

## פרשת משפטים

It isn't simple to ask 'what does your intuition say' when you know the answer already. It's hard to know if you are objective or not. But, we will try it anyway.

If we were not aware of it already, the Aseres HaDibros in Parshas Yisro are not only individual Mitzvos. They, besides referring to specific commandments, are also general categories that, altogether, comprise the totality of the *Taryag*-613 Mitzvos.

Rashi teaches us that at the end of our Parshas Mishpotim when we have another aspect of *Mattan Torah* presented to us.

We read (Sh'mos Perek 24/Posuk 12):

וַיֹּאמֶר ה' אֶל מֹשֶׁה עֲלֵה אֵלַי הִרְרָה וְהִיָּה שָׁם וְאָתְנָה לִּי אֶת לַחַת הָאֲבֵן וְהַתּוֹרָה  
וְהַמִּצְוָה אֲשֶׁר כָּתַבְתִּי לְהוֹרֹתָם:

Moshe said to Hashem, 'Ascend to Me to the mountain and be there and I will give you the tablets of stone and the Torah and the Mitzvah that I wrote to teach them.

Rashi writes:

את לחת האבן והתורה והמצוה אשר כתבתי להורתם - כל שש מאות ושלוש עשרה מצות בכלל עשרת הדברות הן, ורבינו סעדיה פירש באזהרות שישד לכל דבור ודבור מצות התלויות בו:

*The tablets of stone and the Torah and the Mitzvah that I wrote to teach them*  
– All 613 commandments are included in the Ten Commandments. Rabbenu Saadia Gaon explained in the *Azharos*<sup>1</sup> that he wrote in which he teaches which of the Mitzvos that are attached to each one of the Ten Commandments.

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<sup>1</sup> *Azharos* is a *piyut* that poetically expresses the 'tree' of Torah and the branches that each of the Ten Commandments forms and the fruit, the individual Mitzvos, that come from each branch.

In many communities of *Eidot HaMizrach*, this *Azharot* is recited on Shavuot. I have also heard that in some of those congregations it is recited the week of Parshas Yisro as well.

Even though the intuition is challenging, it is fair to ask the following: 'Since the Ten Commandments are all-inclusive, with what should the Torah begin its individual exposition of the 613 specific commandments?'

The actual answer, of course, is the Mishpotim, civil and criminal laws that are presented in this week's Parsha that immediately follows Parshas Yisro. I believe that our honest intuition would not have chosen most of these specific Mitzvos and regulations to be highlighted as the beginning of the Torah's elucidation of the individual Mitzvos.

I would have thought that the Torah's elucidation of specific Mitzvos would have begun with the Halachos of idolatry, murder and forbidden relationships. After all, these are all unique Mitzvos that override the general principle of violating Torah rather than sacrificing one's life.

The Torah writes in Parshas Acharei Mos (Vayikro Perek 18/Posuk 5):

וּשְׁמַרְתֶּם אֶת חֻקֹּתַי וְאֶת מִשְׁפָּטַי אֲשֶׁר יַעֲשֶׂה אֲתֶם הָאָדָם וְחֵי בְּהֵם אֲנִי ה':

You shall guard My statutes and my laws that a person should do them and live in them, I am Hashem.

In Masseches Yoma (85 b) we learn:

אמר שמואל...וחי בהם - ולא שימות בהם:

Shmuel said, 'You should live in them' – [that means] you should not die because of them.

The above three prohibitions, idolatry, murder and forbidden relationships, are all exceptions to that rule<sup>2</sup>. Those exceptions are derived in Masseches Sanhedrin 74 a.

Rambam codifies those exceptions in Hilchos Yesodei HaTorah Perek 5 (Halachos 1-2) and writes:

כל בית ישראל מצווין על קדוש השם הגדול...ומוזהרין שלא לחללו...כיצד כשיעמוד עובד כוכבים ויאנוס את ישראל לעבור על אחת מכל מצות האמורות בתורה או יהרגנו

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<sup>2</sup> There are additional exceptions as well but they are not related to any specific commandments, but, rather, to specific circumstances such as public violations or שעת השמד, a time of forced apostasy.

יעבור ואל יהרג שנאמר במצות אשר יעשה אותם האדם וחי בהם, וחי בהם ולא שימות בהם, ואם מת ולא עבר הרי זה מתחייב בנפשו.

במה דברים אמורים בשאר מצות חוץ מעבודת כוכבים וגלוי עריות ושפיכת דמים, אבל שלש עבירות אלו אם יאמר לו עבור על אחת מהן או תהרג, יהרג ואל יעבור...

The entire House of Israel is commanded to sanctify the Great Name and warned not to profane it. For example, if an idolater will arise and force a Jew to violate one of the commandments that is said in the Torah and, if not, he will kill him, the Jew should violate the commandment and not be killed since it says regarding the commandments, 'That a man shall do them and live with them'. If one dies and did not violate, he is committed a capital crime.

When the above is said it is regarding all the Mitzvos with the exception of idolatry, forbidden relations and murder. Rather, with these three transgressions if someone says to the Jew – violate one of them or you will be killed, he is to be killed and not transgress.

Would it not be sensible for the Torah to start its exposition with one of those three?

I could also argue that the Mitzvos of Shabbos should be showcased at the outset. We know one who intentionally violates Shabbos publicly is considered to have turned away from Torah observance completely.

That is what we read in Masseches Eiruvim (69 b):

והמחלל שבתות בפרהסיא...מומר לכל התורה כולה

One who profanes Shabbos publicly [and intentionally] is like one who has turned from the Torah completely<sup>3</sup>.

That is, for example, their handling of wine has similar prohibitions of that of non-Jew handling wine<sup>4</sup>.

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<sup>3</sup> The Gemara there lists idolatry as the other instance of מומר לכל התורה כולה.

<sup>4</sup> There are other issues as well such as being counted for a minyan, reliability on their Kashrus and much more. Here is not the venue for such a Halachic discussion.

Or, perhaps, I would have wanted to give special mention to *Korbonos* as the unique opportunity for *Avodas Hashem* that they provide<sup>5</sup>.

But, if all or any of the above were products of our intuitive reasoning, or of our musings, the fact is we are wrong.

The bulk of the first part of Parshas Mishpotim are issues of civil law, torts, as they are referred to in modern day jurisprudence.

Some deal with damages - personal<sup>6</sup> and property<sup>7</sup> - and various types of liabilities<sup>8</sup>. Some have criminal aspects<sup>9</sup> and others are regulations in which the involved parties are allowed to change the rules that the Torah gives<sup>10</sup>.

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<sup>5</sup> Whether such a hypothesis may be raised is dependent on a major dispute between Rambam and Ramban is an idea to be considered. See Ramban to Vayikro Perek 1/Posuk 9 to have an initial view of this subject.

<sup>6</sup> For example, see Sh'mos Perek 21/P'sukim 18-19.

<sup>7</sup> When one's property damages – see *ibid.* P'sukim 28-34. When a person's damages someone else's property see *ibid.* Posuk 37.

<sup>8</sup> See for example *ibid.* Perek 22/P'sukim 6-14.

<sup>9</sup> See *ibid.* Posuk 1.

<sup>10</sup> See the section dealing with *Shmomrim* –watchmen cited above, *ibid.* Perek 22/P'sukim 6-14.

We learn in Masseches Bava Metzia (Perek 7/Mishnah 8):

ארבעה שומרין הן שומר חנם והשואל נושא שכר והשוכר שומר חנם נשבע על הכל והשואל משלם  
את הכל ונושא שכר והשוכר נשבעים על השבורה ועל השבויה ועל המתה ומשלמין את האבדה  
ואת הגנבה:

There are four categories of 'watchmen', individuals who agree to take care of someone else's property: an unpaid watchman, a borrower, a paid watchman and a renter.

The unpaid watchman can take an oath to exempt himself from payment for a loss that occurs to the object for which he took responsibility; the borrower pays for all losses; the paid watchman and the renter can take an oath to exempt themselves when the object is broken, captured or dies and must pay in cases of the object being lost or stolen.

Certainly, on the surface, these topics seem to be most mundane and not the leading topics that I, at least, would have expected that the Torah would have chosen with which to begin.

But, I think that it is even more striking to note the specific topic within these *mishpotim* that the Torah did choose to have its beginning of specific Mitzvah instruction.

Let us read our Parsha's beginning (Sh'mos Perek 21/P'sukim 1-2):

וְאֵלֶּה הַמִּשְׁפָּטִים אֲשֶׁר תִּשִּׂים לִפְנֵיהֶם: כִּי תִקְנֶה עֶבֶד עִבְרִי שֵׁשׁ שָׁנִים יַעֲבֹד וּבְשִׁבְעַת יֵצֵא לְחֶפְשֵׁי חָנָם:

These are the laws that you [Moshe] are to put before B'nei Yisroel. When you acquire a Jewish slave he shall work for six years and in the seventh year he shall go free without payment.

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The above Halachos are all based on Chazal's interpretation of the verses noted above. A perusal of those verses will shed light on Chazal's interpretations since most seem explicit or close to it. A study of those verses with Rashi will certainly add to the clarity.

Though these Halachos and regulations are Torah Law, we read in that same Perek (Mishnah 10):

מתנה שומר חנם להיות פטור משבועה והשואל להיות פטור מלשלם נושא שכר והשוכר להיות פטורין משבועה ומלשלם:

An unpaid watchman can stipulate with the agreement of the owner that he will be exempt from payment even without taking an oath. The renter can make a stipulation with the owner that he will be exempt from all payments and the paid watchman and the renter can stipulate that they will be exempt from both payments and oaths.

Though we read in that same Perek (Mishnah 11):

כל המתנה על מה שכתוב בתורה תנאו בטל

Any stipulation that is made on that which is written in the Torah is invalid

The Halachah explains that Mishnah as referring to non-monetary laws. The laws of Shomrim are monetary.

However, for example, the laws of *Ribbis*, interest that are found in our Parsha and elsewhere are laws of *issur v'heter*, not monetary and thus cannot be changed by stipulations and agreements, even if all parties wish to adopt various conditions.

Why should this subject, עבד עברי, be the lead-off our study of particularistic Halacha? We will not deal with the fact that the laws of *eved Ivri* are inactive today. Torah is eternal so that is not an issue per se.

But why is this subject deserving to head the list of Mitzvos?

And we think a little more, aided by Rashi, we will be even more perplexed. We read:

כי תקנה - מיד בית דין שמכרוהו בגנבתו כמו שנאמר (שמות כב/ב<sup>11</sup>) אם אין לו ונמכר בגנבתו.

*When you buy* – [When you buy the *eved Ivri*] from Beis Din. Beis Din sold this person to repay the value of an article that he stole<sup>12</sup> as it says, ‘if the thief does not have money to pay for the theft, he should be sold for the article that he stole.

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<sup>11</sup> The theme of this verse is that of a thief who burrows under a person’s home in order to break-in and steal. The Posuk says that, out of doubt, you are allowed to kill this intruder because he expected to be challenged and thus came with the will to kill you if you try to prevent the theft.

However, if it is clear that the person doesn’t come to kill, then the householder may not kill the thief.

We read:

אם זָרְחָה הַשֶּׁמֶשׁ עָלָיו דָּמִים לוֹ שְׁלֵם יְשָׁלֵם אִם אֵין לוֹ וְנִמְכַר בְּגִנְבָתוֹ:  
If the sun shines upon this intruder, being clear that he does not pose a threat to you, he has blood and may not be killed; if he does not have the wherewithal to pay for what he stole, he will be sold for that which he stole.

<sup>12</sup> A Jewish male may sell himself because of a state of penury. Rashi’s continuation teaches where that Halacha is taught. We read:

...כשהוא אומר (ויקרא כה/לט) וכי ימוך אחיך עמך ונמכר לך, הרי מוכר עצמו מפני דוחקו אמור...  
When it says ‘when your brother who is with you becomes weakened and he is sold to you’ – that is when one sells himself because of his difficult situation.

That verse read:

וְכִי יִמוּךְ אָחִיךָ עִמָּךְ וְנִמְכַר לָךְ לֹא תַעֲבֹד בוֹ עֲבֹדֶת עֶבֶד:  
When you brother with you becomes weak and he is sold to you, do not make him work back-breaking labor.

The thief is the individual that the Torah has chosen to feature as its starting point for explicating its laws! It is astounding. Is this the principle with which the Torah wishes to give us our first impression?

Is this the initial meeting place of Am Yisroel and Halachah?

Perhaps we should begin teaching Dinim in our schools with the subject of slaves sold because of their thievery?

In fact, Chazal already suggested a beginning curriculum for תינוקות של בית רבן, children at the outset of their learning. We read in Midrash Tanchuma (Parshas Tzav 14):

אמר רבי אסיא למה הם מתחילים התינוקות של בית רבן ללמוד בספר ויקרא אלא מפני שכל הקרבנות כתובים בו ומפני שהם טהורים עד עכשיו ואינם יודעים מהו טעם חטא ועון לפיכך אמר הקדוש ברוך הוא שיהו מתחילין תחלה בסדר הקרבנות יבואו טהורים ויתעסקו במעשה טהורים לפיכך אני מעלה עליהם כאלו הם עומדים ומקריבים לפני הקרבנות...

Rav Asia said, 'Why do we begin children's studies with Sefer Vayikro [that deals with *Korbonos*]? The reason is that all of the *Korbonos* are written in it and since the children are pure and until now they do not know the taste of sin and transgression, therefore Hashem said that they should begin learning the order of the offerings.

Let those who are pure be involved in acts of purity.

Therefore I Hashem consider it as if they are standing and offering *Korbonos* before Me.

Now, it is true that the reasoning for children's education to begin with Sefer Vayikro is not relevant for the adults who received the Torah and already had the 'taste of sin and transgression'. But does that mean that it is necessary to go to the other extreme and focus on this thief?

But, the facts are that it is with the instance of the עבד עברי that the Torah did decide to begin Parshas Mishpotim and the specific type of עבד עברי under

discussion is the one who was נמכר בגנבתו, sold because he could not pay back the debt that was incurred when he stole an article and it was not returned<sup>13</sup>.

How are we to understand the Torah's choice?

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<sup>13</sup> There are instances when the thief is obligated to pay a monetary penalty, a קנס in addition to returning the stolen article or the stolen money.

These penalties are imposed only when the thief is incriminated in Beis Din by the testimony of proper witnesses.

In such an event, every thief will pay a fine of כפל, double. That is, in addition to the principle owed, he pays an additional amount equal to the principle. If the value of the theft was \$100, the total of the כפל would be \$200.

We learn this in our Parsha (Perek 22/Posuk 3):

אם המצא תמצא בידו הגנבה משור עד חמור עד ששה חיים שנים ישלם:

If the thief will be found with the stolen article in his hand, whether an ox or a donkey or a sheep, alive, he shall pay twice the amount.

There are very specific instances where the thief pays a total of four or five times the amount of the object that was stolen. That is, in addition to the principal he pays a fine of an additional 3 or 4 times of the amount of the principal. That is what we read in our Parsha (Perek 21/Posuk 37):

כי יגנב איש שור או ששה וטבח או מכרו חמשה בקר ישלם תחת השור וארבע צאן תחת הששה:

When a person steals an ox or a sheep and he slaughters it or he sells it – five cattle he shall pay in place of the ox and four sheep he shall pay instead of the sheep.

These penalties only apply to the very specific cases explicit in this verse.

In any case, since the Torah writes regarding this עבד עברי in a verse we have already seen:

אם זרחה השמש עליו דמים לו שלם ישלם אם אין לו ונמכר בגנבתו:

If it is clear that the intruder 'has blood' because he will not kill the householder, he must pay for the theft; if he doesn't have the money, he shall be sold for this theft.

In Masseches Kiddushin (18 a) we read:

תניא: בגניבתו - ולא בכפילו

The Braisa taught – he is sold for that which he stole but not for the fine that he owes.

We learn in Masseches Nedarim in the Talmud Yerushalmi (Perek9/Halachah 4)<sup>14</sup>:

ואהבת לרעך כמוך (ויקרא יח/יט<sup>15</sup>). רבי עקיבה<sup>16</sup> אומר זהו כלל גדול בתורה. בן עזאי אומר (בראשית ה/א<sup>17</sup>) זה ספר תולדות אדם זה כלל גדול מזה.

‘Love your neighbor as yourself’ – Rabi Akiva says ‘this is a major rule of the Torah’. Ben Azai says, ‘This is the book of the generations of Odom’ – this is an even greater major rule.

Rabi Akiva’s message is well-known to all. We all know the song and his words have become a valuable legacy as we extol the basic importance of אהבת רעים, loving one another.

On the other hand, many may never have even heard of Ben Azai’s differing opinion and may be particularly surprised to hear that he holds that his opinion is superior

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<sup>14</sup> These verses and the evaluations of them by Rabi Akiva and *Ben Azai*, respectively, are brought in a number of places with some variant readings. Some of the sources that we will bring here note the source in places other than the Yerushalmi that we are citing and the variant texts may be influential upon the understanding of the discussion.

At the same time, it is unreasonable to assume that the great people whom we cite were unaware of the variant readings.

<sup>15</sup> The entire verse reads:

לֹא תִקֹּם וְלֹא תִטֹּר אֶת בְּנֵי עֲמֻךָ וְאֶהְבֶּתָּ לְרֵעֶךָ כְּמוֹךָ אֲנִי ה'!  
Do not take revenge and do not bear a grudge against the members of your people; love your neighbor as yourself; I am Hashem

<sup>16</sup> The observant reader may be thinking that there is a printing error with the name עקיבא spelled with the letter *heh* instead of the letter *alef* as we write here. In fact, there is no error. In the *Talmud Yerushalmi* there are a number of spellings that are different than the ones we find in the *Talmud Bavli*. This is one example of that phenomenon.

In the time of Chazal there were differences between the spelling of Hebrew in Eretz Yisroel and the spelling of Hebrew in *Bavel*.

<sup>17</sup> The entire verse reads:

זֶה סֵפֶר תּוֹלְדוֹת אָדָם בְּיוֹם בְּרָא אֱלֹהִים אָדָם בְּדְמוּת אֱלֹהִים...לִקְיָם עָשָׂה אֱלֹהִים:  
This is the book of the generations of Odom on the day of G-d’s creating Odom; in the image of G-d He made him.

to that of Rabi Akiva when, at first glance, it is challenging to see what his seemingly innocuous verse could be considered important whatsoever. And certainly that verse does not seem to have the momentum of **ואהבת לרעך כמוך**!

How is this to be understood?

The Posuk that Ben Azai chooses to emphasize is the first ongoing genealogy that the Torah teaches. It teaches us of the ten generations between *Odom HoRishon* and Noach and those generations will be the fathers of all generations to follow.

That is, Hevel had no children. Kayin's descendants all perished in the flood. It was this third son of *Odom HoRishon*, Shes, who was the forebear of Avraham Ovinu. It was from *Shes* that we are all descended.

But this **כלל גדול** about which Ben Azai talks seems to be marginalized when we read the Mishna in Masseches Ovot (Perek 5/Mishnah 2):

עשרה דורות מאדם עד נח להודיע כמה ארך אפים לפניו שכל הדורות היו מכעיסין  
ובאין עד שהביא עליהם את מי המבול עשרה דורות מנח עד אברהם להודיע כמה  
ארך אפים לפניו שכל הדורות היו מכעיסין ובאין עד שבא אברהם וקבל עליו שכר  
כולם:

There were ten generations from Odom to Noach to let us know how much slowness to anger there is before Him. All the generations were continuing to anger Him until He brought the waters of the flood upon them.

There were ten generations from Noach to Avraham to let us know how much slowness to anger there is before Him. All the generations were continuing to anger Him until Avraham came and received the reward for all of them.

Now, based on this seminal Mishnah, Ben Azai's Posuk seems depressing. For twenty generations that was a continued downward path, paused by Noach and then wrapped by Avraham Ovinu.

But we are also not to be misled into thinking that with Avraham Ovinu history turned rosy. Avraham Ovinu had Yishmael as a son and Esav as a grandson. And we know who the families were that stemmed from them. Perhaps the most infamous descendent of Esav was Amalek. So there is no positivity there – unless we wish to focus exclusively upon Avraham Ovinu.

In fact, there are two approaches to Ben Azai's verse in which we see it in two very separate lights.

One approach, that of Meshech Chochmoh, sees that the verse is focusing on the great people of our history.

The other approach, that of the *Ohev Yisroel miApta* sees the verse as telling us that despite the fact that there are terrible disappointments, all people have the potential, at least, to be written in this Book of the Generations of Odom.

Let us learn excerpts from both.

Meshech Chochmoh writes on the verse of כמוך ואהבת לרעך כמוך:

...בן עזאי אומר: "זה ספר תולדות אדם" זה כלל גדול מזה. זה דבר כי תדע, כי כל השיטות מהרשע כבר היו, כמו שיטת האגרופ - היה אצל דור המבול "כי מלאה הארץ חמס" (שם ו/יג<sup>18</sup>), ו"באו בני האלהים אל בנות האדם" (שם שם ד<sup>19</sup>). שיטת כיס אחד יהיה לכולנו היה אצל הפלגה, כי רצו שיהיו שותפים וחברה יחד בהון ובנשים וכל מחמדיהם לא יהא להם יחס, רק משותף להמין. והקדוש ברוך הוא פלג לשונם, וכל אומה רצתה להכחיד חברתה. רק השתלמות האדם למרום תכליתו ולפסגת מטרתו אשר בל יוכל להשתלם יותר, היה על ידי השתלשלות ההשגחה אצל האבות, עד בואם אל רום המעלה בהשגחה הנסיית ובחכמה על ידי משה, והגיעו כולם למעלת נבואה, וראו כבוד ה'. ולכן תדע, כי "זה הספר" - הוא ספר התורה - הוא "תולדות אדם", התפתחותו למרום קיצו מה שיוכל האדם לבא בעולם הזה.

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<sup>18</sup> The entire verse reads:

וַיֹּאמֶר אֱלֹהִים לְנוֹחַ קֵץ כָּל בָּשָׂר בָּא לִפְנֵי כִי מְלֵאָה הָאָרֶץ חָמָס מִפְּנֵיהֶם וְהִנְנִי מַשְׁחִיתָם אֶת הָאָרֶץ:  
G-d said to Noach, "The end of all flesh has come before Me because the land is full with violence before them; behold I am destroying them and the land."

<sup>19</sup> The entire verse reads:

הַנְּפִלִים הָיוּ בָאָרֶץ בְּיָמֵים הֵהָם וְגַם אַחֲרָי כֵן אָשֶׁר יָבֹאוּ בְנֵי הָאֱלֹהִים אֶל בְּנוֹת הָאָדָם וַיִּלְדוּ לָהֶם הַמָּה הַגְּבֻרִים אֲשֶׁר מְעוֹלָם אֲנָשֵׁי הַשָּׁמַיִם:

The giants were in the land in those days and also afterwards noblemen came to the daughters of man and gave birth with them; those were the warriors that were from all times, the people who were well-known.

*Ben Azai says 'this is the book of the generations of Odom is a greater principle - this is what you should know. All the various evils philosophies [of how the world should operate] have already existed.*

The rule of the fist – already existed at the time of the *Mabbul* as it says, 'the world was filled with violence' and 'the nobility took all the women.

That all people should share all of their possessions [socialism?] was the view of the generation of the Tower of Babel where they wanted all to be partners in everything and to share their wives and all that they desired and that there should be no individual, personal, pedigree everyone should belong to the entire species. And Hashem split their languages and then each nation wanted to destroy the other.

Only when mankind becomes complete and reaches the heights of their purpose in this world and to the peak of their goal can they be said to be perfect. That perfection came about through the development of Divine Providence with the Patriarchs until they reached the heights of Divine Providence with miraculous events and then reached the wisdom of Moshe and then Israel reached the level of prophecy and they saw the Glory of G-d [at Sinai].

Thus you should know that 'this is the book...' refers to the Sefer Torah which is the history of man [as it unfolds], man's development to the highest level that man can reach in this world...

That is, Meshech Chochmo understands Ben Azai's Posuk as referring to superior man, the individual who is not swayed by false philosophies and values. Rather, it is telling of the *toldos*, of how a great man can lead his life to develop himself and continue on a personal level to have ever-greater achievements and how the nation as a whole can do so as its history progresses from generation to generation.

Perhaps, that is the reason that the verse uses the term *odom* to remind us of the process that needs to be undertaken so that Israel can return to the pristine status that *Odom HoRishon* possessed before he sinned and was banished from *Gan Eden*.

Meshech Chochmo continues this theme in a commentary he writes in Parshas Nitzavim (D'vorim Perek 30/Posuk 11). He comments on the verse there:

כִּי הַמִּצְוָה הַזֹּאת אֲשֶׁר אֶנְכִי מְצַוְךָ הַיּוֹם לֹא נִפְלֶאת הִוא מִמֶּךָ וְלֹא רַחֲקָה הִוא:

Because this Mitzvah that I command you today is not separate from you and not distant.

Meshech Chochmo writes:

זוה (בראשית א/לא<sup>20</sup>) "וירא א...ל'קים את כל אשר עשה והנה טוב מאוד", שהא...לקים עשה אותו ישר, רק המה הגבירו התאוה והדמיון (קוהלת ז/כט<sup>21</sup>) ו"בקשו חשבונות רבים". ולכן אמר בירושלמי נדרים (ט, ד) בן עזאי אומר "זה ספר תולדות אדם" - אין לך כלל גדול בתורה מזה. והוא כי האדם כשהוא קרוב לתולדתו בלא שטוף תאות מגונות ובלא הפלגת מושכלים דמיונים כוזבים, הוא ספר גדול אשר בו כתוב וחקוק בעט א...לקי הרחקת העול ובקשת הצדק והחסד ומציאות השם יתברך וההרחק מהתאוה, רק האדם ילמד ממנו במבט ישר. וזה שאמר (בראשית א/כז<sup>22</sup>) "בצלם אלקים" וכו', שהוא כהאלקים ממנו "לדעת טוב ורע" (שם ג/כב<sup>23</sup>) היינו "ממנו" - עצמו.

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<sup>20</sup> The entire verse reads:

וַיֵּרָא אֱלֹהִים לְקִים אֶת כָּל אֲשֶׁר עָשָׂה וְהִנֵּה טוֹב מְאֹד וַיְהִי עֶרֶב וַיְהִי בֹקֶר יוֹם הַשְּׁשִׁי:  
Hashem saw all that He did and behold it was very good; it was night and it was morning, Day One.

<sup>21</sup> The entire verse reads:

לְבַד רָאָה זֶה מְצָאתִי אֲשֶׁר עָשָׂה הָאֱלֹהִים לְקִים אֶת הָאָדָם יָשָׁר וְהֵמָּה בִקְשׁוּ חֲשָׁבוֹת רַבִּים:  
Besides this, see what I discovered: G-d made man straight; mankind seeks all sorts of calculations [to avoid being straight].

<sup>22</sup> The entire verse reads:

וַיִּבְרָא אֱלֹהִים לְקִים אֶת הָאָדָם בְּצַלְמוֹ בְּצַלְמוֹ בְּצַלְמוֹ אֱלֹהִים בָּרָא אֹתוֹ זָכָר וּנְקֵבָה בָּרָא אֹתָם:  
G-d created man in His image, in the image of G-d He created him; male and female He created them.

<sup>23</sup> The entire verse reads:

וַיֹּאמֶר ה' אֱלֹהִים לְקִים הֵן הָאָדָם הָיָה כְּאֶחָד מִמֶּנּוּ לְדַעַת טוֹב וָרָע וְרַע וְעָתָה פֶּן יִשְׁלַח יָדוֹ וְלָקַח גַּם מִעֵץ הַחַיִּים וְאָכַל וַחֲיִי לְעֹלָם:  
Hashem G-d said, 'Behold Man became like one of us to know good and bad and now lest he send out his hand and take from the Tree of Life and he and live forever.

The word ממנו in *L'shon HaKodesh* can mean 'from us' or 'from him'. It would seem that according to the simple reading of the verse ממנו would mean 'from us' because Hashem was grouping Himself with the angels.

This verse is in consonance with what we read at the end of Creation, 'G-d saw all that He did and behold it was very good'. That is, as it says in Sefer Koheles, 'G-d made everything straight [and correct]'. However, mankind empowered their desire and fantasy and 'sought to make all sorts of calculations [that were not straight and correct]'.

Therefore it says in the Talmud Yerushalmi, 'Ben Azai said that the verse, "this is the book of the generations of man" – there is not a greater principle in the Torah than this.

The explanation is this: When a person is close to [the source] of his birth, removed from the flow of despicable desirers and far-removed from false intellectual imaginings, that person is himself an important individual upon whom is engraved the Divine writing that he is distant from iniquity and is seeking righteousness and kindness and finding G-d and distancing himself from desires.

Man can only learn from G-d by looking in a straight and correct manner. That is the *image of G-d* that is said in Creation. That man is similar to G-d in regards that he knows that which is good and that which is bad. Such knowledge comes ממנו, from Him, from Hashem Himself.

I understand the approach of Meshech Chochmo as follows:

Rabi Akiva extolled the verse of *ואהבת לרעך כמוך*. And, he seemingly wasn't the first.

We learn in Masseches Shabbos (31 a):

שוב מעשה בנכרי אחד שבא לפני שמאי, אמר לו: גיירני על מנת שתלמדני כל התורה כולה כשאני עומד על רגל אחת. דחפו באמת הבנין שבידו. בא לפני הלל, גייריה. אמר לו: דעלך סני לחברך לא תעביד - זו היא כל התורה כולה, ואידך - פירושה הוא, זיל גמור.

There was another event when one non-Jew came before Shammai and said to him, 'Convert me on the condition that you will teach me the entire Torah

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However, Meshech Chochmo learns *p'shat* that since 'knowing good and bad' stems from G-d's knowledge only, ממנו must be translated as 'from Him'. After all, the angels' knowledge is not their own. It, too, comes ממנו, 'from Him'.

while I am standing on one foot.’ Shammai pushed him away with a building tool<sup>24</sup>.

The non-Jew came before Hillel [and made the same request and declaration]. Hillel converted him. Hillel said to him, ‘That which is hateful to you, do not do to your friend. That is the entire Torah; the rest is its commentary – go and learn.’

One who learns Ramban’s commentary on *וזהבת לרעך כמוך* will see how closely that it takes Hillel’s words and applies them to that Mitzvah.

That is, Rabi Akiva sees this proper interpersonal relationship with all people<sup>25</sup> as being the underlying principle of the entire Torah.

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<sup>24</sup> This tool, *אמת הבנין*, is either a ‘level’ that makes sure that the rows of stone, bricks or wood are placed in a straight manner or a stick or brick that is one *אמה* in length.

According to this explanation the term *אמת הבנין* refers to a ‘level’, then it stems from the word *אמת*, meaning ‘truth’. It is used to measure that the various parts of the building must be measured by an objective manner – this tool.

According to the other explanation *אמת הבנין* refers to the *amoh* measurement.

Why is it important to know why Shammai drove this individual away using the *אמת הבנין*? The answer seems to be that Shammai did not want any lack of clarity regarding the Torah – a deficiency that would certainly come about if this potential *גר צדק* would be given a shortcut regarding conversion procedures. Thus he drove him away with a tool that wishes to assure that building’s structural integrity.

We may also note that

<sup>25</sup> Rambam writes in *Mishneh Torah Hilchos Dei’os* (Perek 6/Halachah 3):

מצוה על כל אדם לאהוב את כל אחד ואחד מישראל כגופו שנאמר וזהבת לרעך כמוך, לפיכך צריך לספר בשבח וליחוס על ממונו כאשר הוא חס על ממון עצמו ורוצה בכבוד עצמו, והמתכבד בקלון חבירו אין לו חלק לעולם הבא.

It is a Mitzvah incumbent upon everyone to love each and every one of Israel – just like he loves himself as it says, ‘You shall love your neighbor as yourself’. Therefore one must tell the praises of the other and protect the other’s money just like he protects his own and [seek the honor of the other] just like he seeks his own. One who seeks honor from the shame of another has no portion in the World to Come.

Ben Azai, on the other hand – and according to Meshech Chochmo- sees the outstanding nature of the verse of ספר תולדות האדם as referring to the outstanding members of our nation. Those who approach perfection, who receive prophecy and Divine inspiration, the exceptional people and they are the example for us all and thus there exalted profile presents and even greater principle of the goal of the Torah and the *tachlis* of Creation.

However, the *Ohev Yisroel* sees the divergence between the opinions of Rabi Akiva and Ben Azai in a different light. We read his writing to Parshas B'reishis (*Likutim d.h. b'midrash rabba*):

במדרש רבה (בראשית רבה סוף פרק כד) זה ספר תולדות אדם בן עזאי אומר זה כלל גדול בתורה. רבי עקיבא אומר ואהבת לרעך כמוך זה כלל גדול בתורה עד כאן לשונו. נראה דהנה סיפא דקרא זה ספר תולדות אדם ביום ברוא א...ל'קים אדם בדמות א...ל'קים עשה אותו, ובא להורות אותנו שהאדם נברא בצלם א...ל'קים ומהות הצלם הוא תקונין קדישין ואורות עליונים אורות מקיפין הנמצאים מן המעשים ישרים ותורה ומצות שהאדם עוסק בהם באהבה ויראה. והנה הצלם הזה מה מאוד צריך לשמור אותו לבלתי יסתלק וילך לו על ידי רוח שטות שיכנס בהאדם:

The Midrash Rabba writes, 'This is the book of the generations of Man' – Ben Azai says this is a great principle of the Torah. Rabi Akiva says, 'you shall love your neighbour as yourself' this is a great principle of the Torah' (end of quote).

It appears that the conclusion of the verse of 'this is the book of the generations of man on the day of G-d's creating man; in the form of G-d He

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הגהות מיימוניות, one of the earliest commentators on Mishneh Torah, writes in his commentary to this Halachah:

ודוקא שהוא רעך בתורה ובמצות אבל אדם רשע שאינו מקבל תוכחה מצוה לשנאתו שנאמר (משלי ח/ג) יראת ה' שנאת רע ואומר (תהילים קלט/כא) הלא משנאיך ה' אשנא וגו'. (בערבי פסחים) עד כאן:

This only applies when the other person is 'your neighbor' in Torah and Mitzvah observance'. However, regarding a wicked person who does not accept rebuke, there is a Mitzvah to hate him as it says, 'the fear of G-d is hating evil' and it says, 'Is it not, Hashem, those who hate You, I will hate?' This is found in the Tenth Perek of Masseches Pesachim.

The Gemara to which he is referring is found there on 113 b.

made him' comes to teach us that man was created in the image of G-d and the substance of that image is the 'holy *tikkunim*<sup>26</sup> –rectifications' and the 'sublime lights<sup>27</sup>', the 'encompassing lights' that come about from the straight actions and the Torah and Mitzvos that man is involved in with Awe and Love of G-d.

Behold, this 'image [of G-d]' must be guarded very much so that it should not depart from and leave man because of a foolishness that might enter into the person.

*Ohev Yisroel* does not clearly deal with the superiority of one principle over the other<sup>28</sup>. But it is clear that the Posuk of ספר תולדות אדם refers to the development of the individual, each and every person, and not just those who achieve the greatest of heights.

וְאֵהְבֵת לְרֵעִי כְמוֹךְ is for every person. That is the interaction that I am to have with the other. ספר תולדות אדם is how I am to see myself.

*I am to be aware of my potential. I am to be aware of my faults. I am to regret that I am not living up to my potential and thus I am responsible to seek the *tikkun(im)* that I require and the light that will enlighten me in the darkness that has pervaded me because of my faults.*

And thus, ספר תולדות אדם is an enhanced principle. It is a clarion call for each and every person to know what their goal is and to undertake the necessary actions to reach that goal.

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<sup>26</sup> *Tikkun* in Kabbalistic terms refers to actions that can be undertaken to 'repair' or 'rectify' behaviors or thoughts that have lowered an individual or all of mankind from the pristine level with which he or they are endowed by the:

נשמה שנתת בי טהורה היא...

Hashem, the soul that You gave me is pure...

When a person sullies that soul and regrets doing so, he must undertake a *tikkun* or *tikkunim* that can rectify him, with heavenly help, of course.

<sup>27</sup> These lights and the ones that follow are radiances from the Shechinah that come to us in one way or the other.

<sup>28</sup> See note 14.

I relate to others with love, untampered. I relate to myself with introspection and self-criticism that is intended to rectify that which I need to do.

That is how I understand the intent and impact of the *Ohev Yisroel* and that now brings us back to our inquiry regarding the reason why the Torah began its explication of specific Mitzvos with the עבד עברי, the Jew who is sold into slavery because he stole and is unable to make restitution.

How do we look at this Jewish slave? Do we look down upon him? Do we denigrate him and treat him with disrespect? Do we see him as lowly and unworthy and as being an outcast? He is a sinner, a thief and a slave!

It is for the very reason that the Torah leads its Mitzvos with the Halachos of *eved Ivri* in order to deny the worthiness of all of the outlooks noted just above.

The Halachah teaches us that this slave cannot be worked in a degrading manner. When he is sold<sup>29</sup>, he is not to be put on a slave block, rather he is sold in a private and dignified manner<sup>30</sup>. He may not be given back-breaking labor or busy-work just because he is available<sup>31</sup>. He may not be ordered to do work that is meant to degrade him – such as to carry his clothes to the bathhouse<sup>32</sup>.

In fact, Rambam writes<sup>33</sup>

כל עבד עברי או אמה העבריה חייב האדון להשוותן לו במאכל ובמשקה בכסות ובמדור שנאמר (דברים טו/טז<sup>34</sup>) כי טוב לו עמך...מכאן אמרו כל הקונה עבד עברי

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<sup>29</sup> That which is written here also refers to an *eved Ivri* who sells himself to another Jew because he is impoverished.

<sup>30</sup> Mishneh Torah LaRambam Hilchos Avodim Perek 1/Halachah 5.

<sup>31</sup> Ibid. Halachah 6.

<sup>32</sup> Ibid. Halachah 7. Rambam writes there that it is certainly permissible to hire a Jew to do such labors, even if they are seen as degrading, because the worker can choose to accept the job or to refuse it. That is in contrast to a slave.

<sup>33</sup> Ibid. Halachah 9.

<sup>34</sup> The entire verse reads:

כקונה אדון לעצמו, וחייב לנהוג בו מנהג אחוה שנאמר (ויקרא כה/מו<sup>35</sup>) ובאחיכם בני ישראל...

Regarding every *eved Ivri* or female Jewish slave, the master must make them equal to him with food, drink, clothing and living arrangements as it says, 'because it is good for him with you'.

Based on this, Chazal said 'whoever acquires an *eved Ivri* has acquired a master over himself. The master must deal with the *eved Ivri* in a brotherly manner, as it says [in the context of Jewish slaves], 'with your brothers, B'nei Yisroel'.

The *eved Ivri* is showcased at the beginning of the specific Mitzvos that the Torah outlines for us.

With this showcasing, the Torah here is emphasizing the Mitzvah of **וְאָהַבְתָּ לְרַעֲךָ כָמוֹךָ**. You cannot be choosy. Love this *eved Ivri*, even though he was sold as a thief, as you love each and every Jew.

And, at the same time, this *eved Ivri*, if he is fortunate enough to have an owner who fulfils the precept of **וְאָהַבְתָּ לְרַעֲךָ כָמוֹךָ**, must look at another verse in the Torah and not be swept away by the privileges that he receives.

What is that other verse? **זֶה סֵפֶר תּוֹלְדוֹת אָדָם**.

What does Rambam say that the attitude of this *eved Ivri* should be? He writes in the continuation of the last Halachah that we read:

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וְהָיָה כִּי יֹאמֵר אֵלָיךָ לֹא יֵצֵא מֵעִמָּךְ כִּי אָהֲבָךְ וְאֵת בֵּיתְךָ כִּי טוֹב לוֹ עִמָּךְ:  
It will be when the *eved Ivri* says to you, 'I will not go out from you' because he loves you and loves your house because it is good for him with you.

<sup>35</sup> The entire verse reads:

וְהִתְנַחַלְתֶּם אֹתָם לְבָנֵיכֶם אַחֲרֵיכֶם לְרִשְׁתָּ אַחֲזָה לְעַלְמָם בְּהֵם תַּעֲבֹדוּ וּבְאֲחֵיכֶם בְּנֵי יִשְׂרָאֵל אִישׁ בְּאָחִיו  
לֹא תִרְדֶּה בוֹ בְּפָרְךָ:

You shall have the non-Jewish slave as an inheritance for your sons after you to inherit them as a holding; you shall always have them as slaves; but, with your brothers B'nei Yisroel, each man with his brother – you may not work them with back-breaking labor.

ואף על פי כן צריך העבד לנהוג בעצמו מנהג עבדות באותן העבודות שהוא עושה לו.

Even though he is being treated most favorably, the *eved Ivri* must comport himself as a slave regarding the various work that he has to perform.

When he sees himself as a slave, despite the good and loving care that he receives, this *eved Ivri* will know that he must find the proper *tikkunim* and seek the light that those acts of rectification will bring.

Both *וואהבת לרעך כמוך* and *זה ספר תולדות אדם* have man as their central focus. Man as he relates to the other and man as he relates to himself.

These are the great principles upon which our Torah was given. May we follow them and fulfill them to the very best of our ability.

Shabbat Shalom

Chodesh Tov

Rabbi Pollock