YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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***Bein Adam Le-chavero*: Ethics of Interpersonal Conduct**

**By Rav Binyamin Zimmerman**

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In memory of our grandparents, whose yahrzeits fall this week:

Shmuel Nachamu ben Shlomo Moshe HaKohen Fredman (10 Tevet)

Chaya bat Yitzchak David Fredman (15 Tevet)

Shimon ben Moshe Rosenthal (16 Tevet)

By their grandchildren and great-grandchildren,

Aaron and Tzipora Ross and family

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***Shiur* #11: The Obligation of *Mishpat*, Careful Scrutiny of One's Actions**

After spending a number of lessons developing the basis for the obligation of performing acts of *chesed*, kindness, we must take note of the fact that the Jewish tradition of morality is much more extensive. The prophet Yirmeyahu informs us that God desires not only *chesed*; He upholds two other ideals as well, and He expects His handiwork to do the same:

Thus says God:

Let not the wise man glory in his wisdom,

Neither let the mighty man glory in his might,

Let not the rich man glory in his riches;

But let him that glories glory in this — that he understands and knows Me,

That I am God, who exercises *chesed,*

*Mishpat* and *tzedaka* on earth;

For in these things I delight,

Says God.

(*Yirmeyahu* 9:22-23)

These verses, which the Rambam chooses to conclude his *Moreh Ha-nvukhim* with, describe the unique Jewish tradition of morality and the emphasis that God places on the ideals of *mishpat* (justice) and *tzedaka* (righteousness)*,* along with *chesed*. We have already discussed the term *chesed,* which in its simplest form means kindness. The importance of kindness, and especially the uniquely Jewish understanding of kindness, is an undeniable part of Jewish tradition. But what is the meaning of *tzedaka* and *mishpat;* why does God desire them as much as *chesed*?

If Yirmeyahu were the only one to mention these terms, then we could afford to give a simplistic explanation, but these terms reappear in some of the most important verses describing the Jewish tradition of morality. The mention of these ideas of *tzedaka* and *mishpat,* sometimes in place of the more natural term *chesed,* seems to indicate that a proper definition and precise classification of all three of these actions is essential for understanding the unique Jewish tradition of Divine morality.

These terms appear in numerous other places — notably, in our daily prayers, in the blessing of justice, we refer to God as “the King who loves *tzedaka* and *mishpat*.” King David is referred to as performing “*mishpat* and *tzedaka* to all” (II *Shmuel* 8:15).

In *Makkot* 24a (see lesson #01), the Talmud cites the prophets who based the *mitzvot* of the Torah on certain overarching principles; it is *mishpat* that appears in the top three and the top two, while *chesed* and *tzedaka* are mentioned only once each:

The prophet Mikha came and established them [i.e., the fulfillment of the six hundred thirteen commandments] upon three [ethical requirements], as it is written: “He has told you what is good and what God demands of you: only [1] to do justice, [2] to love kindness (*ahavat chesed*), [3] and to walk humbly with your God” (*Mikha* 6:8)…

Yeshayahu came again and established [the *mitzvot*] upon two, as it says, “So said God: [1] Guard justice and [2] perform righteousness” (*Yeshayahu* 56:1)…

Once again, these three terms reappear as central themes, but *mishpat* is mentioned in both verses underscoring the Jewish tradition. But what is *mishpat*, and why is it so central?

We may find an answer to this in the Torah’s description of the heritage of our patriarch Avraham. Most would assume that Avraham’s legacy is rooted in his extreme kindness and hospitability, his unique form of *chesed* for which he gains renown. However, after the Torah’s description of Avraham’s hospitality towards the three wayfarers (*Bereishit* 18:1-5), God describes Avraham’s uniqueness in providing a legacy of *tzedaka* and *mishpat.* (See lesson #03, in which we quoted the Meshekh Chokhma’s view that this verse is the source of the obligation of *chinnukh,* education). God decides to inform Avraham of his plans to destroy Sodom not only because of his uniqueness, but also because he will educate his children to live by *derekh Hashem*, the way of God, which incorporates righteousness and justice.

And God said, “Shall I hide from Avraham what I am doing, seeing that Avraham shall surely become a great nation and all the nations of the earth shall be blessed in him?  For I have known him to the end that he may command his children and his household after him to **keep the way of God, to do righteousness and justice**, to the end that God may bring upon Avraham that which He has spoken to him.” (*Bereishit* 18:17-19)

What exactly is Avraham’s tradition of *tzedaka* and *mishpat,* and why does it pre-empt the mention of Avraham’s *chesed*? This verse also describes these terms as reflective of the *derekh Hashem*, the way of God; thus, understanding their power may help us reveal the secret to the way of God that we desire to follow.

**The Rambam’s Understanding of *Derekh Hashem***

Defining the terms will hopefully be helpful in understanding a difficulty in the Rambam’s view which we discussed in lesson #07. The Rambam is analyzing these same verses about Avraham, and he concludes that this refers to the golden mean, the proper mode of human behavior. He explains that we are to walk in the moderate ways of God, fulfilling the dictate of “*Ve-halakhta bi-drakhav,”* “And you will follow His ways.” The Rambam writes that a person who adopts this path is in fact following the way of God:

We are bidden to follow the middle paths, which are the right and proper ways, as it is written, “And you will follow His ways”.

Our Sages taught the following explanation of this mitzva. “Just as He is called ‘merciful,’ so should you be merciful; just as He is called ‘gracious,’ so should you be gracious.” Just as He is called “holy”, you shall be holy. In a similar manner, the Prophets call God by other titles: “slow to anger,” “abundant in kindness,” “righteous”, “just,” “perfect”… to inform us that these are good and just paths. A person is obligated to accustom himself to these paths and to emulate Him to the extent of his ability. (*Hilkhot De’ot* 1:5-6)

Rambam concludes by saying that this way is *derekh Hashem,* the way of God referred to in our verse:

And since the Creator is known by these titles, and this is the middle path which we must follow, this way is called "the way of God," and this is what Avraham taught his children, as it is written: “For I have known him to the end that he may command [his children and his household after him to keep the way of God, to do righteousness and justice]”… And one who follows this path brings goodness and blessing to himself, as it is written: "To the end that God may bring upon Avraham that which He has spoken to him." (*ibid*. 7)

The Rambam’s explanation is fascinating but at the same time it is very difficult to understand. The Rambam describes d*erekh Hashem*, which Avraham sought to bequeath to his descendants, as the golden mean, maintaining balance in one’s character traits. How does the Rambam know that this is what the Torah means? Could one not claim that the “way of God” is exercising every positive character trait in the extreme — being the most humble, the most generous, the most merciful, etc. After all, there is no mention in this verse that moderation is the way of God; how does the Rambam know that this is what this verse refers to? By defining *tzedaka* and *mishpat*, we will be able to understand the Rambam’s position here as well.

**Defining *Tzedaka* and *Mishpat***

*Tzedaka,* at first glance, seems very understandable; nevertheless, in our next lesson, we will try to explain its deeper meaning. The real question is the following: what is *mishpat,* and why is it so essential to the Jewish tradition? Indeed, if we attain a better understanding of *mishpat* and its status as one of the defining character traits of the Jewish people, we may redefine *tzedaka* as well. After all, if *chesed* cannot stand alone, and if *tzedaka* and *mishpat* seeming supersede it in the unique heritage of Avraham, each term must be defined more precisely, with an eye towards its unique Jewish message.

The Hebrew word “*mishpat*” is literally translated as “justice.” At first glance, one can imagine that the Torah commands us to love justice or even to build a system of justice, but the Jewish tradition goes beyond this, hailing *mishpat* as one of the defining ideals of the Jewish people.

In the second-to-last chapter of his *Moreh Ha-nvukhim* (III:53), the Rambam explains the three concepts we are discussing, based on the verse in *Yirmeyahu* that we began with. He explains *chesed*, as going beyond, doing more than is required of one — such as doing more for another person than one is required to. *Tzedaka*, on the other hand, means “granting to everyone that which is due to him, and giving to every being what is deserved.” *Mishpat* is "applying judgment as is proper in each case, whether giving benefit or punishment."

The noun *mishpat* denotes the act of deciding upon a certain action in accordance with justice, which may demand either mercy or strictness.

We have thus shown that *chesed* denotes pure charity and *tzedaka,* kindness, prompted by a certain moral conscience in man, and being a means of attaining perfection for his soul; *mishpat*, on the other hand, may in some cases find expression in revenge, in other cases in mercy.

Rav S. R. Hirsch has a similar explanation for the cryptic verse (*Bereishit* 15:6) “He regarded it for him as *tzedaka”:*

*Tzedaka* is not identical with *mishpat*; *tzedaka* is always mentioned beside *mishpat* as something different. Only one who does both *mishpat* and *tzedaka* fulfills his duty in life. When God does *tzedaka,* He bestows favor on His creatures out of His grace, not on account of their merit.

*Mishpat* stems from the root “*shafat*”… The basic meaning of the root is to put something in its proper place; the primary meaning of *shafat* is thus to impose order. *Mishpat* does not make one rich nor add to what exists; it merely maintains what exists and restores things to their rightful owner.

The commentators express that *mishpat* entails judgment. It is an act of careful reflection on what is necessary, and how one deserves to be treated. With this understanding of *mishpat*, one can understand the Rambam’s explanation of the way of God and the middle path.

**Understanding “The Way of God”:**

Rav Aharon Lichtenstein explains how the Rambam’s definition of *mishpat* and *tzedaka* explains the nature of the golden mean.

In light of this explanation by Rambam, we can now understand what brings him to understand "the way of God" as he does. Since the verse goes on to say, "to perform righteousness and justice," rather than "to perform kindness," Rambam concludes that the text is not talking here about an educational policy that calls upon a person to maintain every trait in the most excessive and extreme fashion. That would be "*chesed*," which indicates excess. Rather, the verse discusses an approach that teaches that every trait should be maintained in moderation, such that the person will not stray from the middle path.

It should be added that the verse suggests that in order to arrive at performing righteousness and justice, a person must first lay the foundations of a lifestyle that represents "the way of God." Someone whose actions are motivated by momentary considerations may do some good here and there, but this will not be a structured, consistent process, and there is no way of him passing it on to future generations. Only a person who builds himself a structured way of life in which he controls his personality traits and maintains each in a measured, deliberate fashion, is able to perform "righteousness and justice" and also to bequeath his path to his children and household.

With this in mind, Rav Lichtenstein explains why in other instances the Rambam seems to praise extremes in one’s relationship with God. For example, he describes the proper adoration of God as boundless lovesickness for Him (*Hilkhot Teshuva* 10:2). Nevertheless, he still refers to the middle path as that of moderation.

Only a person who has established for himself the foundations of "righteousness and justice" can strive for the boundless love of God described in *Shir Ha-shirim*, after which he returns unharmed to his routine lifestyle. Only a person whose path in serving God is a solid, consistent one, rather than a collection of rapturous religious moments, can bequeath his path "to his children and his household after him." (Rav Aharon Lichtenstein, *Sicha* on [*Parashat Vayera*](http://www.vbm-torah.org/archive/sichot66/04-66vayera.htm), “The Way of God”)

First, one must develop an approach to life built on *tzedaka* and *mishpat*, carefully weighing his actions, knowing when to administer the letter of the law and when to be more kind. With this in mind, we can understand an explanation of the Rambam’s golden mean cited in the name of Rav Soloveitchik *zt”l*, redefining the nature of the path of moderation.

Rav Soloveitchik is quoted as saying that moderation does not mean using every attribute in its middle application, for the simple reason that moderate behavior is not the appropriate response to every situation. The golden mean must govern a person's general approach to life, rather than dictate his conduct under all circumstances. The Rambam bids us to use sound judgment and reason when deciding how to act, rather than maintaining a consistent pattern of behavior at one extreme. At times a person must act forcefully, while other instances call for a more mild demeanor. While some situations require one to deal exactingly and inflexibly, others dictate adaptability and the willingness to forego. (See Rav David Silverberg, *Parashat Vayera,* Virtual Beit Midrash)

The Rav's understanding is expressive of the balanced life of *tzedaka* and *mishpat*, a synthesis of kindness and justice. Careful analysis of every situation allows one to determine the most appropriate mode of action.

The way of God taught to us by Avraham is the way of sound reason, clarity, sensibility, and careful, patient decision-making. In essence, one who follows the golden mean is in control of himself and is carefully able to scrutinize every situation. Such an individual uses his sense of *mishpat*, not as a judge in the courtroom, but a judge over his own actions, arbitrating the proper mode of behavior.

**Every Jew is a Judge**

In fact, one might suggest that *mishpat* is the overarching obligation of the Jew. While the concept of judgment is often viewed as the domain of the appointed judges of the community, this may in fact be only part of the story.

The commentators wonder why it is that *Avot*, the tractate that deals with many ethical issues, appears in the section of the Talmud known as *Nezikin*, which deals with damages. Two of the Rishonim who dealt with the question arrive at seemingly different conclusions, but a deeper look may indicate that these answers are very much related.

The Rambam, in his introduction to the Mishna, provides a well-developed lengthy discourse on the order of the various tractates, and he addresses this seeming anomaly.

And after completing the discussion of all the necessities of judges, the Mishna inserts Tractate *Avot*. It does so for two reasons. Firstly, in order to tell you the truth of the *Mesora* and Jewish tradition… and secondly, in order to inform us the ethical teachings of the various Jewish scholars of blessed memory, in order for us to learn from them, and it is the judges that need this more than anyone else. For if a regular individual does not study ethical teachings, the damage is minimal, for he has only caused himself damage. However, if a judge is unethical or immoral, he destroys himself and the nation through the damage he inflicts. Therefore, Tractate *Avot* begins with laws addressing directly the judges…

The Rambam goes on to enumerate various lessons for judges that appear at the beginning of Tractate *Avot*; properly studied, these lessons improve the judicial system. The Rambam concludes that a judge who inculcates the lessons of *Avot* will become like a master physician who knows exactly when and how to use each and every means of healing; similarly, the judge who masters these teachings will know exactly when to be strict or easygoing in judgment, and he will not cause any unnecessary damage through his decisions.

Thus, the Rambam stresses that *Avot* is placed in *Nezikin*, the section of the Oral Law dealing with criminal, civil and commercial law, because its main message is aimed at judges. The Me’iri, on the other hand, seems to understand differently. He writes in his introduction to the tractate that “the subject of this tractate is to awaken man to perfect his attributes and actions in order to achieve the ‘ultimate perfection,’ i.e., the perfection of the soul.” The Me’iri continues by saying that, for this reason, *Avot* is the tractate which the Talmud (*Bava Kamma* 30a) points to for self-improvement, as it contains various explications of the wholesome character.

At first glance, one might understand that the Rambam and the Me’iri are providing diametrically opposed outlooks as to the audience of Tractate *Avot*. The Rambam views it as directed towards the judges, designed to perfect their character in order that they may judge properly, while the Me’iri sees the tractate as directed towards improving the personality of each and every individual.

On the one hand, one cannot deny the various laws, especially at the beginning of the tractate, that seem to provide directives to judges: “Be deliberate in judgment” (*Avot* 1:1), “Questions the witnesses thoroughly” (ibid. 9) and the like. On the other hand, how could the Rambam focus on these directives when numerous elements of the tractate seem to deal with lessons for the ordinary Jew, not just the judge?

We may understand that the two explanations provided, that of the Rambam and that of the Me’iri, are not contradictory but rather complimentary. As the Me’iri notes, the tractate is directed towards improving the character of every individual, but as the Rambam states, perfection of character is most important for the judges, whose decisions will impact other people and society. *Avot* is in fact the tractate for the judge, but every individual acts as a judge, and is involved in dispensing *mishpat*, justice. While some individuals administer justice in courts, others do so in the marketplace or the like. Any time one interacts with his fellow man, he acts as a judge. He, sometimes unwittingly, weighs his neighbors’ actions and determines if he feels they have acted properly. Only someone who has inculcated the lessons of *Avot* can be a judge in the courtroom as the Rambam notes, but as the Me’iri adds, the teachings of *Avot* are also essential for every Jew who interacts with his fellow man, for he too is a judge of the other’s actions, and only proper control can lead to the proper administration of justice.

***Mishpat*: Weighing Every Action with Precision**

The approach that man is a judge over himself and that his actions should be carefully weighed and analyzed as if by a magistrate, is expressed clearly in many of the commentaries on the Torah’s directive (*Devarim* 16:18) “Judges and officers you shall appoint in all your gates.” The simple explanation of the verse is that every community must insure that they set up a court system in every city, along with officers of the court who can enforce the decisions. However, *Itturei Torah*, a collection of Torah gems, quotes a number of commentators who understand the verse as referring to the individual as a judge over himself as well. Among them are the words of Rav Simcha Bunim of Peshischa:

Whenever you, as an individual, have a decision to make, appoint judges and officers: “judges” to weigh carefully whether your decision is a correct one; and once you have decided, appoint “officers” to carry out that which you have decided, just as an officer enforces the decisions of the court. Indeed, many of the best intentions are wasted because of people’s failure to carry them out into practice.

The Toledot Yaakov Yosef takes this idea one step further: the way one judges others should be in line with how one judges oneself.

“Judges and officers you shall appoint in all your gates” — for you, for yourself. First judge yourself, and using the same yardstick, judge others. Do not be lenient with your faults while judging harshly the same fault in others; do not overlook sin in yourself while demanding perfection of others.

If this is the case, then one can understand what we saw in lesson #08 from Rav Yaakov Ettlinger’s *Arukh La-ner*: that the prophet Mikha’s directive of doing *mishpat* refers to *mitzvot* *bein adam le-atzmo,* the intrapersonal directives, aimed at insuring a wholesome personality. As he explains, *mishpat* is defined as “weighing one’s actions to ensure that one is wholesome.”

**The Chazon Ish’s One Character Trait:**

With this in mind, we can understand the fascinating opinion of the Chazon Ish, expressed in his philosophical work, *Emuna U-vitachon* (Faith and Trust). He writes that the prevalent understanding is that man has many character traits, all of which act independently and must be perfected individually. He maintains a contrary understanding: that there is in fact one attitude which determines whether an individual will be able to protect his character or not.

The teachers of morals have declared that the ways of perfecting character traits are a separate chapter in the discipline of perfecting one’s service of Hashem; furthermore, they have even worked on breaking up the defects into separate ones such as anger, pride, craving, love of honor, love of dispute, vengefulness, spite etc. As this system of thinking has become common, many people have become convinced that perfection is made up of different parts. True, this is so when it comes to illness of the spirit and when it comes to finding ways to combat corrupting elements, **but at the root of all the character traits, there is only a single good trait and a single bad one.** The bad trait is that of leaving natural life to its natural processes. If a person makes no efforts to the contrary, he will become skilled in all the bad traits…all to the extreme. He will not even lack one of the bad traits enumerated by the sages.

The good trait is the absolute determination to put moral feeling above that of desire, and from that starting point, a person can fight against all the bad traits together. This determination cannot be partial, for a person whose intellect and high quality of soul have awakened him and influence him to choose the good, when he is feeling elevated, strives for endless good and cannot be satisfied with the good he does. He sees in front of him an eternal and infinite world, and hates all the bad traits together.

According to the Chazon Ish, any failure in character development is rooted in the one negative trait, of taking things as they go without much attention to the necessary action in every situation. The positive trait, on the other hand, is that of Truth, weighing carefully each and every action under any circumstance that might arise, in order to determine the proper mode of action for every situation.

**Conclusion: The Power of *Mishpat***

Our discussion of *mishpat* reflects the fact that Jewish tradition recognizes the importance of control over one’s sensibilities and traits, and using carefully weighed actions in response to all situations that might arise. A balanced life requires that one realize that all his actions, especially interactions with others, must be reflective of “the way of God,” “the King who loves *tzedaka* and *mishpat*.”

*Mishpat* and *tzedaka* are not only the legacy of Avraham; they are not merely Mikha and Yeshayahu’s essential fundamentals of the Torah; they are also the ideals which we are supposed to inculcate into our being. In the fifteenth-century *Responsa Yakhin U-Voaz* (Vol. I, ch. 134) we find this stated explicitly. Rav Duran explains that if the verse in *Yirmeyahu* declares that one can only glory in one’s knowledge of God, in being one who administers *chesed, mishpat* and *tzedaka,* then these are obviously essential ideals which must define our character.

Acting in this way is the antidote for the terrible predicament of exile that the Jewish people continue to suffer from, as the prophet Yeshayahu writes:

Zion will be redeemed through *mishpat*, and those who return to her through *tzedaka*. (*Yeshayahu* 1:27)

May it occur speedily in our days.