YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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

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

**By Rav Dr. Judah Goldberg**

**Shiur #33: Pursuit of the Ethical Life (4):**

***Middat Sedom* and *Lifnim Mi-shurat Ha-din* – Part One**

In the last three *shiurim*, we extensively analyzed the role of Sedom both in *Sefer Bereishit* and elsewhere in *Tanakh*. Briefly, Sedom is not just a perpetual icon of Divine reckoning and punishment (as emphasized in *Devarim* 29:22 and throughout *Nevi’im*[[1]](#footnote-2)), but it also represents the antithesis of Avraham’s mandate of *tzedaka u-mishpat* (charity and justice). In *Torah she-bikhtav*, at least, Sedom survives as a reminder of what *berit Avot* has come to replace and what it must continually strive to achieve, most prominently in Jerusalem, the “City of Righteousness” (*Yeshayahu* 1:26).

But what meaning does Sedom carry within *Torah she-be’al peh*? One would imagine that it belongs to a narrative about our history, but that it has little to do with our present! Any lasting lessons that emerge from its story, we might presume, have been subsumed within the vast corpus of Jewish law, through the commandment to give charity. We would not expect to meet up with Sedom in halakhic literature any more than we would anticipate mention of Kayin, Nimrod, Avimelekh, or any other antagonists of *Sefer Bereishit*.[[2]](#footnote-3)

Nevertheless, strikingly, our Sages do incorporate Sedom — more precisely, *middat Sedom* (the manner of Sedom) — into their formulations of Jewish obligation. First, it appears in the Mishna:

One who says, “What’s mine is mine, and what’s your is yours” — this is an average attitude.

Some say: this is the manner of Sedom. (*Avot* 5:10).

Second, in multiple places the Talmud invokes a principle of “*Kofin al* (we compel regarding) *middat Sedom*,” with regard to situations of “*zeh neheneh ve-zeh lo chaser”* (this one stands to benefit while the other loses nothing).[[3]](#footnote-4) *Kofin al middat Sedom* means that benevolence towards another when there is no cost to oneself is not only encouraged but mandatory, and therefore coercible.[[4]](#footnote-5) We must ask ourselves: what particular significance does the historical reference to Sedom carry here?

One approach is to treat the reference as little more than a literary flourish. *Middat Sedom* becomes a convenient shorthand for unnecessary or unjustified stinginess to anyone with a passing familiarity with *Tanakh*, but it doesn’t carry any additional meaning. A second approach would suggest that the reference to *Parashat Vayera* purposely distinguishes this rule from other laws. Rooting this obligation in the Sedom narrative either adds a layer of impetus or suggests that what is at stake is not primarily a violation of *berit Sinai*, but a breach of *berit Avot*.

Our starting point for analyzing *middat Sedom* will be a seminal article on the subject by *mori ve-rabbi* HaRav Aharon Lichtenstein ([“*Kofin al Middat Sedom*: Compulsory Altruism?” Trans. by David Strauss, *Alei Etzion*, 16 (5769 [2009]), 31-70](http://www.gush.net/alei/16-02sedom-final.doc)). In particular, we will consider HaRav Lichtenstein’s analysis of possible sources for a prohibition against *middat Sedom* before offering our own suggestion.

***Middat Sedom*: Why Not?**

In characteristic fashion, HaRav Lichtenstein addresses not only the nature of *kofin al middat Sedom* and the implications thereof, but also its basis within the halakhic system. That a rabbinic court may intervene and coerce an individual not to spitefully deny benefits to another (e.g., demand a division of property that will be needlessly inconvenient for one of the partners [*Bava Batra* 12b]) implies that there is an underlying prohibition to do so. However, HaRav Lichtenstein notes, nowhere does the Talmud explain what obligation compels the individual to cooperate in the first place. A general attitude of “What’s mine is mine,” etc. may be distasteful, but not obviously illegal. If one who harbors it were to protest that he or she is merely acting within his or her property rights and has not violated any laws, what could the court respond?

HaRav Lichtenstein offers several options (55-56). At the extreme, one who is deliberately spiteful may be in violation of the prohibition to hate a fellow Jew (*Vayikra* 19:17-18). In the positive, an obligation to offer easy help to a fellow Jew would fall under the general responsibility of *chessed* (kindness), which itself emanates from the commandments to “Love your neighbor as yourself” (*Vayikra* 19:18) and to imitate Divine traits (*Devarim* 28:9). Finally, HaRav Lichtenstein contends that avoiding *middat Sedom* would be subsumed under a responsibility to act *lifnim mi-shurat ha-din* (well within the boundaries of the law), itself included, according to the Ramban, in the Torah’s sweeping command to do “*ha-yashar ve-hatov,*” “the right and the good” (*Devarim* 6:18).[[5]](#footnote-6) Elsewhere, HaRav Lichtenstein emphasizes this final option (“Does Judaism Recognize an Ethic Independent of Halakhah?” *Leaves of Faith: The World of Jewish Living*, 45).[[6]](#footnote-7)

Humbly, I would like to suggest a different possibility (as I once had the privilege of doing before *mori ve-rabbi,* of blessed memory). What all these suggestions share in common is that they point to commands of *berit Sinai*, and reasonably so. With regard to the source of any obligation of Jewish living — especially one that a court may enforce — our first instinct is to “leaf through and leaf through” (*Avot* 5:22) the full corpus of Jewish law. However, as we previously asked with regard to living in the Land of Israel, does this exhaust all the possibilities? Perhaps the primary force behind *kofin al middat Sedom* lies not within *berit Sinai*, but outside of it.

The impetus to look elsewhere is particularly strong when the very formulation of the rule includes such an obvious reference to *Sefer Bereishit* and, by extension, to *berit Avot*. As we stressed in our previous analysis of *Parashat Vayera*, the city of Sedom is not merely a bad actor of ancient history but serves as a direct foil for Avraham and his central legacy; they are opposite sides of the same coin. Repudiation of *middat Sedom*, then, might just be the flipside of our collective mission “to keep the way of God to do *tzedaka u-mishpat*,” as our forefather Avraham instructed us to (*Bereishit* 18:19). If this verse, and Avraham’s mission, require us “to be meticulous with the mitzva of charity more than with all [other] positive commandments,” according to the Rambam (*Hilkhot Mattenot Aniyim* 10:1; see *shiur* #7), then *middat Sedom*, the diametric opposite,is simply unthinkable! From this perspective, those who emulate the traits of Sedom, rather than the way of God, are not so much in violation of the precepts of Sinai (though HaRav Lichtenstein may be technically correct) as they are betraying their core identities as children of Avraham.

**Shared Features of *Lifnim Mi-shurat Ha-din* and *Tzedaka U-mishpat***

Are there any practical differences between a source from *berit Sinai* and a source from *berit Avot* for a prohibition on *middat Sedom*? Intuitively, following the general thrust of this study, as well as our parallel discussion of *yishuv* and *dirat Eretz Yisrael*, we might imagine that a source in *berit Sinai* would lead to a formalization of the principle — including the jurisdiction of the court — whereas a source in *berit Avot* would indicate a purely subjective value. In this case, however, the suggestion is palpably false, in both directions, and it is important to explore why.

HaRav Lichtenstein readily acknowledges that the overall concern for *middat Sedom* and the specific circumstances of its enforcement may not be coextensive:

There can be *middat Sedom* that does not lead to compulsion— whether because it does not express itself in a particular act, but in a general and amorphous way of life; or because it has only taken root as a personality trait, but has not yet found practical expression; or because of secondary factors. (54-55)

In other words, even when reluctance to share has not risen to a level that calls for judicial intervention, it may nevertheless be repulsive. Furthermore, according to HaRav Lichtenstein, this may be the difference between the Mishna, which speaks broadly of “*middat Sedom*” and includes a dissenting opinion that labels “What’s mine is mine,” etc. as average, and the Talmud, in which the essential principle of *kofin al middat Sedom* is uncontested (though its parameters are) (38-41).

Thus, HaRav Lichtenstein’s position also allows for a contextual element with regard to *middat Sedom*. Importantly, this is no mere concession, but a key consequence of HaRav Lichtenstein’s anchoring of *middat Sedom* in the concept of *lifnim mi-shurat ha-din*. In fact, the two different sources for *middat Sedom* given here — *lifnim mi-shurat ha-din* and *berit Avot* — were previously offered in *shiur* #2 by HaRav Lichtenstein and R. Walter Wurzburger, respectively, as two different complements to the formal aspects of Jewish law. In doing so, both were looking for a category of responsibility that was deliberately more open-ended, contextual, and reliant on intuition, and *lifnim mi-shurat ha-din* and *berit Avot* both answer that need.

More important, then, than what differentiates HaRav Lichtenstein’s and R. Wurzburger’s approaches is what unites them: a shared rejection of narrow halakhic formalism. Thus, before addressing what *berit Avot* uniquely adds to this discussion of *middat Sedom*, we will first explore HaRav Lichtenstein’s understanding of *lifnim mi-shurat ha-din* and the ways in which it parallels, within the context of *berit Sinai*, our analysis of the values of *berit Avot*.

***Lifnim Mi-shurat Ha-din***

HaRav Lichtenstein discusses the concept of *lifnim mi-shurat ha-din* in another landmark essay (“Does Judaism Recognize an Ethic Independent of Halakhah?” *Leaves of Faith: The World of Jewish Living,* Volume 2 [Jersey City: 2004], 33-56). He affirms that *lifnim mi-shurat ha-din* is a mandatory, integral component of *berit Sinai* and perhaps even enforceable at times;[[7]](#footnote-8) in fact, for HaRav Lichtenstein, *kofin al middat Sedom* is a case in point. What, then, distinguishes *lifnim mi-shurat ha-din* from classic “*shurat ha-din*,” the proverbial letter of the law? Of *lifnim mi-shurat ha-din*, HaRav Lichtenstein writes:

It is less rigorous not only in the sense of being less exacting with respect to the degree and force of obligation — and there are times, as has been noted, when it can be equally demanding — but in the sense of being more flexible, its duty more readily definable in light of the exigencies of particular circumstances. (47)

In other words, intuition does not belong exclusively to *berit Avot*, and formalism is a common but not universal characteristic of *berit Sinai*. As much as *berit Sinai*, at both the Biblical and rabbinic levels, tilts towards discrete, generalizable obligations, it can also charge the individual or group in broad, purposely vague terms — in both the ethical and ritual realms[[8]](#footnote-9) — necessitating the active participation of the agent(s) in determining what is being asked for in any given situation.

In these cases, Halakha imposes upon us an aspiration and a mission, which are as binding as any other commandments, yet, at least at the Biblical level, ask for nothing concrete in particular. The agent — and his or her autonomy — is at the heart of the command, rather than the obligation which is to be fulfilled. According to HaRav Lichtenstein, this character is evident in the Torah’s precise formulation of nearly all the *mitzvot* that he cites with regard to *middat Sedom*:

In this area, the halakhic norm is itself situational. It speaks in broad terms: “And thou shalt do the right and the good”; “And thou shalt walk in His ways” (*Devarim* 28:9). The metaphors employed to describe it, “the ways of the good” and “the paths of the righteous,” denote purpose and direction rather than definitively prescribed acts.

The same is true with regard to the Gemara’s derivation of *lifnim mi-shurat ha-din*, in contrast to *shurat ha-din*:

“‘And the action’: this [refers to] the line of *din*; ‘that they shall take’ (*Shemot* 18:20*)*: this [refers to] *lifnim mi-shurat ha-din*” (*Mekhilta*, *Yitro*, *Massekhta de-Amalek*, 2)—the reified static noun being used in relation to one and the open-ended verb in relation to the other. (48)

Even though the Sages, as we noted in *shiur* #5, often translate these broad *mitzvot* into specific requirements, they neither intended nor were empowered to blunt them of their original, raw ethical force. At the rabbinic level, “Love your neighbor as yourself” underwrites the specific obligations to visit the sick and comfort mourners (Rambam, *Hilkhot Avel* 14:1), but the overarching Biblical command remains just as relevant (see *Hilkhot De’ot* 6:3).[[9]](#footnote-10)

**“More Dear than the Wine of Torah”**

In his description of *lifnim mi-shurat ha-din*, HaRav Lichtenstein relies, in part, on two critical passages by medieval halakhists. First, he cites the Ramban’s commentary on the Torah’s command to do *ha-yashar ve-hatov* (*Devarim* 6:18), in which the Ramban elaborates upon Rashi’s brief comment that this includes *lifnim mi-shurat ha-din*. The Ramban explains that it would be preposterous to imagine that the Torah could have ever been specific enough to cover all ethical dilemmas in all circumstances:

For it is impossible to list in the Torah all of a person’s activities with his neighbors and acquaintances, and all of his commercial dealings, and every possible communal and political ordinance. Rather, after [God] had mentioned many of them… [Moshe] continued by saying generally that one should do *ha-tov ve-hayashar* in every matter.[[10]](#footnote-11)

In other words, strict formalism is an unrealistic expectation of any code of law meant to be both timeless and comprehensive. Halakha erects a rigid, elaborate structure but deliberately bridges its inevitable gaps with open-ended, agent-centered commandments that speak to both laypeople and legislators: The Ramban subsumes *lifnim mi-shurat ha-din* and overall sterling personal conduct under the banner of *ha-yashar ve-hatov*, but he also notes how the Talmud roots certain rabbinic enactments in the same verse, such as the right of an abutting property owner to preempt other purchasers in a land sale (*Bava Metzia* 108a).[[11]](#footnote-12)

The Ramban gives us, on the one hand, a rejection of strict formalism, and, on the other, a full-throated endorsement of a subjective realm of ethics. Still, from the Ramban’s words alone, one could insist that this is a pragmatic concession on the part of Torah. Ideally, God should direct every move and every footstep, but within the limited reality of dynamic human endeavor, He has no choice but to delegate some of the real time decision-making to lesser authorities.

However, HaRav Lichtenstein also cites a passage from the *Maggid Mishneh* (an early commentary on the Rambam’s *Mishneh Torah*) which belies this notion. Commenting on the law of the abutter and other rules regarding land transactions, the *Maggid Mishneh* first echoes the Ramban:

For our perfect Torah gave [general] principles concerning the development of a person’s character and his conduct in the world… and so, too, it said, “You should do *ha-yashar ve-hatov*,” meaning that one should act in ways that are *tov* and *yashar* with others. With regard to all this, **it would not have been appropriate to give detailed instructions**. For the Torah’s commands apply at all times, in every period, and under all circumstances, and are absolutely obligatory; whereas people’s characteristics and behavior vary, depending on the time and the individuals. The Sages set down some relevant details subsumed under these principles, some of which they established as law and some only as recommendations.

In closing, though, he adds an important postscript:

And with reference to this did they say (*Avoda Zara* 35a), “The words of the beloved (*dodim*) [the Sages] are more dear than the wine of [Divine] Torah, as it says (*Shir Ha-shirim* 1:2), ‘For your *dodim* are better than wine.’” (*Hilkhot Shekhenim* 14:5)

The *Maggid Mishneh* relates to rabbinic improvisation not as a necessary evil, but as a welcome contribution — even more beloved than pristine Divine word! It is not that God understood the limitations of His “perfect Torah” and planned accordingly. Rather, in all its perfection, the Torah consciously leaves room for human initiative, intuition, and creativity — just as God does for Avraham in *Parashat Vayera*.

Admittedly, the *Maggid Mishneh* is referring in this context to rabbinic application of *ha-yashar ve-hatov*, rather than personal, contextual judgment; and the appropriate balance between the two is certainly debatable.[[12]](#footnote-13) Still, inasmuch as the Ramban includes both categories under the heading of “*ha-yashar ve-hatov*,” I would argue that its overall encouragement of active engagement is relevant, at some level, to both. If so, then in *berit Sinai*, too, God seeks out human participation, in pursuit of the grand project of *ha-yashar ve-hatov*.

**Coercion of *Berit Avot*?**

To recap, grounding a rejection of *middat Sedom* in *berit Sinai* does not preclude a subjective aspect. On the flipside, tracing it to *berit Avot* does not mean that a rabbinic court — the legislators and enforcers of Sinai — cannot or should not have jurisdiction in certain objective cases. *Chazal* are ultimately responsible for regulating interpersonal behavior, and they may incorporate any values or concerns that they see fit. Just as they formalize broad commandments of Sinai into concrete, coercible obligations, so may they begin with the values of *berit Avot* and, in turn, add their stamp to them.

Still, one may ask: have we not suddenly blurred the very distinctions we have fostered until now? Early on, we characterized *berit Sinai* as legal and objective and *berit Avot* as dependent on personal intuition, only to argue now that *berit Sinai* also contains broad, open-ended charges and that *berit Avot* can lead to enforceable legislation. What is left, then, of the original argument?

I would counter that the blurred demarcation between *berit Avot* and *berit Sinai* is not a challenge at all, but rather an elegant demonstration of the interplay between them. *Berit Sinai* neither replaces *berit Avot* nor simply joins its side inertly. Rather, *berit Sinai* incorporates and reflects the concerns of *berit Avot*, often by concretizing them into discrete obligations and sometimes by reformulating the same overarching values into broad directives.

There is nothing surprising in finding considerable overlap between *tzedaka u-mishpat* and *ha-yashar ve-hatov*, even while we note the distinctions between them. “*Ha-yashar ve-hatov*” is not exactly synonymous with “*tzedaka u-mishpat*,” and being commanded, even with a general charge, is still different than being invited into a partnership with God in pursuit of *tzedaka u-mishpat.*[[13]](#footnote-14)Even here, then, *Berit Sinai* reflects *berit* *Avot* without merely recapitulating it. Each covenant adds its own particular flavor to the pursuit of the ethical, even while an element of subjectivity may be purposely common to both.

Finally, if we consider the possibilities for interaction between *berit Avot* and *berit Sinai*, we might suggest a third, hybrid formulation regarding the basis for *kofin al middat Sedom*. Perhaps the root of the overarching wariness of *middat Sedom* lies in the *berit Avot* value of *tzedaka u-mishpat*, but the impetus for our Sages, both as legislators and jurists, to assert themselves in this context comes from the Sinaitic commandment to do *ha-yashar ve-hatov*. In this case, *kofin al middat Sedom* emerges as an elegant example of the delicate interplay between the two covenants we have been considering: We can say that “*kofin*” is a function of *berit Sinai*, while “*middat Sedom*” is primarily a function of *berit Avot*.

**Conclusion**

In this *shiur*, we analyzed two different possible sources for *kofin al middat Sedom*, only to subsequently emphasize how much they share. If the concepts of *tzedaka u-mishpat* and *lifnim mi-shurat ha-din* are indeed so closely related, does the source of this law really matter? We will address this question in the next *shiur*.

**For Further Thought:**

1. I once heard HaRav Lichtenstein pose the following question: When *Chazal* enact a rule based on *ha-yashar ve-hatov*, does it take on the form of rigid *din*,or does it retain some of the subjective, contextual character of the original verse? See, for example, *Or Zarua*, *Bava Metzia* 359.

**Questions or Comments?**

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

1. See *Yeshayahu* 13:19; *Yirmeyahu* 49:18 and 50:40; *Amos* 4:11; and *Tzefanya* 2:9. [↑](#footnote-ref-2)
2. The Talmud does make reference to the generation of the Flood and the generation of the Tower of Bavel (as well as the Sodomites) in a curse for one who doesn’t honor a commitment, but only as illustrations of Divine retribution (similar to *Devarim* 29:22) (*Bava Metzia* 44a, 48a). Particular sins or attributes are not discussed. [↑](#footnote-ref-3)
3. *Eruvin* 49a; *Ketubot* 103a; and *Bava Batra* 12b, 59a, and 168a. [↑](#footnote-ref-4)
4. Admittedly, identifying *middat Sedom* as “*zeh neheneh ve-zeh lo chaser*” is problematic. The Sodomites are condemned for avoiding charity, but charity specifically comes at a loss to the donor! See Rashi on *Ketubot* 103a (including the earlier edition cited by *Shita Mekubetzet*), as well as R. Shimon ben Tzemach Duran (Tashbetz) and *Tiferet Yisrael* on *Avot*. If, following *shiur* #30, we propose that *middat Sedom* refers not so much to particular policies as to an overarching ideology of radical isolation and self-sufficiency, then the association is easier. In practice, the Sodomites are guilty of not giving, but their outlook would be just as scornful of situations of *zeh neheneh ve-zeh lo chaser*. On this point, also see the commentary of R. Matitya Ha-Yitzhari (Spain, 14th-15th c.) on *Avot*. [↑](#footnote-ref-5)
5. See also *Devarim* 12:28 and Ramban there. [↑](#footnote-ref-6)
6. Also see the closing section of *Ha’amek She’eila* and *Responsa* *Meshiv Davar* 2:92. [↑](#footnote-ref-7)
7. See, for instance, Mordechai, *Bava Metzia*, 257 and Bach, *CM* 12:4. [↑](#footnote-ref-8)
8. See, for instance, Ramban on *Vayikra* 19:2. [↑](#footnote-ref-9)
9. Also see R. Walter Wurzburger, *Ethics of Responsibility: Pluralistic Approaches to Covenantal Ethics* (Philadelphia: 1994), 73-74. [↑](#footnote-ref-10)
10. In his commentary on *Vayikra* 19:2, the Ramban notes that “this is the Torah’s method, to specify and [then] to generalize” and cites *Devarim* 6:18 as an example. [↑](#footnote-ref-11)
11. Also see *Bava Metzia* 35a. [↑](#footnote-ref-12)
12. See HaRav Lichtenstein, “*Halakha Ve-halakhim Ke-oshiyut Mussar: Hirhurim Machshavtiyyim Ve-chinukhiyyim*,” *Mussar Aviv* (Maggid, 2016), 47. [↑](#footnote-ref-13)
13. Also see “Ethic Independent of Halakha,” 50-51. [↑](#footnote-ref-14)