YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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

**By Rav Dr. Judah Goldberg**

**Shiur #39:**

**Pursuit of the Ethical Life (10)**

**The King and *Tzedaka U-Mishpat***

In the previous two *shiurim*, we demonstrated how Halakha both authorizes and encourages the king to utilize his own moral intuition in judging, and possibly even legislating, outside of formal Jewish law. This further refutes arguments in favor of halakhic positivism by demonstrating that intuition is possible and welcome within the halakhic system and perhaps even necessary.

However, this does not necessarily mean that the king’s use of intuition has anything to do with *berit Avot*. As we have repeatedly stressed, moral intuition can be just as easily traced to *berit Sinai* and the corpus of Jewish law, such as through the commandment to do *ha-yashar ve-hatov*. Perhaps monarchy is merely a construct of *berit Sinai* but does not draw upon or reflect an ethical tradition that predates it. Is there reason to believe otherwise?

**David, Shlomo, and *Tzedaka U-mishpat***

Notably, the critical terms “*tzedaka*” and “*mishpat*” appear throughout *Nevi’im* regarding King David and his descendants, as thoroughly documented by Prof. Moshe Weinfeld.[[1]](#footnote-1) Regarding King David himself, we have already seen *II* *Shmuel* 8:15, which the Sages directly link to the ethical mandate of Avraham (see *shiur* #36):

David ruled over all of Israel, and David would perform ***mishpat u-tzdaka*** for his whole nation.

This verse follows a series of military campaigns by King David (8:1-14), suggesting that once he solidified his rule, he was able to return to his primary domestic responsibilities.[[2]](#footnote-2) Furthermore, the following verses (8:16-18) summarize the administrative duties within David’s government: “And Yo’av ben Tzeruya oversaw the army, and Yehoshafat ben Achilud was the secretary,” etc. The implication, I think, is that *mishpat u-tzedaka* is not a mere pastime of David’s, but one of his primary roles within his kingdom.[[3]](#footnote-3)

Moreover, David, like Avraham, seeks to leave a legacy to his children after him:

These are the righteous, who bequeath to their children the fruit of their labors. So did David bequeath the fruit of his labors, as it says, “David would perform ***mishpat u-tzedaka*** for his whole nation.” So, too, “[To] Shlomo[[4]](#footnote-4) — God, give your ***mishpat*** to a king, and your ***tzedaka*** to the son of a king” (*Tehillim* 72:1). (*Midrash Tehillim* 72:2)

The psalm that the Midrash comments upon continues:

May he judge your people with righteousness, and your destitute with ***mishpat***. The mountains will offer peace to your nation, as well as the hilltops — through ***tzedaka***. (72:2-3).

The Midrash places these words in the mouth of King David about the son who will succeed him.[[5]](#footnote-5) According to the Radak, in fact, this is the last prayer that David utters; thus, the psalm ends, “The prayers of David, son of Yishai, have concluded” (72:20). In other words, David’s final request is that his successor carry on this defining legacy, which he himself inherits from Avraham.[[6]](#footnote-6)

Indeed, King David’s prayer is answered. *Midrash Mishlei* observes, “It says regarding Shlomo ‘***mishpat u-tzdaka***,’ and it says regarding David ‘***mishpat u-tzdaka****’*” (1:1) and further notes the parallels between David, Shlomo, and Avraham:

Great is *tzedaka*, for our father, Avraham, was praised about it, as it says, “And he believed God, and He considered it for him ***tzedaka***” (*Bereishit* 15:6), and it says, “For I have known him… to do ***tzedaka***, etc.” (18:19).

Great is *tzedaka*, for David, King of Israel, is praised about it, as it says, “And David would perform ***mishpat u-tzdaka*** for his whole nation” (*II Shmuel* 8:15).

Great is *tzedaka*, for King Shlomo is praised about it, as [the Queen of Sheba] says, “May Hashem, your God, be blessed, who desired you, to put you on the throne of Israel; out of God’s eternal love for Israel did he place you as king to do ***mishpat u-tzdaka***” (*I Melakhim* 10:9). (14:34)

A variation on this *midrash* includes Yitzchak, Ya’akov, Moshe, and Aharon (*Tanna De-vei Eliyahu Zuta*, 1); however, the *midrash* speaks of *tzedaka* generally and therefore attributes it to all these personalities. The coupling of *tzedaka* with *mishpat*, however, is unique to Avraham, David, and Shlomo, and I conjecture that *Midrash Mishlei* is highlighting this point.[[7]](#footnote-7) In other words, David, in his role as king, embodies the ethical tradition of Avraham, and he passes it on to Shlomo, who is similarly appointed “as king to do ***mishpat u-tzdaka***.”

***Mishpat U-tzdaka* after Shlomo**

*Mishpat u-tzdaka* doesn’t stop with Shlomo. King Yehoshafat, whose name (“God judges”) is telling in its own right, reorganizes the court system and charges the judges to be accountable to God alone (*II Divrei Ha-yamim* 19:5-11).[[8]](#footnote-8) In praising Yehoshafat for his initiatives, the Sages specifically pick up on the phrase “ways of God” (17:6) and note the parallel to Avraham:

He appointed judges over [the Jews] that knew how to walk in the “ways of God,” as it says, “that they may keep the way of God to do ***tzedaka u-mishpat***” (*Bereishit* 18:19). (*Midrash Tanchuma*, *Shofetim*, 1)[[9]](#footnote-9)

*Mishpat u-tzdaka* also appears explicitly in a prophecy by Yeshayahu about a future child from the House of David. He will be blessed, according to Yeshayahu, with:

Abundant authority and endless peace upon David’s throne and his kingdom, to stabilize and support it through ***mishpat*** and ***tzedaka*** forever after. (9:6)[[10]](#footnote-10)

Commentaries identify this king as Chizkiyahu, who is singled out for most closely emulating his ancestors Kings David and Shlomo in his righteousness.[[11]](#footnote-11) Fittingly, *mishpat u-tzdaka* reappear in anticipation of his arrival.

***Mishpat U-tzdaka* in *Sefer Yirmeyahu***

Later on in history, *mishpat u-tzdaka* feature most prominently in an extended prophecy by Yirmeyahu concerning the final kings of the First Commonwealth. There, Yirmeyahu reflects on those who embodied *mishpat u-tzdaka* in the past, those who fail these values in the present, and he who will exemplify them in the future.

Yirmeyahu exhorts:

And to the House of the king of Yehuda — hear the word of God. O House of David, so said God: adjudicate ***mishpat*** in the morning, and rescue the robbed from the embezzler… (21:11-12)

So said God: go down to the house of the king of Yehuda and speak there the following. Say: hear the word of God, king of Yehuda, who sits upon David’s throne, you, and your servants, and your nation, who come through these gates. So said God: perform ***mishpat u-tzdaka*** and rescue the robbed from the embezzler. (22:1-3)

The Radak comments that the invocation of King David is not by chance. Rather, he sets an example for all of his successors, “as it says, ‘And David would perform ***mishpat u-tzdaka*** for his whole nation’; so would it have been appropriate for his children and the members of his household to do, that they should learn his good deeds.” Furthermore, “morning” is deliberate here. Justice should not be an afterthought for the Davidic dynasty, but an activity that is prioritized among governmental affairs.

But that is not what God sees in practice. Yirmeyahu rebukes King Yehoyakim:

Woe to he who constructs his house without ***tzedek*** and his upper floors without ***mishpat***, who works his fellow man for free and does not give him his wages… (22:13)

Will you reign because you compete with cedars? For your father ate and drank but performed ***mishpat u-tzdaka***, and therefore all was good for him. He adjudicated the cases of the poor and destitute, and therefore [it was] good, for this is knowing Me, so says God. (ibid., 15-16)

King Yehoyakim has abandoned the example set for him — according to *Targum Yonatan*, by his forefather King David; or, according to Rashi and Radak, by his own father, King Yoshiyahu.[[12]](#footnote-12) The earlier king tended to the poor and thus “knew God” – which, Radak comments, is a reference to *Yirmeyahu* 9:23:

But by this should one be praised — discern and know Me, for I am God, who performs kindness, ***mishpat*** and ***tzedaka*** in the land, for these I desire, so says God.[[13]](#footnote-13)

God, the King of kings, distinguishes Himself through *mishpat u-tzdaka*, and He expects earthly monarchs to follow suit.[[14]](#footnote-14) King David, and possibly King Yoshiyahu, perceived God’s ways and modeled themselves after Him, but King Yehoyakim has forsaken that path.

Moreover, *mishpat u-tzdaka* serve as the foundation for “the house of David,” both physical and figurative, as Yirmeyahu says in the conclusion to the earlier prophecy delivered at the king’s palace:

For if you do [*mishpat u-tzdaka*], then kings who sit for David upon his throne will come through the gates of this house. (22:4)

But, as R. David Sabato notes,[[15]](#footnote-15) King Yehoyakim has chosen to construct a magnificent palace (see 22:14) without critical supplies – “his house without *tzedek* and his upper floors without *mishpat*”! Therefore, it is destined for the opposite:

But if you do not heed these words, I swear by Myself, so says God — this house will be slated for destruction. (22:5)

The term “house” (*bayit*) is central to these prophecies. God promises to David a “house” (see *II Shmuel* 7:11, 16),[[16]](#footnote-16) but like Avraham’s “house,” it must follow “after him… to do *tzedaka u-mishpat*” (*Bereishit* 18:19). If, over time, the foundation of the house erodes, the entire edifice will inevitably crumble.

Finally, Yirmeyahu looks toward the future:

Behold, days are coming, so says God, and I will establish for David a righteous sprout, and a king will rule, and succeed (*vehiskil*), and perform ***mishpat u-tzdaka*** in the land. (23:5).[[17]](#footnote-17)

The current leadership has failed in its mission, but Yirmeyahu imagines a future king — whom most commentators identify as the Messiah — who will revive King David’s legacy of *mishpat u-tzdaka* (thus the imagery, perhaps, of a fresh sprout directly from David; compare to *Yeshayahu* 11:1). At the end of history, Jewish leadership will come back to its deepest roots, and the *berit Avot* values of *tzedaka u-mishpat* will once again reign supreme.[[18]](#footnote-18)

**The Kings of Yehuda and Judgment**

Yirmeyahu’s sharp words certainly articulate a mission for the kings of the Davidic dynasty, and Yechezkel echoes them in the context of his own vision of a future redemption:

So said God, the Lord: too long, leaders of Israel — [now] relent on theft and embezzlement and perform ***mishpat u-tzdaka***.[[19]](#footnote-19) (45:9)

But do these prophecies amount to more than just aspiration? Strikingly, the Gemara cites Yirmeyahu in a halakhic context, regarding the Mishna’s rule that “a king does not judge and is not subject to judgment” (*Sanhedrin* 2:3).

Both the Bavli and Yerushalmi challenge this ruling. The Yerushalmi asks from the historical record: “Does it not say, ‘David would perform *mishpat u-tzdaka* for his whole nation’?” The Yerushalmi’s answer is vague, and commentaries differ about its interpretation. In any case, though, the Mishna’s essential rule remains intact.[[20]](#footnote-20)

The Bavli, however, refuses to accept this conclusion for the Davidic dynasty, based on the words of Yirmeyahu:

Rav Yosef said: “This was taught only regarding kings of Israel [not from David], but the kings of the House of David may judge and are subject to judgment, for it says, ‘O House of David — so said God: adjudicate *mishpat* in the morning.’” (*Sanhedrin* 19a)

Regarding other Jewish kings, the Gemara explains that the rabbis of the Second Temple period suspended their participation in legal proceedings, either as judges or as litigants, during the reign of King Alexander Jannaeus (Yannai). This ban, though, does not apply to Davidic kings, based on the words of Yirmeyahu.

However, R. Meir of Rothenburg (quoted in *Tosafot Ha-Rosh*) poses the following question: If the exclusion of kings from judgment is only by late rabbinic decree, what, then, does Rav Yosef prove from Yirmeyahu, who is describing an earlier era? At that point in history, there was no distinction, in this context, between kings from David and other kings; likewise, we do not need to presuppose one in practice, if the exclusion is indeed only rabbinic. In retrospect, why is Yirmeyahu’s prophecy relevant to this halakhic discussion at all?

The Rosh answers:

Presumably, since God explicitly commanded [the kings of the Davidic dynasty] to judge, the Sages would not have decreed upon them not to judge.

R. Avraham Chayim Schor echoes this point and elaborates further:

Even though there are many verses that record that [the kings of the Davidic dynasty] engaged in judgment, for regarding David, it says, “David would perform *mishpat u-tzdaka*,” and regarding Shlomo, it says, “And give to Your servant a discerning heart to judge Your nation” (*I Melakhim* 3:9); still, we do not find that Scripture insists that they must execute justice other than in this verse of “So said God,” etc. If not for this verse, one could have said that when the rabbis decreed that a king should not judge, they decreed on the kings of the House of David as well… but since we find that Scripture obligates and commands the House of David to execute justice, we are forced to say that they only decreed upon kings of Israel [not from David], for the Sages do not have the authority to decree and uproot a commandment of Scripture, which commands the House of David to execute justice. (*Torat Chayim*, ibid.)[[21]](#footnote-21)

In other words, according to the Gemara’s understanding, Yirmeyahu delivers not an exhortation for the moment, but a statement of destiny and, therefore, of concrete obligation.[[22]](#footnote-22) Moreover, it carries specific halakhic weight that influences later rabbinic enactments. Even though the Sages find reason to exclude monarchs from legal proceedings, they feel unable to override God’s clear charge to the kings of Yehuda.

The Rosh, citing another example regarding usury (see *Bava Metzia* 70b and Tosafot ad loc.), generalizes his assertion and suggests that the Sages never clash with an explicit Biblical directive. Still, perhaps the issue is particularly salient here. If we read the isolated verse that the Gemara cites within the larger context of Yirmeyahu’s prophecies, we understand that at stake is not a narrow obligation, but a core identity of the Davidic monarchy. As the House of David rests upon *mishpat u-tzdaka*, a ban on participation in justice would effectively deny it both its legitimacy and its purpose.

**Royal Intuition and *Mishpat U-tzdaka***

To summarize, the last few *shiurim* have revolved around two core ideas about Jewish monarchy:

1. The king is empowered and encouraged to supplement Jewish law with the broad use of moral intuition.
2. Fundamental to the Jewish conception of monarchy, at least in its ideal representation through the Davidic dynasty, is the pursuit of *mishpat u-tzdaka*.

Merging these two concepts leads to the following proposition: **The king’s recourse to extra-legal moral intuition, while sanctioned by *berit Sinai*, is primarily rooted in the ethical vision of *berit Avot*.** The king pursues *mishpat u-tzdaka*, of course, by supporting the traditional, rabbinic legal system (like King Yehoshafat), and even by participating in it, if he is learned enough (like King David); but also by proactively and ambitiously asserting himself independent of the law. When he prosecutes a murderer who almost escaped on a technicality or enacts legislation to maintain social order and encourage a civil society, he is putting the overarching *berit Avot* values of *tzedaka u-mishpat* into action.

Linking “royal justice” to *tzedaka u-mishpat* adds important dimensions. Read narrowly, the halakhic discussions about a king’s judicial and legislative powers relate only to *mishpat*. However, if we place them into the context of Yirmeyahu’s prophecies and other verses, we recognize that *mishpat* is only one side of the coin.

The king must supplement *mishpat* with *tzedaka* in two different senses, correlating, I think, to the two different readings of *II Shmuel* 8:15, “David would perform *mishpat u-tzdaka,”* which we encountered in *shiur* #36. First, he must practice *tzedaka* and *mishpat* separately. He should exemplify charity and kindness for the entire nation alongside his involvement in justice, just as King David, according to one Tanna,[[23]](#footnote-23) would offer help to an indigent litigant who had lost his or her case (*Sanhedrin* 6b). About the king, the Rambam writes:

He should be gracious and merciful to their lowly and to their great, and involve himself in their matters and their welfare, and worry about the honor of the lowest of their lowly. (*Hilkhot Melakhim* 2:6)

The king must use his position to spread beneficence and to advocate for the downtrodden, even when justice does not turn in their favor.

King Yehoyakim, by contrast, climbs on the backs of his subjects in order to further consolidate his own wealth and power: “Your eyes and your heart are only on your [illicit][[24]](#footnote-24) gains, and on innocent blood to spill, and on embezzlement and abuse to carry out” (*Yirmeyahu* 22:17). What could more betray the legacy of King David for his “house” than one who “constructs his house without *tzedek* and his upper floors without *mishpat*, who works his fellow man for free and does not give him his wages” (22:13)?

Second, at least according to the Ran, the king ought to seek the fusion of *mishpat u-tzdaka*, analogous to R. Yehoshua ben Korcha’s “*mishpat* tempered by *tzedaka*” (*Sanhedrin* 6b).

According to Prof. Weinfeld, the phrase “*mishpat u-tzdaka*” does not necessarily refer to just adjudication, in contrast to the term “*mishpat-tzedek*” (*Devarim* 16:18).[[25]](#footnote-25) Rather, from its context in *Tanakh*, it challenges the king to construct a just and compassionate society, which cares for its underprivileged and rescues them from harassment and abuse. The king’s legislation should seek not only to maintain order but also to achieve social harmony by bridging the divisions between different social classes and protecting the disenfranchised (18-21).

**Conclusion**

While all Jews must answer to the ethical calling of *berit Avot* in their private lives, the king is uniquely charged with carrying the mantle of Avraham’s ethical vision on the national level. He has the opportunity to set not only practical policy but also the tone for national consciousness and purpose. Conversely, a king who flouts Avraham’s mission has not merely neglected one of his royal tasks; rather, as the Prophets collectively warn, he has negated his entire *raison d'être* and shaken the foundations of his kingdom.

**Questions or Comments?**

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

1. *Mishpat U-tzdaka Be-Yisrael U-ve’amim* (Jerusalem: 1985). Also see the article by my teacher, R. Menachem Leibtag, available at: <https://tanach.org/breishit/vayera/vayera.htm>. [↑](#footnote-ref-1)
2. See Malbim, who also notes how these two tasks mirror the two goals that the Jews originally seek from a king: “And our king will judge us, and he will go out before us and fight our battles” (*I* *Shmuel* 8:20). Also see Abarbanel. [↑](#footnote-ref-2)
3. Also see *Sanhedrin* 49a. [↑](#footnote-ref-3)
4. Our text of *Midrash Tehillim* interposes the word “*amar*” (said) here, which suggests that the prayer is attributed to Shlomo. However, it is clear from the rest of the Midrashic text that David is speaking; furthermore, the parallel text in *Yalkut Shimoni* (805) does not have this word. Alternatively, perhaps the text should be amended to say that “about Shlomo he said” or “it was said.” [↑](#footnote-ref-4)
5. An alternative in the Midrash is that the prayer is said about the Messiah; also see ibn Ezra and Radak. In that case, perhaps Shlomo offers the prayer; see *Da’at Mikra*’s summary of the psalm. [↑](#footnote-ref-5)
6. According to the Midrash, David’s specific request is that Shlomo should be allowed to rule, like God Himself, by intuition, to which God accedes (also see *Shir Ha-shirim Rabba* 1:10(. However, compare to *Rosh Hashana* 21b. [↑](#footnote-ref-6)
7. *Midrash Zuta*, *Shir Ha-shirim* 1:15, adds only Moshe to this short list, whom *Devarim* 33:21 might be describing when it says, “He performed God’s ***tzedaka*** and His ***mishpatim*** with Israel”; see *Avot* 5:18 and *Sota* 13b. Moshe, though, might also be a king; see commentaries on *Bereishit* 36:31, as well as *Shemot Rabba* 2:6 and *Midrash Tanchuma* (Buber ed.), *Beha’alotekha* 15, 17, 19, regarding *Devarim* 33:5.

God, too, is praised for *tzedaka*; we will discuss this point in a future *shiur*. [↑](#footnote-ref-7)
8. R. Reuven Margolies, based on 19:11, suggests that Yehoshafat actually organizes two parallel court systems, one for rabbinic law and one for royal legislation (“*Batei Ha-mishpat Be-Eretz Yisrael*,” in *Tal Techiyya* [Be’er Sheva: 2008], 16n). [↑](#footnote-ref-8)
9. Also see *Shemot Rabba* 30:13. [↑](#footnote-ref-9)
10. Also see 16:5 and 32:1. [↑](#footnote-ref-10)
11. See *II Melakhim* 18:1-7, including Radak on verse 5. Also compare “*yaskil*” in verse 7 to *I Shmuel* 18:5, 14-15, 30. Also see *Bava Kamma* 16b: “‘Chizkiyahu died, and they buried him in the preferred (*ma’alei)* of the graves of David’s progeny’ (*II Divrei Ha-yamim* 32:33). R. Elazar said, ‘in the preferred (*ma’alei*)’ — next to the greatest (*me’ulim*) of the family. And who is that? David and Shlomo.” [↑](#footnote-ref-11)
12. *Targum Yonatan* understands “cedar” as an allusion to King David, with whom King Yehoyakim cannot compete. For other interpretations, see Rashi and Radak. [↑](#footnote-ref-12)
13. R. Binyamin Lau also notes *Yirmeyahu* 2:8, as well as the parallel language of “knowing” (*y-d-a*) in these verses and in *Bereishit* 18:19, though in reverse. In *Bereishit*, God knows about Avraham that he will spread *mishpat u-tzdaka*. In *Yirmeyahu*, human knowledge of God is to emulate His *mishpat u-tzdaka* (*Jeremiah: The Fate of a Prophet* [Jerusalem: 2013], 83). [↑](#footnote-ref-13)
14. Also see *Mishlei* 16:10-12. Prof. Weinfeld further notes that *mishpat u-tzdaka* is specifically mentioned in association with God’s kingship (108-109). See, for instance, *Tehillim* 99:4 and the eleventh blessing of the *Amida* prayer. [↑](#footnote-ref-14)
15. See his full, enlightening analysis of these prophecies [here](https://etzion.org.il/en/shiur-14-prophecies-regarding-kings-davidic-dynasty-2111-236). [↑](#footnote-ref-15)
16. Contrast with the physical “house of cedars” that King David occupies (7:1-2). [↑](#footnote-ref-16)
17. This prophecy (23:5-6) is echoed later (33:14-16). Regarding the word “*vehiskil*,” see also *Yeshayahu* 52:13 (according to *Midrash Tanchuma*, *Toledot*, 14) and note #10 above. [↑](#footnote-ref-17)
18. Also see note #5 above. [↑](#footnote-ref-18)
19. However, see *Metzudat David*, who explains that these words are directed at the contemporary Jewish leadership in exile. [↑](#footnote-ref-19)
20. Though according to *Korban Ha-eda*, Rabbi may argue on the Mishna. [↑](#footnote-ref-20)
21. Also see *Kesef Mishneh*, *Hilkhot Melakhim* 3:7. [↑](#footnote-ref-21)
22. The Rambam, however, seems to relate to Yirmeyahu’s words as a statement of character, in contrast to that of other kings. See his commentary on the aforementioned *mishna*; *Hilkhot Sanhedrin* 2:5; *Hilkhot Eidut* 11:9; and *Hilkhot Melakhim* 3:7 and *Lechem Mishneh* ad loc. [↑](#footnote-ref-22)
23. *Devarim Rabba* 5:3 attributes this position to R. Yehuda. [↑](#footnote-ref-23)
24. See *Targum Yonatan* and Rashi. [↑](#footnote-ref-24)
25. On *tzedek* vs. *tzedaka*, also see Ramban on *Bereishit* 6:9. [↑](#footnote-ref-25)