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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# Dedicated in memory of Florence Lipstein, whose yahrzeit is 25 Tevetby Sidney and Cheryl Lipstein

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**Shiur #12:
*Mishpatim* — Appreciating God's Precepts, in Study and Practice**

***Mishpat* and *Mishpatim***

In last week’s lesson, we discussed the concept of *mishpat*, and we explained its fundamental significance within the Jewish moral tradition. A Jew is given the opportunity to follow in the footsteps of Avraham, dispensing *mishpat* and *tzedaka*, and thereby to walk in the ways of God. The Jew who succeeds in inculcating *mishpat* in his life gains control of his character, and he is able to act in every situation with the necessary action and reaction.

The word “*mishpat*” appears in the Torah not only in its singular, independent form, but also as the root of the plural “*mishpatim,*” often translated as precepts. The word “*mishpatim”* is a generic word for rational *mitzvot,* but in a number of contexts, it specifically refers to interpersonal civil laws. The prominence of the ideal of *mishpat* is expressed through the appreciation of the system of rational *mitzvot*, *mishpatim*. In numerous places in the Torah, God repeats that the unique contribution of His legal system is exemplified by the righteous *chukkim* (decrees, non-rational laws) and *mishpatim* which He presents to the Jewish nation.

In order to understand the significance of the *mishpatim,* as well as the outlook and actions they entail, we will first delineate the uniqueness of the *mishpatim* and explain the Torah’s distinction between *chukkim* and *mishpatim*. Why does the Torah choose to differentiate between the two terms?

**Uniqueness of *Mishpatim***

Clearly, every society needs a set of laws dealing with civil issues; therefore, one can imagine that there need be nothing overly unique in the Torah’s system. Yet, in a number of contexts, the *mishpatim* of the Torah are described as extremely special. The singularity of the Jewish system of justice is in fact expressed succinctly in a verse from the psalms recited in our daily prayers:

He relates His word to Yaakov, His decrees and precepts to Israel. He did not do so for any nation; they know not such precepts — praise God! (*Tehillim* 147:19-20)

Rav Avraham Yitzchak Bloch of Telz explains these verses in the following way. There is a seeming anomaly in God’s revelation at Mount Sinai: one would imagine that the Ten Commandments would all be uniquely Jewish, yet the second half contains some logical *mishpatim,* which are presumably accepted by Jew and non-Jew alike. God thereby demonstrates to the Jews, as described in these verses, that even the seemingly logical *mishpatim* cannot be truly known by the nations. (See *Tehillim*, ArtScroll Tanach Series p.1719)

The premise that even logical commandments shared by Jew and non-Jew alike are indeed different is seemingly expressed in the midrashic description of God offering the Torah to other nations before presenting it to the Jewish people. In Pirkei De-Rabbi Eliezer, Rabbi Tarfon describes God’s offers and the various nation’s rejection:

The Holy One, Blessed be He, ‘shone forth from Se’ir’ (*Devarim* 33:2) and revealed himself to the children of Esav… and said to them “Will you accept the Torah?”

They replied, “What is written in it?”

“Do not commit murder” (*Shemot* 20:12), said God.

“Go away” the children of Esav retorted. “We cannot abandon the blessing of Yitzchak to Esav, for he said (*Bereishit* 27:40): “By your sword you shall live.”

From there, God proceeded to appeared to the children of Yishmael… “Will you accept the Torah?” He asked.

“What is written in it?” they inquired.

“Do not steal” (*Shemot* 20:12), said God.

They responded, “We cannot stop doing what our ancestors did…”

At that point, God sent angels to all the other nations of the world…

The scene is rather startling. After all, the *mitzvot* that Esav’s and Yishmael’s descendants are uninterested in and unable to accept are logical precepts; these prohibitions are binding upon non-Jews as part of the seven Noahide commandments. Why would one reject the Torah due to unwillingness to accept what one is obligated to do anyway?

One approach is to compare the Jewish precepts to the corresponding Noahide ones; this reveals that many of the Jewish laws are far more inclusive. For instance, the prohibition against killing for a Noahide proscribes outright bloodshed, while for a Jew, even publicly embarrassing his fellow man is considered bloodshed (see *Bava Metzia* 58b).

One might even go a step further and contend that the tradition of the Torah requires one not only to avoid forbidden actions, but in fact to develop one’s personality and an outlook based on its reality.

Rav Hirsch, in his commentary to these verses, notes another beautiful aspect of the Torah’s *mishpatim* unknown to other nations. The rational, legal system of any country, based upon a social contract, is always subject to change and amendment. For instance, if the citizenry agrees that its desire to know the inner lives of others is more important than maintaining standards of privacy, then a paparazzi society will develop, in which each member continually looks to invade the other’s privacy in order to sell a good story. However, the divine *mishpatim* are eternal and unchanging. God’s expectations of what human society can and should achieve, setting standards of privacy, kindness, and goodwill, can never be outvoted by a majority. These *mishpatim* are unique to the Jew, and they are readily apparent when looking at the standards of the Torah versus those of the secular society around us.

This uniqueness is expressed powerfully by Moshe as he introduces the *mitzvot* in his final speech to the Jewish people, extolling the amazing laws which he has transmitted from God to the Jewish people.

See, I have taught you decrees and precepts as Lord, my God, has commanded me, to do so in the midst of the land to which you come, to possess it. You shall safeguard and perform them, for it is your wisdom and discernment in the eyes of other nations, who shall hear all these laws and say “Surely a wise and discerning people is this great nation!” For which is a great nation that has a God Who is so close to it, as is Lord, our God, whenever we call upon Him? And which is a great nation that has righteous decrees and precepts, such as this entire Torah that I place before you today? (*Devarim* 4:5-8)

Moshe’s teaching of the Torah is in fact an expression of the righteous law system which recognizes the closeness of the Jewish people to God and their wisdom among the nations.

The Ramban describes in his commentary to the verse why it is that Moshe specifically mentions “decrees and precepts”, *chukkim* and *mishpatim*. He writes that “through *mishpat,* the world is upheld” (see *Mishlei* 29:4), and he continues by describing the world’s recognition of the unique *mishpatim* of the Jewish people:

And Moshe then says that observing the *chukkim* and *mishpatim* yield great benefits, for they are the source of glory and admiration from other people for those who perform them, end even the Jews’ enemies praise them for observing these commandments. Furthermore, Moshe adds in verse 7 that these *mishpatim* have a benefit beyond compare, as God is close to them whenever they call upon Him, and even the nations contemplate this and realize that the *chukkim* are performed by the Jews… and the *chukkim* and *mishpatim* are righteous and fair.

**The Universal Obligation of *Dinim***

It should be noted that, according to a number of opinions, the Torah’s high regard for *mishpatim* may be seen even in the obligations of non-Jews in this area. The Ramban (*Bereishit* 34:13) supports this position in defining the parameters of the Noahide obligation of *dinim* or *dinin*, laws, one of the seven commandments which non-Jews are commanded to observe:

In my opinion, the meaning of “laws” which the Sages have counted among the seven Noahide commandments is not just that they are to appoint judges in each and every district; beyond this, He commanded them concerning the laws of theft, overcharging, defrauding and withholding a hired man’s wages; the rules of guardianship of property, rape and seduction; the principles of damage and wounding a fellowman; laws of creditors and debtors; laws of buying and selling, and their like. They are similar in scope to the laws with which Israel was charged…

The Ramban thereby expresses his view that all nations of the world are required to develop a system of justice upholding the parameters of civil law that the Jewish people are commanded in the Torah.

The Rema, the author of the Ashkenazic glosses on *Shulchan Arukh*, goes as far as to entertain the possibility in his responsa (*Teshuvot Ha-Rema*, ch.10) that non-Jews might be obligated to decide monetary law in accordance with the fourth volume of *Shulchan Arukh*, *Choshen Mishpat,* which encompasses civil law.

Nevertheless, despite the importance of a legal system which binds all nations of the world to observe ethical, interpersonal civil norms, the Jewish system of *mishpatim* is still unique.

Indeed, Rav Chayim of Volozhin is quoted as saying that the obligation of non-Jews cannot possibly be identical to the Jewish one, on account of the verse cited earlier: “He did not do so for any nation; they know not such precepts.”

Furthermore, the Ramban himself, in the continuation of the above-cited passage, lists a number of distinctions between the Jewish system of justice and the non-Jewish one. While God cares about all nations, and He requires that they build a legal system similar to the one which the Torah’s prescribes for the nation of Israel, there is it is a truly unique bond between the Jewish people and God, as expressed in the *mishpatim.* This is what Moshe declares that even the nations of the world realize. What is this bond, and what is its significance?

**Placement and Significance**

The centrality of the idea of *mishpat* and the specifics of the *mishpatim* is expressed by the position of the eponymous Torah portion, *Parashat Mishpatim*, particularly its first three chapters (*Shemot* 21-23), which contain mostly civil laws, rather than ritual laws. This unit is sandwiched in between two narratives of the Giving of the Torah on Mount Sinai. The preceding portion, *Parashat Yitro*, contains a detailed account of the Giving of the Torah, the incredible display of God’s greatness and magnificence at the Convocation at Sinai, in which God gives the Torah and the Jews receive the Torah (*ibid.* 19-20). At the conclusion of this unit, a few ritual laws are mentioned, and then the Torah begins to detail the civil laws of *Parashat* *Mishpatim*. However, immediately after these chapters, the Torah returns (*ibid.* 24) to the depiction of the Giving of the Torah, including the Jewish declaration of acceptance, the words “*Naaseh ve-nishma,*” “We will do and we will listen.”

Why is it that the civil laws are presented in the middle of this whole description of the Giving of the Torah? Why do they deserve such a central position in the Torah? An analysis of the introductory verse of *Parashat Mishpatim* and the remarks of some commentators will help us to understand this. The verse (21:1) begins:

And these are the precepts that you shall place before them.

The commentators wonder about the use of the initial conjunction, the letter “*vav*”, usually translated “and”. If the civil laws are introduced at the beginning of *Parashat Mishpatim* with the letter *vav*, what is the connection to the previous unit?

The Ramban (*ad loc.*) quotes a statement of the Sages:

And thus did the Sages say in *Midrash Rabba* (*Shemot Rabba* 30:15): “The entire Torah depends on *mishpat*; therefore, the Holy One, Blessed is He, gave the *dinin* immediately after the Ten Commandments.”

The Ramban also explains that civil laws are an expansion of the fundamentals of interpersonal relations already mentioned — foremost among them, “You shall not covet” (*ibid.* 20:13):

If a person does not know the law governing a house or a field or other property, he will think that it is rightfully his and he will covet it and take it for himself. Therefore he said to Moshe, “Place before them just judgments that they may practice among themselves, and thereby they will not covet what is not legally theirs.” (ibid)

Rashi also deals with the significance of beginning with a *vav* and mentioning these laws next to the description of the Altar.

Whenever “and these” appears, it adds on to that which has been stated previously. Just as the above-mentioned were given at Sinai, so too, these commandments were given at Sinai.

Why is the passage of *dinin* juxtaposed with the preceding passage of the Altar? This tells you that you should place the Sanhedrin adjacent to the Holy Temple.

The comments of the Ramban and Rashi express the centrality of *mishpatim*. As Rashi writes, all these laws were given at Sinai; they are all divine, even the ones dealing with the societal concerns of all nations. The judges of the Sanhedrin sit in the Holy Temple, for the adjudication of civil law is as holy as the Altar itself. Furthermore, as the Ramban writes, “The entire Torah depends on *mishpat*.” *Mishpat* and *mishpatim* are central to Judaism.

**Meeting God on Earth**

The laws of the Torah, dictated in the Written Law and defined and elaborated upon in the Oral Law, are a means of applying God’s standards and bringing them down to this world. The *mishpatim*, which comprise the basis of the Jewish legal system, are the means of translating the will of God into the everyday situations that arise. The judge, basing his decisions on the *mishpatim,* is expressing God’s will as taught by the Torah. This idea is expressed clearly by Rav Shemuel bar Nachmani:

Rav Shemuel bar Nachmani said in the name of Rav Yonatan: “Any judge that renders a judgment that is absolutely true causes the Divine Presence to rest upon Israel, as it is stated: ‘God stands in the divine assembly; and in the midst of judges shall He judge’ (*Tehillim* 82:1). But any judge that renders a judgment that is not absolutely true causes the Divine Presence to depart from Israel…” (*Sanhedrin* 7a)

God is present in assemblies that issue judgments in accordance with his laws. This carries with it tremendous obligations for the judge.

And Rav Shemuel bar Nachmani said in the name of Rav Yonatan: “A judge should always view himself as though a sword is resting between his thighs, and Gehenna is open beneath him…”

 In a number of contexts, the Ramban expresses this idea as well. He establishes that judges who proceed in accordance with Godly *mishpatim* in fact represent a rendezvous with eternity, where God actually takes part in the trial through the mouthpiece of the judges.

The Ramban (*ibid.* v. 6) discusses why the Torah refers to judges with the term “*elohim*”, a name usually reserved for God himself. He begins by quoting ibn Ezra:

Rabbi Avraham ibn Ezra says that judges are called “*elohim”* because they uphold the laws of God in the land.

Simply stated, ibn Ezra seems to understand that judges act as agents of God in administering His justice. While this is already an audacious statement, the Ramban takes it one step further.

But in my opinion… this alludes to the fact that God is with the judges in matters of justice. It is He Who really declares who is innocent and who is guilty…

The Ramban goes on to list a number of verses referring to God standing with the judges and administering justice through the courts. In conclusion, he brings support for this concept from *Shemot Rabba* (30:24):

When a judge sits and judges truthfully, the Holy One, Blessed be He, leaves the highest heavens, as it were, and causes His Divine Presence to dwell alongside [that judge]…

The judges, according to the Ramban, in their knowledge of God and His *mishpatim*, are worthy of God’s standing in judgment with them, as the verses depict literally. In *Devarim* (19:19), the Ramban explains that this is the reason why the law states that conspiring witnesses found guilty after the defendant has already been punished will not receive his punishment: God, Who sits with the judges, ensures that they rule properly.

God would not allow the righteous judges, who stand before Him, to spill innocent blood, for “the judgment is God’s” (*Devarim* 1:17)… All this is testimony to the great eminence of the judges of Israel and to the guarantee that the Holy One, Blessed be He, agrees with them and is “with them in the matter of judgment”… for they are indeed standing before God… and He leads the judges on the true path.

**Love of *Mishpatim*, Love of Justice, Love of *Beit din***

If the *mishpatim* are the expression of the wisdom and will of God, than there are a number of practical ramifications. Rashi (*Devarim* 4:9) indicates that the Torah’s warning against forgetting the commandments is a warning against forgetting even a small element of these laws; anyone who does so will be viewed as foolish by the nations, rather than wise and discerning. For the very reason that the interpersonal laws are bestowed by God, they require precision in order for one to fulfill them properly.

Most importantly, a reverent view of the *mishpatim* translates into a respectful view of the court, the *beit din*. The courtroom is not merely a place for dealing with disputes, but a venue for seeing the brilliant view of God , as voiced by the judges, regarding the interpersonal situation at hand. For this reason, the Torah explicitly mentions that disputants must bring their case to *beit din* to determine who is in the right and who is in the wrong:

When there will be a grievance between people, they shall come to the court, and they will judge them; they will vindicate the righteous one and find the wicked one guilty. (*Devarim* 25:1)

Moreover, based upon our approach, going to *beit din* is essentially translating God’s will, as expressed in the Torah, into one’s everyday life. It is a means of coming “face to face” with the divine will and being able to apply it to one’s life.

Practically speaking, one must find a *beit din* which is respected and does their job as prescribed, upholding the Torah’s system of justice as representatives of God on this earth. Going to *beit din* is nothing less than seeking out God’s counsel on the situation.

For this reason, both litigants should be happy to go to *beit din*, not in order to fight, but in order to find the answer to the honest question: which one is correct? They will both be happy with the verdict, because their sole desire is to act in accordance with the divine system of righteous laws, handed down from God. The Talmud (*Sanhedrin* 7a) even cites a beautiful aphorism:

Yet another used to say: Let him who comes from a court that has taken from him his cloak sing his song and go his way.

Said Shemuel to Rav Yehuda (*Shemot* 18:23): “This is alluded to in the verse, “And all this people as well shall come to their place in peace.”

This is a saying expressed by an ordinary individual, but the great sage Shemuel finds a Biblical source for it. It means that even though the court ruled against him, removing his coat as payment to the other party, the losing party should be happy that wrongly acquired property has been removed from his possession.

 Regrettably, people are not always so appreciative of the *beit din*. In his masterwork, *Emuna U-vitachon*, the Chazon Ish spends two chapters (3-4) dealing at length with issues of morality and character development. He attempts to show how many people who express outward piety are in fact fooling others, and sometimes even fooling themselves. The yardstick for identifying one whose love for the Torah is pretense is whether he avoids litigation in *beit din*. The Chazon Ish condemns these individuals, who will do whatever they can to avoid having to present their case in *beit din,* even when invited amicably to do so, as haters of God’s law. At one point, he goes so far as to refer to the individual who avoids going to the *beit din* as “rotten to the core.” Though his outward appearance and even his view of himself might be that of a Torah-loving and Torah-living Jew, his unwillingness to go to the *beit din* to settle a dispute is a sign he has no interest in performing God’s will and does not really love God’s Torah.

Unfortunately, the view of the *beit din* in the eyes of many is very negative. While some of this may be the result of certain courts failing to uphold the proper standard, the Chazon Ish presents a number of reasons why people reject a *beit din* for seemingly noble reasons, which he dismisses as excuses for those who do not really love the Torah.

To the dismay of the lovers of *mishpatim*, the situation has deteriorated to the point that many view an invitation to a *beit din* as a threat, and the party who wants to do so is often viewed as the instigator. Unfortunately, while sometimes there may be ulterior motives, the Jewish approach to the process of *mishpat* and *din* as realized between two practicing Jews has always to honor and cherish it. The Chazon Ish’s approach indicates that those who take an anti-*beit din* outlook under all circumstance are nothing more than haters of the Torah; they have not studied enough Torah to appreciate the law, and it is they who undermine the view of God as expressed by the *beit din*.

**Defining the Terms: *Chukkim* and *Mishpatim*:**

To conclude our discussion, a more exact definition of *mishpatim* will serve us well. It is often understood that the distinction between a *mishpat* and a *chok* is in the *taam* (underlying reason, logic, purpose) of each type of mitzva. A *chok* has a reason unknown to man; it may have no reason. A *mishpat*, on the other hand, has a *taam*. However, this distinction seems lacking and imprecise.

In fact, it seems that even *chukkim* have some message for us as well (see *Derashot* *HaRav,* page 227), but if so what does it mean that they lack a *taam*? The Sages do not hesitate to give reasons for the *para adumma* (red heifer)*,* despite the verse’s calling it the quintessential “decree of the Torah” (*Bamidbar* 19:2). On the other hand, certain *mishpatim* seem very difficult to comprehend. For instance, the Ran, in his celebrated *Derashot* (*Derush* 11), explains that many laws in court aim to express the divine view of a situation, even though extrajudicial measures will be necessary to ensure that social justice is maintained. If so, what does it mean when we differentiate between *chukkim* and *mishpatim* based on whether the commandment has a *taam* or not?

Rav Yitzchak Berkowitz develops a rather novel interpretation of the distinction between *chukkim* and *mishpatim*; it has far-reaching implications for the manner of studying them. The confusion, he explains, comes from the literal translation of *taam* as reason. This is not exactly accurate. The Talmud (*Yevamot* 23a) discusses the opinion of Rabbi Shimon, who expounds the *taam* of the verse in a way at odds with the majority opinion. The Talmud explains that Rabbi Shimon not only provides the rationale for the laws; he defines the parameters of the mitzva based upon its *taam*. The *taam*, according to Rabbi Shimon, is the defining factor of the mitzva, giving it its structure, with all the halakhic ramifications the *taam* indicates.

Rav Berkowitz explains that this understanding of *taam* is also what lies at the root of the distinction between *chukkim* and *mishpatim*. The question is not whether a mitzva has a reason or not, but whether that reason affects the application of the law. A *chok* does not have a *taam*, meaning it is an absolute rule. Indubitably, it has a reason, but it does have a reason that can limit its expression and parameters. A *mishpat*, on the other hand, is the exact opposite: the definition of the *mishpat* is the *taam*. The very same act in one case will be a mitzva, and in another case, it will be sinful. Being kind and considerate of others by definition requires understanding whom one is dealing with: what they need and how one can help. Any attempt to create broad legal interpersonal demands is doomed to failure. The Torah seeks to inculcate the proper principles; the variables of each situation will determine the exact action. This is also reflected by the view (see lesson #06) that interpersonal *mitzvot* are oriented towards results, not actions; only an action that upholds the Torah’s principle is sufficient.

In short, a *mishpat* is a principle and a *chok* is a rule. This allows us to explain Rashi’s comment regarding the necessity of teaching the reasoning behind the *mishpatim*; Rashi explains the Torah’s directive (*Shemot* 21:1) to place the *mishpatim* “before them,” as an indication of how these *mishpatim* should be taught:

The Holy One, Blessed be He, said to Moshe: “Do not think of saying, ‘I will teach them the chapter or the law two or three times until they know it well, as it was taught, but I will not trouble myself to enable them to understand the reasons for the matter and its explanation.’”

Therefore, it is said: “You shall place before them,” like a table, set and prepared to eat from, before the person.

The implications of this approach are far-reaching. It is insufficient to learn the laws, even to memorize them; rather, one must develop an understanding of the *taam* of each law, the principle behind it, by which every individual, every judge of his fellow man, must live. In these lessons, we are trying to develop an understanding of these principles. It is these principles which should be our guiding light in creating a society based on God’s system and code of behavior. Hopefully, this community will not need a *beit din,* as each person will infuse society with Godliness. Certainly, this is why the idea of *mishpat* is so complicated. It is not enough to know the rules. One must learn how to apply them and how to make judgment calls. Moreover, one must be sensitized and transform oneself. One must also realize, at the same time, that *mishpatim* are divine, absolute rights and wrongs, just like *chukkim*. *Mishpatim* are equally full of detail. It is not enough to love one’s neighbor; one must learn the principles of how to do so, and one must acquire the precision to apply them.