YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

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

**By Rav Dr. Judah Goldberg**

**Shiur #45:**

**Pursuit of the Ethical Life (16):**

**Living with *Tzedaka U-Mishpat***

**Part IV: Illustrations and Conclusions**

**Ethics in Action: Servants, Slaves, and Foreigners**

With this *shiur*, we close this subset of *shiurim* on applications of *tzedaka u-mishpat*, as well as the entire unit devoted to the ethical vision of *berit Avot*. We will attempt to illustrate the principles of the previous *shiurim* by looking at Judaism’s treatment of certain underprivileged populations. Subsequently, we will summarize what we have learned about moral intuition in Judaism and consider how wide the audience for this message can be.

**An Indentured Servant**

With regard to a Jewish indentured servant (*eved Ivri*), the Gemara teaches that he must be treated on par with his master:

The rabbis taught: “For it is good for him with you” (*Devarim* 15:16) – “with you” in food; “with you” in drink. That it should not be that you eat bread of sifted flour and he eats bread of unsifted flour; you drink aged wine and he drinks fresh wine; you sleep on fabric and he sleeps on straw. From here [the Sages] said: Acquiring an *eved Ivri* is like acquiring a master for oneself. (*Kiddushin* 22a)

Commentaries differ about the relevance of this teaching to workers other than indentured servants. The Rosh writes:

It seems that this is only with the indentured servant described in the Torah who goes [free] after six [years of servitude]; but [with regard] to a worker hired for a year, or a month, or a week, or a day, we do not say this.[[1]](#footnote-1) (*Kiddushin* 1:27)

The Meiri (20a), on the other hand, quotes an opposing tradition from the Geonim. First, the Geonim assert that equivalent accommodations are not an enforceable right of the servant, but a duty of the master: “a trait of ethics and civility (*derekh eretz*) that the Torah taught him.” Second, even though the institution of an indentured servant is currently defunct, as it is dependent on the no-longer-functioning jubilee cycle, the teaching applies equally to any long-term domestic help. The Meiri’s formulation here is particularly incisive:

Today, even though the law of an indentured servant does not pertain once the jubilees ceased, the traits of piety and civility do not cease.

The Geonim’s two points may be linked. Were parallel accommodations a monetary right, then they might be unique to the indentured servant’s unusual work arrangement; but since, in the Geonim’s opinion, it is a moral duty of the master, it is equally relevant to any domestic help that one employs.[[2]](#footnote-2)

*Sefer Ha-chinnukh* makes a similar point with regard to the commandment to provide parting gifts to an indentured servant at the completion of his or her service (see *Devarim* 15:13-15):

The law of the Jewish indentured servant functions only when the jubilee year functions… However, even today, “Let a wise one hear and increase insight” (*Mishlei* 1:5), that if he hires a Jew who works for him for an extended time, or even a short time, that he load up [the worker] upon departure from that with which God has blessed him. (Commandment #482)

The Meiri and *Sefer Ha-chinnukh*, in my opinion, offer simple but elegant examples of ethical principles extrapolated from the law. Where a rigid formalist might see arcane stipulations about indentured servitude, the Meiri and *Sefer Ha-chinnukh* see rich source material for an ethically sensitive soul that seeks to “increase insight” by transcending the narrow domain in question in order to live life more broadly in the spirit of Torah.[[3]](#footnote-3)

Moreover, the Rosh, who does not extend the requirement of parallel accommodation to domestic workers, does not necessarily argue with the Meiri’s general approach. He might simply believe that equal treatment is a right of the servant, rather than the master’s duty; or that civility itself makes different demands in different circumstances.

By bridging the ancient rules of indentured servitude with the still current phenomenon of domestic help, the Meiri and *Sefer Ha-chinnukh* do a service to both: they rescue an area of law from threatened obsoleteness and at the same time provide important guidelines for a feature of their (and our) economy. The technical criteria of the law may not always be met, but its underlying message — in this case, so obviously consonant with the values of *berit Avot* — is timeless.

**Canaanite Slaves**

In the same passage, the Meiri then quotes an oft-cited statement about Canaanite slaves from the Yerushalmi:

If R. Yochanan would eat meat, he would give [some] to his slave; if he drank wine, he would give to his slave. He would say about himself, “For Who made me in the belly made him” (*Iyov* 31:15). (*Bava Kamma* 8:4)[[4]](#footnote-4)

The Torah does not demand equal treatment for Canaanite slaves as it does for Jewish indentured servants; as the Yerushalmi concludes, “This is the attribute of mercy” and not legally required. Nevertheless, R. Yochanan holds himself to an ethical standard beyond the calling of Halakha.

While the Yerushalmi just notes R. Yochanan’s practice, the Rambam incorporates it (as well as the verse R. Yochanan cites) into a call for virtue in his conclusion to *Hilkhot Avadim,* the Laws of Slaves (9:8):

It is permissible to burden a Canaanite slave with work (*be-farekh*).[[5]](#footnote-5) Although this is the law, [it reflects] the attribute of piety and the ways of wisdom for a person to be merciful and pursue justice; and he should not overburden his slave and not distress him; and he should provide him food and drink from every food and every drink. The early Sages would give a slave [a portion] from every dish that they themselves would eat and would serve the food of their animals and slaves before their own…

This appears explicitly with regard to Iyov’s positive ways in which he took pride: “Did I shun justice for my male and female slaves in their disputes with me?” “For Who made me in the belly made him, and One formed us both in the womb” (*Iyov* 31:13, 15).[[6]](#footnote-6)

The Rambam begins with a formal answer to a legal question: May a Canaanite slave be burdened with work? His answer is unequivocal. In contrast to a Jewish indentured servant, whose master must respect him as an equal (see *Hilkhot Avadim* 1:6-9), the law places no such restrictions upon the treatment of a Canaanite slave (see *Vayikra* 25:39-46). Clearly, though, the Rambam is dissatisfied with this straightforward, legal conclusion, and he quickly seeks to downplay it. At length, he recruits arguments and precedents in favor of a higher standard, including the example set by R. Yochanan.

In other words, for R. Yochanan and all those who reference him, including the *Shulchan Arukh* (*YD* 267:17), “Halakha is not a ceiling but a floor.”[[7]](#footnote-7) R. Yochanan does not turn the “is” of slavery’s inherent discrimination into an “ought.” Rather, he offers an argument for equality — “For Who made me in the belly made him” — that mitigates slavery’s harsher manifestations, even though the law makes no such demands.

But why stop there? If R. Yochanan does not see Halakha as a moral ceiling, then I don’t think we need to view his habits as the upper bounds of morality either, even while we decline to sit in judgment of him or any of the other giants of our past. As ethical values, in contrast to laws, are flexible and context-dependent, we can respect R. Yochanan’s thoughtful navigation of his own circumstances while still reserving the right — more, embracing the mandate! — to do the same for ourselves. The main lesson we ought to learn from R. Yochanan is not that slavery, in some form, is tolerable, but that living an ethical life means always challenging oneself afresh and never using halakhic license as a cover for moral apathy.

**Human Rights in Judaism?**

Later generations have carried R. Yochanan’s logic further, leading to developments such as the disappearance of slavery altogether and the recognition of universal human equality.[[8]](#footnote-8) For example, in a critique of Israeli courts’ use of human rights arguments, R. Avraham Sherman, a rabbinic judge, first affirms that such rights are fundamentally endorsed by Jewish law:

The basic assumption that a person’s existence from birth accords one the basic right to protect all parts of one’s existence, such as one’s life, one’s body, one’s dignity, and one’s property… is grounded in the Torah’s legal outlook and constitutes a legal principle in Halakha.[[9]](#footnote-9)

As proof, R. Sherman cites the verse from Iyov and its manifestations in halakhic literature. He explains that “the Rambam… understood that R. Yochanan’s practice did not flow merely from a feeling of compassion and pious manner; rather, it reflects a principle of fairness.” In other words, the Rambam translates R. Yochanan’s own conduct from an “is” to an “ought.” It is not just an inspiring story of one sage’s idiosyncratic behavior but establishes a principle of Jewish ethics with wide implications.

Of course, R. Sherman’s own assertion is a major expansion beyond anything R. Yochanan suggests; in fact, the irony of harnessing the Laws of Slaves to defend a sweeping statement of human rights in Judaism lurks just beneath the surface. Still, I believe that R. Sherman’s claim is essentially on target. R. Yochanan cites concern for equality as a tempering force on Jewish practice, independent of the law. It follows that equality should be our presumption and our aspiration, as R. Eugene Korn advocates, unless the law clearly demands otherwise. Even then, functional circumventions sometimes develop under the watchful eye of halakhic decisors, who have approved of ways, for example, to rely upon women’s testimony and to include them as beneficiaries to an estate.[[10]](#footnote-10)

**Beyond the Law: A Convergence of Factors**

The other sources of ethical duty that the Rambam appeals to regarding Canaanite slaves are also instructive. Following his citation of Iyov, he merges two additional factors, as we previously analyzed in [*Shiur* #7](https://www.etzion.org.il/en/shiur-07-independence-berit-avot-and-its-interaction-berit-sinai-%E2%80%93-part-2):

Callousness and brazenness are found only in the uncircumcised non-Jews. But the descendants of our father Avraham — namely, [*Benei*] *Yisrael,* whom the Holy One, blessed be He, endowed with the goodness of the Torah and commanded in “righteous statutes and laws” (*Devarim* 4:8) — they are merciful towards all.

Here, the Rambam invokes both Avraham and “the goodness of the Torah” – in other words, the confluence of *berit Avot* and *berit Sinai* together. Apparently, an argument for compassion only on the basis of “righteous statutes and laws” or only from Avraham’s legacy would be incomplete.

In specifically seeking their fusion, I think, the Rambam offers a strong endorsement of the approach we quoted in the previous *shiur* from R. Walter Wurzburger. The teachings of *berit Sinai* point the way for the children of Avraham, who, in the spirit of their forefather, seek to transcend its technical criteria and apply its ethos universally.

To this, the Rambam appends one last source of ethical duty:

Similarly, regarding the attributes of the Holy One, blessed be He, which we are commanded to imitate, it says, “And His compassion is upon all his creations” (*Tehillim* 145:9).

This, of course, is classic *imitatio Dei*, the *berit Sinai* commandment to walk in the ways of the Divine.

Thus, the Rambam interweaves multiple different sources of Jewish ethical duty towards slaves beyond the requirements of the formal law, including:

1. “Iyov’s positive ways”[[11]](#footnote-11) (and subsequently R. Yochanan’s);
2. *Berit Avot*;
3. The influence of *berit Sinai —* “righteous statutes and laws”; and
4. The commandment to imitate God’s compassion.

After such a thorough and forceful appeal for compassion for slaves, though, we need to revisit the term “permissible” in the opening of the Rambam’s *halakha*. Is a Jew, then, really allowed to burden his slave? It seems that “permissible” only relates to the prism of Sinaitic law — the overwhelming focus of the Rambam’s *Mishneh Torah —* which, indeed, does not regulate treatment of Canaanite slaves. However, that is not the only prism through which a Jew evaluates his or her choices! The law may be silent about a Canaanite slave’s work conditions, but from the point of view of *berit Avot*, or of the ethical values of *berit Sinai*, callous behavior is hardly tolerable. These other sources of responsibility may not speak in the language of “forbidden” and “permitted,” but the duties they impose upon the Jew are no less binding.

**Foreigners**

The Meiri’s pithy argument that even though “the jubilees ceased, the traits of piety and civility do not cease” might also have implications for another marginal figure: a foreign resident (*ger toshav*). Briefly, Halakha invites non-Jews who embrace certain core values to reside within the Land of Israel and to benefit from association with the Jewish community (see Rambam, *Hilkhot Issurei Bia* 14:7(. Jews, in turn, are commanded to respect and care for these foreign residents as for their own (Rambam, *Hilkhot Melakhim* 10:12).

In order to receive this status, a non-Jew must commit to the seven Noahide laws before a body of Jews. However, the Rambam writes that “we only accept a *ger toshav* when the jubilee [year] is observed, but today, even were [a non-Jew] to accept upon himself the entire Torah except for one detail, we do not accept him” (*Hilkhot Issurei Bia* 14:8). In that case, *ger toshav* status, like that of an indentured servant, would seem to be obsolete.

However, there may be two ways to rescue the *ger toshav* from current irrelevance. First, the Meiri, coincidentally, believes that many of the benefits extended to a *ger toshav* do not require formal acceptance. In a predominantly pagan, barbaric world, the only way for a non-Jew to clearly distance himself or herself from his or her native culture was to make a formal pledge. However, “nations that are constrained by standards of religion and civility,” according to the Meiri, automatically enjoy benefits of a *ger toshav* (Commentary on *Bava Kamma* 37b).

On the other hand, the Rambam, as we quoted, seems to insist upon formal acceptance for a *ger toshav*, possibly because he sees the process as more genuinely transformative. A *ger toshav* is not merely separating from his or her host culture. He or she is assuming a new identity as an affiliate of the Jewish nation, a status which may be unavailable when the nation lacks full sociopolitical stability (for which the jubilee is a marker).[[12]](#footnote-12) Still, does that mean that the door to the Jewish community is necessarily shut to all non-Jews who do not want to fully convert, and that any who find themselves in its midst cannot gain any rights? Here, I think the Meiri’s contention that, unlike the jubilee cycle, “the traits of piety and civility do not cease” needs to be considered very carefully.

Carefully indeed. The State of Israel is currently contending with large populations of foreigners: some invited, such as recruited workers; and some not, such as asylum seekers and others simply seeking a change of fortune. The laws of a *ger toshav* certainly may be instructive, but *berit Sinai* will reveal its full wisdom only if we drink from it deeply. A serious investigation into the Rambam’s view of a *ger toshav*, for example, would need to follow this figure across all of *Mishneh Torah*. We would want to better understand the designation: Which criteria for becoming a *ger toshav* are essential to the status, and which are more technical? Does motive matter? How should we apply ancient categories to contemporary situations? Should we differentiate between different individuals and populations?

Turning to the host community: Which benefits and consequences of *ger toshav* status relate to his or her social integration, and which to personal transformation? Which of the duties towards a *ger toshav* qualify as “traits of piety and civility” and therefore might transcend the technical boundaries of the law, and which are functions solely of formal status? The laws of a *ger toshav* may well inform current sociopolitical dilemmas, but we won’t know unless we study them carefully enough. Just as *berit Sinai* needs the complementation of *berit Avot*, pursuit of *berit Avot* relies upon the very best of *berit Sinai*.

And yet, even if the laws of a *ger toshav* are found to be totally irrelevant, we must still ask ourselves: What would Avraham do? What language would he use about the “other,” such as migrants and refugees? What would he advocate for them? And even if he found more restrictive policies necessary, what compassion and sensitivity would he bring to their enforcement?

**Conclusion to the *Tzedaka U-mishpat* Unit: To Whom Do Jewish Ethics Speak?**

Through this unit of *shiurim* about *tzedaka u-mishpat*, we have sought to demonstrate an ethical mandate that the progeny of Avraham both can draw upon and must answer to, independent of Halakha. We argued that *Torah She-be’al Peh* endorses the use of moral intuition in multiple contexts and that several of its concepts may actually be rooted in the *berit Avot* values of *tzedaka u-mishpat*, such as *middat Sedom*, arbitration, and royal justice. Finally, we offered some suggestions of how values of *tzedaka u-mishpat* might influence Jewish living, on the individual and communal/ national levels, today.

This message, I believe, is intended not only for Jews observant of Halakha. If the ethical values of *berit Avot* interact with but are independent of *berit Sinai*, then they speak to all Jews, independent of commitment to the obligations of *berit Sinai*. Moreover, as with the other values of *berit Avot*, they provide a common agenda for observant and non-observant communities to rally around together.

The couplet of t*zedaka u-mishpat*, as an overarching vision and as a guidepost for individual behavior, belongs equally to allchildren of Avraham. Moreover, in the eyes of our Sages, it is one of the most defining elements of being Jewish; its glaring absence, unlike any other trait or misdeed, calls one’s heritage into question. As such, it should be championed and celebrated by all segments of the Jewish community and should in turn unify them in its pursuit.

If some Jewish denominations put “*tikkun olam*”at the top of their agenda, they deserve encouragement from the traditional community, rather than scorn, even as debates continue about its contents and its appropriate place among other Jewish priorities. At the same time, I believe that secular Jewry can make its ethical pursuits more “Jewish” by incorporating the values and orientation of *berit Sinai*, even if it is not willing to submit to its formal demands. Of course, to do so, secular Jewry will need the help of its traditional counterpart, which possesses the knowledge and skills necessary to distill the messages of *berit Sinai* for a wider audience.

Articulated successfully, those messages can enlighten not only Jews. If we believe genuinely in the wisdom and integrity of God’s Word, then we should believe that its moral force can reverberate even more widely. *Mori ve-rabbi* HaRav Aharon Lichtenstein writes:

The halakhic discipline… is specifically Jewish and bears no normative relation to the Gentile. And yet it too has universal implications. While the details of halakhic living and its formal regimen do not relate to the non-Jew, the ideals and values embedded within the halakha address themselves to mankind as a whole. (“The Condition of Jewish Belief,” *Leaves of Faith*, Vol. 2, 342)

R. Wurzburger closes the introduction to his *Ethics of Responsibility* with a similar claim, accompanied by a hope. After defending the notion of distinctively Jewish ethics, he writes:

The applicability of the norms and values of Jewish Covenantal Ethics is by no means restricted to the members of the Jewish Covenantal Community… While the ritualistic elements of Judaism are completely particularistic and intended exclusively for individuals who either by birth or by conversion qualify as members of the People of the Covenant, Jewish ethical teachings are not subject to the same kind of limitation but are viewed as possessing universal relevance.

I hope that this book will evoke more than parochial Jewish interest and will contribute to the clarification of some of the perplexing moral issues of our time. (8)

Of course, this outlook does not originate with students of R. Soloveitchik but with God Himself. The description of “righteous statutes and laws” that the Rambam quotes is first anticipated from the nations of the world:

And you shall protect and perform, for [the Torah] is your wisdom and your insight in the eyes of the nations, who will hear all of these statutes and proclaim, “Only a wise and insightful nation is this great people…. And who is such a great people that has **righteous statutes and laws**,” like this whole Torah. (*Devarim* 4:6-8)

Deep faith in Halakha includes the conviction that its profundity can be perceived by outsiders as well. The treasures of rabbinic tradition are waiting to be mined, for the yearning eyes of Jews and non-Jews alike. Will its faithful answer that call?

**For Further Thought:**

1. Much has been written about the status of a *ger toshav* and its relevance to the modern context, inside and outside of Israel. See, for example, R. Ahron Soloveichik, *Parach Mateh Aharon*, *Sefer Madda*, *Hilkhot Avoda Zara* 9:16*.*

**Questions or Comments?**

Please email me directly with your feedback at [judahlgoldberg@gmail.com](mailto:judahlgoldberg@gmail.com)!

1. Also see *Responsa Mishpat Kohen*, 68. [↑](#footnote-ref-1)
2. The Maharit (22a) relates this issue to different versions of text (see Tosafot, 15a); however, see *Tosafot Ha-Rosh,* 15a and 22a. Also see *Arukh Ha-shulchan, CM* 331:7. [↑](#footnote-ref-2)
3. Chief Rabbi Ben-Zion Uziel also invokes *Kiddushin* 22a with regard to fair wages (*Responsa Mishpetei Uziel,* *CM* 44), though the connection seems more tenuous. [↑](#footnote-ref-3)
4. This statement is also cited by the Rif (31a) and the Rosh (8:6) on *Bava Kamma*, within a larger quote from the Yerushalmi; compare to *Gittin* 12b and Rif and Rosh there. [↑](#footnote-ref-4)
5. See *Hilkhot Avadim* 1:6 for a definition of *perekh*. [↑](#footnote-ref-5)
6. Regarding the translation of verse 15, see [*Shiur* #7](https://www.etzion.org.il/en/shiur-07-independence-berit-avot-and-its-interaction-berit-sinai-%E2%80%93-part-2), note #11. [↑](#footnote-ref-6)
7. R. Walter Wurzburger quotes this formulation in the name of R. Joseph B. Soloveitchik (*Ethics of Responsibility*, 32). [↑](#footnote-ref-7)
8. Also see R. Haim Sabato, *Seeking His Presence: Conversations with Rabbi Aharon Lichtenstein*, 78-85. [↑](#footnote-ref-8)
9. “*Chukei Yesod Zekhuyot Ha-adam Le-or Torat Yisrael U-mishpateha*,” *Torah She-be’al Peh*, 36 (5755 [1995]), 81. [↑](#footnote-ref-9)
10. For a brief survey of these issues, see R. Ido Reichnitz, *Medina Ka-Halakha*, 212-214. [↑](#footnote-ref-10)
11. Emulation of Iyov takes on different meanings depending on his identity, which the Sages debate. If he is Jewish, then his conduct might be presumed to reflect some aspect of Jewish tradition. If, however, he is not Jewish, then his ethic likely represents natural morality. We will return to this point, God willing, in a future *shiur*. [↑](#footnote-ref-11)
12. See *Hilkhot Melakhim* 6:4 and *Kesef Mishneh*, as well as *Chiddushei Maran Riz Ha-Levi al Ha-Rambam*, p. 164. [↑](#footnote-ref-12)