YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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

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**Shiur #17: *Din* and *Lifnim Mi-shurat Ha-din***

**Can *Chasidut* Be Obligatory?**

In the past two lessons, we have dealt with the character of the *chasid*, who constantly seeks to further his observance by acting *lifnim mi-shurat ha-din*, beyond the letter of the law. At first glance, the *chasid* is a character who acts in an optional yet optimal manner; however, an analysis of the nature of acting *lifnim mi-shurat ha-din* seems to present a very different picture. By analyzing the nature of acting *lifnim mi-shurat ha-din,* we will have a greater appreciation and understanding of the *chasid*. Ultimately, we will emerge with a new sense of the overwhelming kindness of the Torah.

The translation of the term implies going beyond the *din*, beyond strict legal obligations, providing what is not technically required on behalf of another; it is certainly notable but apparently optional. However, the sources seem to reveal a different picture. The Talmud finds a biblical source for acting *lifnim mi-shurat ha-din*, and in some cases it seems that acting *lifnim mi-shurat ha-din* is not only earning extra credit; it is obligatory. A series of Talmudic passages may serve to restructure our understanding of the laws. The Talmud, in multiple contexts, presents the responsibility of certain individuals to act *lifnim mi-shurat ha-din*, above and beyond the letter of the law.

**The Source of Obligation**

The requirement of *lifnim mi-shurat ha-din* is presented by the Talmud as rooted in Yitro’s advice to Moshe when he advises him to establish a court system and appoint judges (*Shemot* 18:20): “And you shall show them the way they shall walk therein and the action which they shall do.”

For Rav Yosef taught: “‘And you shall show them’ — teach them their life’s course; ‘the way’ — this alludes to visiting the sick; ‘they shall walk’ — to burying the dead; ‘therein’ — to exercising kindness; ‘and the action’ — to *din* proper, ‘which they shall do’ — to *lifnim mi-shurat ha-din*.” (*Bava Metzia* 30b)

Though this verse is really only Yitro’s advice to Moshe, still surprisingly the Talmud expounds “which they shall do” as a reference to going beyond the letter of the law, juxtaposing acting *lifnim mi-shurat ha-din* with fulfilling mandatory elements of behavior. The conjunction would seem to indicate that extralegal behavior is not always optional. Could that really be true?

**Reason for Jerusalem’s Destruction**

The same passage of the Talmud is very fascinating for a different reason. It presents the reason for the destruction of Jerusalem as its inhabitants’ unwillingness to forgo the letter of the law and execute judgments *lifnim mi-shurat* *ha-din*.

Rabbi Yochanan said, “Jerusalem was destroyed only because its inhabitants decide cases according to Torah law.”

The Talmud asks: “Should they have instead decided case according to the laws of tyranny?”

Rather, say that Jerusalem was destroyed because they limited their decisions to the letter of the law of the Torah and did not act *lifnim mi-shurat ha-din*.

The commentators wonder why this mistake should be so grave. After all, they relinquished the opportunity to earn extra credit, but they still acted in accordance with the Torah laws. Is this not accurate?

The Ben Yehoyada (*op. cit.* 30a) explains that in fact the Jewish people had performed very heinous crimes and deserved destruction on their account. Nevertheless, had the Jews acted *lifnim mi-shurat ha-din* with each other, had they not been exacting with their neighbors, God would not have been exacting with them. However, once they treated each other with the strictness of the law, God did in kind and punished them for their sins.

This understanding seems to focus on the hidden charm of *lifnim mi-shurat ha-din* and its power to allow God to act in tandem with us, forgoing His strict justice when we do the same. However, one might offer another explanation: that acting *lifnim mi-shurat ha-din* is so fundamental to our existence that the refusal to apply its principles is at least a symptom of negative behavior which is actually deserving of destruction.

 Let us delve into the parameters of the laws of acting *lifnim mi-shurat ha-din* to learn its importance and the reason for the destruction of those who reject it.

**Cases in the Talmud**

The source cited above from *Bava Metzia* is actually treated as normative law by Rabbi Chiya, who lays out money in order to fulfill the verse, although he has no legal obligation to pay (*Bava Kamma* 99b-100a).

There was a certain woman who showed a dinar to Rabbi Chiya to verify its authenticity, and he said to her that it was a good coin. The next day she came before him and said to him, “I showed it [to purchase something] and they said to me that it is a bad coin and will not pass as currency.” Rabbi Chiya said to Rav, “Go exchange it for her, and write on my ledger: ‘This was a bad deal.’”

The Talmud wonders why Rabbi Chiya replaces her coin; as an expert money changer, he is free from such an obligation. The Talmud answers:

Rabbi Chiya went beyond the letter of the law [in compensating the woman] as Rav Yosef taught... “’Which they shall do’ — to *lifnim mi-shurat ha-din*.”

The fact that Rabbi Chiya pays for damage which he brought about, despite his legal exemption, is explained using the verse cited above. This is understandable, as we have seen that this verse of Yitro’s advice teaches us the requirement of acting *lifnim mi-shurat ha-din*. However, in other circumstances, actions *lifnim mi-shurat ha-din* are justified without any Biblical source at all. Let us take one instance:

Rav Yehuda was following behind his master Shemuel in the market, and he said to Shemuel, “If one found a purse here, what is the law?”

Shemuel said to him: “These belong to the finder.

Rav Yehuda continued, “If a Jew comes and gives an identifying mark, what is the law?”

He said to him: “Then he is obligated to return it.”

“How can both be true?”

Shemuel replied: “[The latter ruling is acting] *lifnim mi-shurat ha-din*.”

It is like the incident involving Shemuel’s father, who found donkeys in the desert. He returned them to their owners after a full twelve months had elapsed, *lifnim mi-shurat ha-din*. (*Bava Metzia* 24b)

 What is particularly interesting is that in this case, Shemuel tells Rav Yehuda that “he is obligated to return it” in order to act *lifnim mi-shurat ha-din*. Can there really be an obligation to do so? If so, where does this obligation stem from? Before attempting to deal with whether there can be a requirement to act *lifnim mi-shurat ha-din,* let us examine another case of acting beyond the letter of the law, a case in which a completely different verse is used.

**“The Way of the Good”**

Possibly the most extreme and fascinating case of extra-judicial action is brought later in Tractate *Bava Metzia* (83a): regarding Rav’s extreme directives to Rabba bar Bar-Chanan.

Rabba bar Bar-Chanan had a keg of wine broken by porters. He took their cloaks as payment. They went and told Rav.

Rav said to [Rabba bar Bar-Chanan] “Return them their cloaks!”

Rabba asked Rav, “Is this the law?”

Rav answered, “Yes, as it is written (*Mishlei* 2:20): ‘In order that you may follow the way of the good.’” Rav thereby gave them back their cloaks.

They then said to Rav, “We are poor people, and we labored the entire day; we are starving and have nothing to eat.”

Rav then said to Rabba bar Bar-Chanan: “Pay them their fee!”

He asked Rav: “Is that the law?”

Rav answered him: “Yes! For the verse continues (*ibid*.): ‘And keep the paths of the righteous.’”

 According to this passage, not only is Rabba bar Bar-Chanan directed to forgo the damages caused by the clumsy porters so as to “follow the way of the good,” but furthermore he is instructed to pay them, so as to “keep the paths of the righteous.” Rashi (*ad loc*.) explains that Rabba bar Bar-Chanan is advised to act in this manner, despite the obligation of the porters to pay for the damage they caused, in order to go beyond the letter of the law, *lifnim mi-shurat ha-din.*

 However, can one really imagine a world in which an individual may never receive compensation for damaged property? Does acting *lifnim mi-shurat ha-din* truly entail such behavior?

**The Different Types of *Lifnim Mi-shurat Ha-din***

Tosafot note that the various passages in the Talmud regarding extra-judicial responsibility refer to different verses. In the first case, in which Rabbi Chiya pays despite his exemption, the source of obligation is Yitro’s “Which they shall do.” In the case of returning lost objects unconditionally, no source is brought, while Rav’s extreme directive to Rabba bar Bar-Chanan is based on a verse in *Mishlei*, “Follow the way of the good.” Tosafot attempt to understand the reason for this discrepancy. What are the exact criteria for determining which particular source is used, and what are the implications of the diverse verses?

Tosafot explain that the different sources are expressive of three different types of acting *lifnim mi-shurat ha-din*. One must differentiate between cases in which one refrains from using a potential exemption and cases in which one goes above and beyond the call of duty. Tosafot clarify this in detail:

1. In situations in which others are obligated to pay, but some privileged individuals are exempt for one reason or another, then the first source, “Which they shall do” is used. Here the obligation of acting *lifnim mi-shurat ha-din* tells a privileged individual to forgo the exemption and to act as others are required to. Thus, we may understand the cases in *Bava Kamma,* as they deal respectively with a scholar and a professional money-changer, both of whom are exempt due to their standing; they are advised to act as others would.
2. In cases in which no real loss is incurred, the verse is not cited. Returning the purse is such a case, because legally there is no obligation; nevertheless, since the finder does not stand to lose anything ultimately, it is proper to conduct oneself in an upright manner and to act *lifnim mi-shurat ha-din.*
3. The other verse from Mishlei, “In order that you may follow the way of the good,” refers to cases in which there is not only no obligation, but going beyond the letter of the law will actually result in a financial loss (such as Rabba bar Bar-Chanan’s accepting the loss of his barrels and furthermore paying the workers). In such a case, the verse from *Shemot* cannot obligate one to incur a loss; therefore, it is only the verse in *Mishlei* that indicates that one should accept the loss.

Essentially, Tosafot are pointing out that not all cases are identical. Under certain conditions, the law representing the Torah’s goal is plain and clear. The Torah spells out that one must pay for damages he has caused or help others load and unload their donkeys. Even if the Torah sees fit to remove a given obligation from certain specific individuals, that does not mean that they should accept that discharge. Going *lifnim mi-shurat ha-din,* as expressed by Yitro, is a call to act in accordance with the God’s desired actions even when they are optional. Still, in other cases, one who carries no legal obligation but incurs no loss for going beyond the letter of the law is also supposed to understand that God wishes one to act in accordance with His will even with no requirement. The third case, though, is exceptional behavior that is even beyond the confines of acting *lifnim mi-shurat ha-din*, and it is irrationally compassionate conduct, which is certainly not even suggested for all, as we will see soon.

A discussion regarding *peshara* is useful for understanding the nature of going *lifnim mi-shurat ha-din*.

***Peshara*: Compromise and Arbitration**

The Talmud (*Sanhedrin* 6b) discusses the merits of choosing to forgo strict justice and agreeing to a legal decision of *peshara*, compromise, by the court. All agree that after the judges have started to adjudicate the case on the basis of strict *din,* calling for a decision of rightful justice, the judges cannot open the floor to a compromise. However, there is a disagreement as to whether beforehand a compromise can or even should be suggested. Three opinions are presented in the Talmudic passage. One opinion states that it is forbidden to offer a compromise; rather strict justice should always prevail. A second opines that it is permitted to offer a resolution of compromise, not adhering to the simple legal dictates. Finally, a third opinions holds that it is in fact a mitzva for the courts to offer a compromise (before the claims of the litigants are heard).

Within its discussion, the Talmud notes that the two great brothers, Moshe and Aharon, differed on this issue:

But let the law cut through the mountain, for it is written (*Devarim* 1:17), “For the judgment is God's.”  And so Moshe's motto was: Let the law cut through the mountain. Aharon, however, loved peace and pursued peace and made peace between man and man, as it is written (*Malakhi* 2:7), “The law of truth was in his mouth, unrighteousness was not found in his lips, he walked with Me in peace and uprightness and did turn many away from iniquity.”

Rashi *(*s.v*. Aval*) explains that Aharon would suggest compromises in order to make peace before the argument flared up and the individuals arrived at court as litigants. Tosafot (s.v. *aval*) add that Aharon would not serve as a judge, and, therefore, there was no question that he was permitted to offer a compromise.

Nevertheless, the whole discussion seems to invite a question: does a compromise not call into question the validity of the Torah’s legal system? Does it not seem to indicate that the judges can arrive at a more just decision if they ignore the law and arbitrate on their own?

Due to this question and other factors that arise from the Talmudic discussion, it seems that *peshara* is in fact an agreement by the two parties not to start the mechanism of *din*, but rather one which operates *lifnim mi-shurat ha-din*, allowing the judges to deliver a verdict beyond the letter of the law. It is not that the laws of the Torah are insufficient or lacking; rather, the overall desire of God sometimes may only be achieved by taking into account situational necessity, which *peshara* allows for and *din* does not. In short, *peshara* is an application of the principles of the Torah to the situation at hand. Its whole existence is a celebration of *lifnim* *mi-shurat ha-din*: not abrogating principles but applying them in a judicially permitted extra-legal situation.

In a celebrated speech, partially recorded in *Reflections of the Rav*, Rav Soloveitchik explains the merits of *pesharah* by explaining the difference between a verdict of *din* and one of *peshara*, particularly in the role of the *dayyan*, the judge, in each respectively:

*Din* pits one party against the other… The law is administered with cold impartiality and its decisions are dictated by objective data. One party emerges the victor, his case is vindicated. The plea of the other is denied. Discord and resentment persist even at the court docket is cleared and the case is closed. The legal issue has been resolved but human bitterness continues to fester.

In *pesharah,* however, social harmony is the primary concern of the *dayyan*… The goal is not to be juridically astute but to be socially healing. The psychology of the contenders, their socio-economic status and values, as well as the general temper of society, are the primary ingredients employed in the *pesharah* process. These considerations are evaluated within the broad halakhic parameters of the *Hoshen Mishpat,* and the final resolution of the conflict is a delicate and sensitive blending of both objective legal norms and the subjective humanistic goals. For this reason, *pesharah* is the preferred alternative. (Besdin, p. 53)

*Peshara* is not an abrogation of the law. It does not contradict *Halakha*; in fact, it shares much with it. It is *mishpat*, but as the Talmud (*loc. cit.*) explains, it is what the prophet Zekharya refers to as “*mishpat shalom*” (8:16) — a peaceful judgment. For the same reason that going *lifnim mi-shurat ha-din* is preferable to following the *din*, so too it is ideal for both parties to agree to resolve their conflict through *peshara*, rather than seeking a court verdict, *din*.

However, a question remains: what entitles the judge to know what parameters to employ when deciding a case of *peshara*? Rav Soloveitchik formulates the question thusly: “But what guide does the *dayyan* employ in *pesharah*?”

In essence, the answer seems to be that rather than focusing on the unique applications of the law that arise in this specific circumstance, the judge must decide to compromise and reconcile the contradictory claims of the claimants by an application of the overall message of the Torah that is derived from analyzing its laws.

In a *pesharah* case the *dayyan* forms his judgment out of his conscience, his sense of justice, fairness and charity. He employs his *da’at Torah*, his sense of Torah fairness, stemming from his intuitive sense of rightness. His is a humane approach, reflecting Torah sensitivity and his love of his fellow man… (*op cit*. p. 62)

 With this in mind, we can understand why the Rambam (*Hilkhot Sanhedrin* 22:24) states, “A court that always settles cases through *peshara* is praiseworthy,” and the Shulchan Arukh rules that it is a mitzva to offer *peshara* (*CM* 12:2).

**Obligations for All or for Special Individuals**

At this point, pursuing *peshara* and going *lifnim mi-shurat ha-din* seem to be notable but still optional. One who wants to follow in the footsteps of Aharon, suggesting compromise and promoting forgoing one’s legal rights in order to help others, is following a path which is ideal, though not obligatory. However, the commentators argue as to whether going *lifnim mi-shurat ha-din* is in fact something which may be mandatory. While the Rosh (*Bava Metzia* 2:7) is of the opinion that it is not, the Mordekhai (*Bava Metzia* 257) holds that one party may be compelled to go *lifnim mi-shurat ha-din*. The Rema (*CM* 12:2) quotes both opinions on the matter as normative halakha.

How can one compel another to uphold standards beyond the legal definition? We have already seen (lesson #14) that in certain cases, an act that is viewed as emulating Sedom may not be tolerated, and the court will step in based on the principle of *kofin al middat Sedom*, forcing one to abjure such behavior. Rav Aharon Lichtenstein explains that this is also rooted in the idea of going *lifnim mi-shurat ha-din* (“Does Jewish Tradition Recognize an Ethic Independent of Halakha?” *Modern Jewish Ethics*, p. 75). However, not all legal yet disagreeable behavior is treated equally. As Tosafot point out, there are different gradations of such behavior, and the court will not always step in to require one to uphold the loftier standards of the spirit of the law.

Beyond this, the court must also take into account the individuals involved. The Bach explains that the custom is to force people to act *lifnim mi-shurat ha-din* if they are wealthy and capable of doing so. The law states the lowest common denominator of obligation, but clearly those who are capable of doing more should do so, and sometimes the courts may require it.

Yet, there is also another category of individuals who may carry an added obligation. Rabbeinu Yehonatan (*Shitta Mekubbetzet,* *Bava Metzia* 24b, s.v. *Naaseh*) seems to rule that a distinguished individual, by virtue of his stature, is obligated to go beyond the letter of the law. This would explain how Rav orders the wealthy and scholarly Rabba bar Bar-Chanan to pay the careless porters for their work. The obligations of a distinguished individual, a *chasid* who is known to be respectable, go far beyond what any legal system could obligate.

 This opinion is very notable; it seems to reflect the fact that Yitro’s idea of going *lifnim mi-shurat ha-din* is stated in the context of the guidelines of behavior for the Jewish people as distinguished judges are installed for them. Often those who are scholarly and know the law are able to devise and identify legal loopholes in order to allow them to act in the manner they see fit without having to violate any laws. However, Judaism takes a dim view of this behavior: it is not only frowned upon; it is totally disallowed. Sedom was the city of legalized evil, where they stole less than a *peruta*‘s worth in order to be escape legal culpability. This is unthinkable for the descendants of Avraham: the scholar and the dignitary must live on a different plane, by higher standards. One might think that after they are separated and elevated from the masses, so much so that there are certain obligations which others have that they are free from, they may forgo their other interpersonal responsibilities. Nevertheless, they have an obligation of *gemilut chasadim*, even when it is difficult; they must act above and beyond the letter of the law.

**A Deeper Understanding**

This all becomes understandable when viewed against the backdrop of last week’s lesson on *chasidut*. The goal of the Torah’s laws is to build principles: to inform us what God loves and to allow anyone who really loves God to learn from them how God really desires for us to act.

The law cannot be abrogated, but it is not supposed to be used in situations where the strict literal definition will call into question the entire gamut of God’s desire. The Talmud even accompanies the explication of the responsibility of going *lifnim mi-shurat ha-din* with the statement that “Jerusalem was destroyed because they limited their decisions to the letter of the law of the Torah and did not act *lifnim mi-shurat ha-din*.” The reason for this is that sticking to the legal exemptions when it is clear that doing so will in fact undermine the whole purpose of the law is, in essence, “illegal.” Although it is technically permitted, it is not in consonance with the will of God, which the law seeks to express.

Sometimes doing something extra is a sign of *chasidut*; it is rooted in a special dose of love of God. Conversely, failing to go beyond the letter of the law is an expression of a lack of love of God. At the very least, we may say that for certain individuals, those who have the means and the scholarly knowledge, there is an expectation to act on a different plane; following the technical requirements of the law may make one culpable in God’s eyes. The idea that the law should always determine positive behavior is indicative of the legalized cruelty of Sedom. Therefore, Jewish *tzedek* declares that some things which appear to be ours really belong to others. But how can one know? At what point does *middat chasidut* tell one to surrender to others? After all, we are not talking about Sedom’s laws, but the righteous laws of the Torah

In fact, Rav Aharon Lichtenstein (*op. cit.* p. 66) remarks that the interpersonal laws are clearly not just specific directives, but yardsticks:

[H]owever, we recognize that Halakha is multiplanar and many-dimensional; that, properly conceived*,* it includes much more than is explicitly required or permitted by specific rules.

**The *Tzaddik* and the *Chasid***

With this in mind, let us return to the question which we posed last week and attempt to answer it. We wondered why it is that those who embrace the concept of *chasidut,* who teach the importance of rising above mere *tzedek*, refer to their great leaders as *tzaddikim.* Would it not be more appropriate to call them *chasidim*?

Based on our explanation, the terminology is understandable. True, the *chasid* acts beyond the call of duty; however, the true *tzaddik* is the one who recognizes that even his acting beyond the letter of the law is in fact within the requirements of the law. If one understands that acting as a *chasid* is not done for extra credit, but that it is the real goal, he is the true *tzaddik* whom all should follow.

**For Next Week:**

 In our next lesson, I hope to show that the Torah in fact includes a specific verse to ensure that we understand Judaism not only through its specific laws, but also through the spirit those laws wish to impart.