim in Halakha and Hashkafa

A core concept in popular Orthodox thought is the distinction between חוקים and משפטים as presented by Rashi. In this view, mitzvot are classified by whether they do or do not have a humanly intelligible purpose...

Can Halakhot Change Categories?

The question then is whether halakhot can legitimately move from one category to another over time. Thus laws regarding Canaanite slaves may once have seemed intuitive, but it is now popular to regard them as concessions to pre-Torah feudal morality. This is a quasirationale, but a dangerous one – cannot all mitzvot be seen as concessions to past moral systems, if they seem out of place to contemporaries? Nonetheless, I hope and pray that no one today would take the laws of Canaanite slavery as models for the treatment of minorities in Israel. Practically, historicization has the same effect as declaring those laws to be chukim...

Categorizing a mitzvah-detail, mitzvah, or complex of mitzvot as chok rather than mishpat has the effect of quarantining it from normal halakhic conversation, and indeed, it has the effect of stigmatizing anyone seeking to reintroduce it as lacking proper religious intuition. Conversely, categorizing a halakhah as mishpat rather than chok effectively accuses those who quarantine it of closing themselves off to the full implications of G-d's word...

It should also be clear that mishpat-advocates are right to be worried about slippery slopes, as each concession on their part makes the halakhah less reflective of their rationales and therefore more susceptible to "chokification"....

I will say by way of self-disclosure that I do believe that the option of declaring something a chok is legitimate... At the same time, I fully agree that this technique is highly susceptible to abuse through deception, including self-deception, and should be used only with great caution. Finally, there may perhaps be some room for mishpat advocates to admit that we often shouldn't have enough confidence in our rationales to impose their implications on others, and for chok advocates to admit that quarantining *devar Hashem* is a bold move that should be undertaken only as a last resort.

7. Hillel Zeitlen, 11th Letter to Jewish Youth

The Torah states quite clearly: "You shall not uncover the nakedness of your father and the nakedness of your mother – she is your mother; you shall not uncover her nakedness... and so on concerning all the arayot as they are listed, with the second half of the pasuk explaining the reason for what is written in the first half. If the woman is your mother or your sister etc. you are forbidden to conduct sexual relations with her. If you conduct sexual relations with your sister or with one of the other female relatives listed by the Torah, you offend the sisterliness of your sister; you damage the honor of the relationship with that female relative. If you approach a woman out of desire and sexual attraction, it is not possible that you will continue to relate to her with the proper honor due to her. To relate to any woman with respect and profound appreciation and at the same time to conduct sexual relations with her is, truly, a contradiction, although people are not prepared to admit this.

8. R. Samet

The human family is perhaps the most important cultural achievement of mankind in the sphere of his social life and in the sphere of the cultural regulation of his sexual activity... Life in the family framework is what the Torah prescribes for man (Bereishit 2:25): "Therefore a man shall leave his father and his mother and shall cleave to his wife, and they shall become a single flesh." The family framework is surrounded with an entire system of mitzvot which regulate it and protect its proper maintenance.

The prohibitions of arayot are the negative aspect of the maintenance of the family. The existence of the family, from both the biological and psychological perspective, demands the restraint of the sexual relations within it and their limitation to a man and woman who are married to one another, forming the foundation of the family. Without the laws of arayot, the human family would have no existence. This is expressed by one of the major social anthropologists of the twentieth century, B. Malinovsky:

"In every human culture we find first of all some well-defined taboo systems, strictly separating the two sexes of whole groups and not allowing contact between them. The most important prohibition prevents any possibility of marriage between close relatives of the same family... The second most important law of the taboo of forbidden sexual relations concerns adultery ("the wife of a man"). While the aim of the first prohibition is to protect the family, the second protects marriage."

The Rambam was therefore correct in explaining the reason for the prohibition of arayot as being because "each of them is always present in his home," and Hillel Zeitlin was correct in his sensitivity to what is explicit in the Torah as the reason for each individual prohibited sexual union: "She is your mother," "she is your sister," etc., except that according to what we have explained above, the reasons are different from those proposed by each of them.

9. Two Sisters: Between the "she'er" and niddah; not a "toevah"; a moral problem of l'tzoror; only in lifetime; explain Yaakov – perhaps his life was the cause of the law; also, Yaakov's situation was not planned.