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**Before Sinai: Jewish Values and Jewish Law**

**By Rav Dr. Judah Goldberg**

**Shiur #34: Pursuit of the Ethical Life (5):**

***Middat Sedom* and *Lifnim Mi-shurat Ha-din —* Part Two**

The [previous *shiur*](https://etzion.org.il/en/shiur-33-pursuit-ethical-life-4-middat-sedom-and-lifnim-mi-shurat-ha-din-%E2%80%93-part-one) presented two different possible sources for the Talmudic rule of *kofin al middat Sedom*. First, *mori ve-rabbi* HaRav Aharon Lichtenstein appealed to multiple Biblical commandments that would prohibit gratuitous stinginess before focusing upon the commandment to do “*ha-yashar ve-hatov*” (*Devarim* 6:18) and the concept of *lifnim mi-shurat ha-din* that emanates from it. Second, the suggestive term “*middat Sedom*” led us to wonder whether the ethical thrust of *Parashat Vayera —* specifically, the contrast between “*middat* *Sedom*” and “*tzedaka u-mishpat*” — could serve as the basis for this rule.

Having emphasized the considerable overlap between *lifnim mi-shurat ha-din* and t*zedaka u-mishpat* in the last *shiur*, we now ask: Are there any practical differences between these two proposed sources for *middat Sedom*? What does invoking *berit Avot* add to this discussion?

1. **Severity**

I think that a number of subtle distinctions might emerge. First, how central and defining the flaw of *middat Sedom* is might depend on the source. If the sole barrier to “What’s mine is mine,” etc. is the broad imperative to act *lifnim mi-shurat ha-din*, then one who is overly protective of his or her own property rights is at worst in violation of a positive precept[[1]](#footnote-1) and more likely has simply fallen short of meeting Halakha’s full expectations. If, though, a gnawing feeling nonetheless persists that *middat Sedom* is not just an average failing, I would argue that this perception, by definition, betrays a moral sense that is based on something other than strict halakhic categorization. What, then, is it reflecting?

In principle, the full range of options that we surveyed in *shiur* #2 is relevant here, including an appeal to natural law and innate moral conscience. Additionally, we could consider not just the narrow violation that a miser transgresses, but the collateral damage that his or her attitude causes to society. At one level, stinginess can be a dangerous portal to more serious crimes. At another level, as HaRav Lichtenstein notes, exceptionally “good fences” can be so isolating that the community that they cut through literally crumbles: “A wholly legalistic community simply cannot exist. Supralegal conduct is the cement of human society. Its absence results in disintegration” (“Ethic Independent of Halakhah,” 45-46).[[2]](#footnote-2)

One who embodies *middat Sedom*, then, can perhaps be compared to a tattler (see Rambam, *Hilkhot De’ot* 7:1-2) or to one who buys stolen goods from a thief (see Rambam, *Hilkhot Geneiva* 5:1), for whom the gravity of their misdeeds is attributable more to the damage they inflict than to their specific actions. The disciple of Sedom is callous not just to the individuals whose interests he or she ignores, but to the needs of society as a whole. (Of course, to close the loop, we should identify a *berit Sinai* responsibility to support the social fabric and to not take actions that undermine it.)

Without discounting this argument, it seems to me that it is working too hard to precisely define that which we already intuitively grasp. *Middat Sedom* is anathema to the progeny of Avraham Avinu, biological and spiritual, whether or not they can all cite chapter and verse to explain why. We have been raised — after all, God anticipated that “he will command his children and his household after him” (*Bereishit* 18:19) — to reject everything that Sedom stood and still stands for. This message is not merely of central importance but has been integrated into our core identities as Jews. It lies at the heart of both Avraham’s election and the legacy that he has passed down to his progeny — in other words, *berit Avot*.

From the perspective of *berit Sinai*, one who exhibits *middot Sedom* is a sinner and possibly a threat to the social order. From the perspective of *berit Avot*, however, he or she is a traitor to the family heritage.[[3]](#footnote-3) In the ideological battle that unfolds in *Parashat Vayera*, he or she has defected to the enemy.

Furthermore, in a remarkable demonstration of just how incompatible *middat Sedom* is with basic Jewish identity, the Rambam rules that one who is extraordinarily callous may even have his or her lineage questioned. Significantly, this ruling appears not only in the closing chapter of *Hilkhot Mattenot Aniyim* (10:2), as the inverse of the Rambam’s statement that “charity is a mark of the righteous descendants of our father Avraham” (10:1), but also within the arid laws of *Issurei Bia*:

Anyone who exhibits brazenness or callousness, and despises others and does not extend to them kindness, we should be extremely concerned that he may be a Gibeonite; for the mark of Israel, the holy nation, [is that they are] self-conscious, compassionate, and kind.[[4]](#footnote-4) (19:17)

In other words, being a coldhearted Jew (unlike, say, an idol-worshipping one) amounts to an irreconcilable contradiction in terms! Tracing *middat* *Sedom* specifically to *berit Avot*, then, raises the stakes considerably, turning miserliness from a disturbing trait into a severe betrayal of Jewish identity.

1. **Range**

Second, my sense is that *tzedaka u-mishpat* might be more ambitious than *ha-yashar ve-hatov*. *Ha-yashar ve-hatov* governs personal conduct, insisting that we negotiate even halakhically neutral situations with ethical sensibility. It does not suggest that charitability (as well as justice) becomes a life project and that one ought to seek out opportunities with creativity and fervor. This, however, is exactly the legacy of Avraham. Towards the end of *Parashat Lekh Lekha*, God emboldens Avraham with a directive to “go out before me” (*Bereishit* 17:1),[[5]](#footnote-5) and in *Parashat Vayera*, in the realm of *chessed*, Avraham runs ahead at full force. If *middat Sedom* is based upon *lifnim mi-shurat ha-din*, avoiding gratuitous excesses may be sufficient. If it is based upon *tzedaka u-mishpat*, on the other hand, then we are challenged to actively distance ourselves from Sedom in every way possible.

The boundaries of *ha-yashar ve-hatov*, in contrast to *tzedaka u-mishpat*, are evident, I think, from a comment by the Rosh. Regarding the division of an estate when one beneficiary already owns abutting property, Rabba invokes “*kofin al middat Sedom*” to explain why he should receive the field that is contiguous with his own (*Bava Batra* 12b). Why, the Rosh wonders, did Rabba not appeal to *ha-yashar ve-hatov*, which is cited elsewhere regarding a preemptive right of purchase for the owner of abutting property (*Bava Metzia* 108a)?

The Rosh answers that *ha-yashar ve-hatov* only asks of an individual not to pursue opportunities where others already have vested interests.[[6]](#footnote-6) In the case of a joint estate, however, when one stakeholder is being asked to cede existing rights to another, *ha-yashar ve-hatov* is not relevant (*Tosafei Ha-Rosh*, cited by *Shita Mekubetzet*; *Responsa*, 97:2). *Ha-yashar ve-hatov*, apparently, calls upon the individual to act with tact and sensitivity and exercise restraint, but not to give of himself or herself*. Tzedaka u-mishpat*, on the other hand, could easily explain coercion in exactly these circumstances.

1. **Mechanism**

Third, the actual mechanics of compulsion may differ, depending on the source for *middat Sedom*. At one extreme, Tosafot (*Bava Batra* 12b) seem to assume that the principle of *kofin al middat Sedom* automatically alters property rights on the level of Biblical law, as astutely noted by R. Shmuel Rozovksy (*Shiurei Rabbi Shmuel*, *Bava Batra*, #220-224).[[7]](#footnote-7) *Kofin al* *middat Sedom*, then, is not a stern encouragement of beneficence, but a de facto usurpation of existing rights that is on the same plane as other Biblically-derived legal principles. If so, as an inherent and integrated piece of the broad legal system governing property, it necessarily must be rooted in *berit Sinai*, rather than in the “softer” values of *berit Avot*.

On the other hand, if we imagine that compulsion necessarily runs through the *ba’al ha-bayit —* that, regarding his property, he is compelled to disavow *middat Sedom —* then the source for such an ethic is wide open: we can point to either *lifnim mi-shurat ha-din* (*berit Sinai*) or *tzedaka u-mishpat* (*berit Avot*) as the underlying motivation.[[8]](#footnote-8) Such an agent-centered rule might be suggested by the formulation of the Rosh: “We force him to distance himself from bad traits and to practice kindness with his friend when he has nothing to lose” (*Responsa*, 97:2).

Of course, *Chazal* could have chosen to translate an ethic of altruism into a default restriction on an owner’s rights; in other words, one could still endorse Tosafot’s orientation on the rabbinic level. Still, a root source for *middat Sedom* in *berit Avot* could not, on its own, explain an automatic realignment of property rights.

**Private Property in Judaism**

With this final point, we come to the concluding section of HaRav Lichtenstein’s essay, in which he relates *kofin al middat Sedom* to the broader issue of Halakha’s attitude towards property and ownership. According to HaRav Lichtenstein, a limitation on property rights “constitutes an important motif in the whole issue of *kofin al middat Sedom*.” This is certainly true if the compulsion is automatic, but even, HaRav Lichtenstein maintains, if it requires active coercion of the owner by the court. He summarizes:

The simple truth may be told: *kofin al middat Sedom* absolutely contradicts the prevailing notion that a person is the supreme ruler over his property, that his assets are “like clay in the hands of the potter” (*Yirmiyahu* 18:6), and that as long as he does not cause others direct damage, he can do with his property as he pleases.…

If Halakha is very far from Proudhon’s declaration that “private ownership is theft,” on the other hand, it refuses to agree with the popular adage that “an Englishman’s home is his castle.” (67-69)

The observation stands on its own and requires us, no matter what the source for *kofin al middat Sedom* is, to more precisely articulate a Halakhic view of property. I merely note that grounding *kofin al middat Sedom* in *berit Avot* may allow us to deliberately distance it from the formal, legal dicta of *berit Sinai*. That is, we might say that the rights of ownership in Halakha are indeed far-reaching, but that the *berit Avot* value of *tzedaka u-mishpat* compels a Jew to forgo some of those rights anyway. Conceptually, rabbinic coercion doesn’t fundamentally alter the underlying rights but makes beneficence compulsory. In practice, as HaRav Lichtenstein notes, obligatory altruism will necessarily encroach upon autonomy, but, fundamentally, legal rights and ethical duties may be operating on different planes.[[9]](#footnote-9) If, on the other hand, *kofin al middat Sedom* is dictated by *berit Sinai,* then the interplay between the law’s different elements may be a bit subtler.

**“Some Say: This is *Middat Sedom*”**

Separating completely between legal parameters and ethical expectations may also provide an alternative reading of the Mishna’s grading of a “What’s mine is mine,” etc. attitude: “This is an average attitude. Some say: this is the manner of Sedom.” As HaRav Lichtenstein, following earlier commentaries, observes, there are two problems with this *mishna*. First, textually, it suggests that *middat Sedom* is a matter of debate, whereas the multiple *sugyot* that discuss *kofin al middat Sedom* do not cite a dissenting opinion. And second, logically, could it be that one Tanna really dismisses the concern of *middat Sedom* completely and is willing to accept “What’s mine is mine,” etc. as average?

As we mentioned in the previous *shiur*, HaRav Lichtenstein resolves these problems by suggesting that the Mishna is discussing an attitudinal flaw, the severity of which may be subject to Tannaitic disagreement, while the Gemara relates to actual cases of obstinacy, which all opinions would equally denounce. Alternatively, the Tanna’im of the Mishna may be relating to different aspects of “What’s mine is mine,” etc. and therefore not arguing at all.[[10]](#footnote-10) In light of our previous observation, perhaps we can suggest that the first opinion is using the legal standard, by which “What’s mine is mine” comes out as neutral. The second opinion, however, is employing the ethical standard, by which “What’s mine is mine” falls woefully short as “*middat Sedom*.” The difference between the opinions, then, is not about “What’s mine is mine,” etc. but about the very subject matter of the Mishna: Are the attitudes listed in the Mishna relating to a legal standard or an ethical one?[[11]](#footnote-11)

**Conclusion**

In the last two *shiurim*, we examined a prominent rule governing interpersonal relations, cited in multiple different contexts by the Talmud, but whose very source and basis in Halakha is murky. As with intermarriage, *yishuv Eretz Yisrael*, and other examples we have seen, we wonder if this, too, might be a case where *Torah she-be’al peh* is drawing primarily upon a value of *berit Avot* and incorporating it into its comprehensive picture of Jewish responsibility. The suggestion is all the more tantalizing when the terminology used makes such vivid reference to *Parashat Vayera*!

Even if we posit that *Chazal* ultimately legislated a rigid, objective rule to govern cases of “this one benefits without loss to the other,” their invocation of Sedom is even more meaningful, not less. **Observing the same rule but calling it something else would leave something precious behind that *Chazal* clearly wanted to capture.** *Chazal* are emphasizing, I think, that their laws do not take the place of *berit Avot*, but complement and incorporate it.

By perpetually inserting *middat Sedom* into legal discourse, from the Mishna and Gemara to *Mishneh Torah* and *Shulchan Arukh*, our Sages remind us, I think, of three points:

1. *Kofin al middat Sedom* may only apply in a few select circumstances, but it represents a broader and deeper ethical tradition.
2. *Middat Sedom* is a persistent threat that requires active resistance, even if we seldom compel over it.
3. We aspire not merely to avoid the worst excesses of Sedom, but to substitute its ethos with that of *tzedaka u-mishpat* and to pursue them as aggressively and expansively as possible.

Finally, while this approach differs from that of HaRav Lichtenstein, I think their common denominator is more significant than the distinctions between them. *Lifnim mi-shurat ha-din* and *tzedaka u-mishpat* both endorse a realm of intuitive ethics that strict halakhic formalism would not affirm. Both call upon the individual to be not only a rule-follower but also an adjudicator; at times, and to varying degrees, they further push him or her to be a pathfinder, or even a trailblazer. At the lower ends, there may be cases that are codified and thus compulsory, but that doesn’t vitiate these values of their overall thrust towards initiative, involvement, and aspiration.

In a sense, then, the source is not as important here as the destination — a life of active engagement and challenge, built upon the backbone of Halakha but never stifled by it, ever in pursuit of the ethical ideal.

**For Further Thought:**

1. Throughout this series, we have analyzed cases in which a transgression is treated as graver than its legal classification suggests. Looking for a basis for this “upgrading” of misdeeds, we have repeatedly turned to *berit Avot* (see *shiurim* #6-7).

There are multiple other cases in *Mishneh Torah* to consider. In this *shiur*, we mentioned tattling and gossiping (*Hilkhot De’ot* 7:1-3) and purchasing stolen goods (*Hilkhot Geneiva* 5:1). In those contexts, we suggested that the consequences of these transgressions may explain their unusually harsh treatment, even though each discrete act carries no punishment at all.[[12]](#footnote-12)

The Rambam also employs similar language — following *Chazal* — regarding embarrassing a fellow Jew in public (*Hilkhot De’ot* 6:8 and *Hilkhot Chovel U-mazik* 3:7) and belittling Torah scholars (*Hilkhot Talmud Torah* 6:11); in a slightly different vein, see *Hilkhot De’ot* 7:7-8 and *Hilkhot Teshuva* 4:1. Notably, almost all of these cases are interpersonal transgressions. In each particular instance, we can ask: What justifies the Rambam’s assertion? Is it because of the downstream consequences of a particular transgression, or because of *berit Avot’*s value of *tzedaka u-mishpat*, or because of some other factor?[[13]](#footnote-13)

**Questions or Comments?**

Please email me directly with your feedback at judahlgoldberg@gmail.com!

1. See *Sefer Mitzvot Katan* #49. [↑](#footnote-ref-1)
2. Also see the commentary of R. Matitya Ha-Yitzhari on *Avot* 5:10. The Maharal notes both types of damage, though he gives a metaphysical, rather than a sociological, explanation for the social havoc that *middat Sedom* can cause (*Netivot Olam*, *Netiv Gemilut Chasadim*, 5). [↑](#footnote-ref-2)
3. Also see the language of the Rashbash: “For we, the congregation of Israel, extend kindness, and we are not strict like *middat Sedom*; and any case where ‘this one benefits without loss to the other,’ one who is exacting is [exhibiting] *middat Sedom*, and it is appropriate for us to not be strict in this regard” (*Responsa*, 67). [↑](#footnote-ref-3)
4. In the Talmudic source for this last statement, the prooftext for Jewish kindness is *Bereishit* 18:19 (*Yevamot* 79a). [↑](#footnote-ref-4)
5. See *Bereishit Rabba* 30:1. Also note Ramban, who contrasts this verse with *Devarim* 13:5 — “**After** Hashem, your God, you should follow.” [↑](#footnote-ref-5)
6. Also see Rabbeinu Yona. Similarly, see *Kiddushin* 59a and the Ran (24a in Alfasi) and Mordechai (524) there regarding a buyer who preempts another who is already negotiating a purchase. However, see the responsum of R. Shlomo b. Tzemach Duran, printed in *Sefer Ha-Tashbetz* 4:1:27. [↑](#footnote-ref-6)
7. Tosafot’s suggestive question is echoed by Rabbeinu Yona, Rashba, and Ritva. [↑](#footnote-ref-7)
8. Also see “*Kofin al Middat Sedom*,” 52, 61-63. [↑](#footnote-ref-8)
9. This doesn’t mean that Halakha never restricts property rights outright. See, for instance, *Bava Batra* 59b, cited by HaRav Lichtenstein (64-66), as well as *Bava Kamma* 81b, cited by the Netziv (closing section of *Ha’amek She’eila* and *Responsa* *Meshiv Davar* 2:92). Still, the term *kofin al middat Sedom* does not appear explicitly there (however, see Ri Migash and Rabbeinu Yona on *Bava Batra*, regarding an inability to protest), and we can ostensibly differentiate between the cases. [↑](#footnote-ref-9)
10. Also see the commentary of R. Shimon b. Tzemach Duran (*Magen Avot*). [↑](#footnote-ref-10)
11. Alternatively, if we take the societal effects of *middat Sedom* into account (see note #2), then we can say that the two opinions in the Mishna are speaking about the personal and collective planes, respectively. “What’s mine is mine,” etc. may be average for the individual but ultimately destructive for society as a whole. [↑](#footnote-ref-11)
12. Also compare to *Hilkhot Teshuva* 1:2, 4 and *Hilkhot Shevuot* 12:1-2. [↑](#footnote-ref-12)
13. Also see *Hilkhot Teshuva* 3:6, 10-14. [↑](#footnote-ref-13)