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THE MODEL OF AVRAHAM: THE UNIQUENESS OF CHESED AND MISHPAT

Guest Dvar Torah by Yehudah (Label) Freundlich

Socrates famously asked whether G-d desires the good, or rather the good is whatever G-d desires. Our parshah immediately strongly rejects the second horn of this dichotomy: that Mishpat and Chesed are defined by what Hashem wants. "It would be a desecration were the judge of all the land not to do Mishpat", Avraham Avinu says to the Ribono Shel Olam. Thus Avraham does not accept Hashem's intention to destroy Sodom as Mishpat and becomes a kanai for Mishpat rather than for Ratzon Hashem. Thus Mosheh Rabbeinu argues against Hashem's plan to destroy *bnei Yisroel* even it is Mishpat, since it is not Chesed.

Avraham formulates a principle of justice (fifty Tzaddikim), which he requests of Hashem. Hashem acquiesces. Avraham raises the ante, forty five Tzaddikim, and so on down until ten. Each time Hashem gives in, but only to what Avraham explicitly requests at that time. When Avraham requested fifty, Hashem could have responded, even ten. But Hashem responds only to Avraham's explicit request of the moment. When Avraham requested fifty Tzaddikim, Hashem could have responded, there aren't fifty. But no, Hashem clearly states Avraham's principle and acquiesces: "If I will find in Sodom fifty Tzaddikim in the city then I will bear the entire place for their sake." All this is intended to teach us that it is our obligation to formulate and demand Mishpat from Hashem.

The Torah explains why Hashem reveals to Avraham what he is going to do: "For I have known him so that he may command his children and his household after him, that they will keep the way of Hashem to do righteousness and justice." Indeed Chazal have stated that Hashem wanted Avraham to argue.

The Torah presents us with the following model of Avraham regarding Mishpat:

1. Avraham does not accept Hashem's intention to destroy Sodom as Mishpat;
2. Avraham becomes a Kanai for Mishpat and argues with Hashem;

3. Avraham formulates principles of Mishpat and attempts to get Hashem to fulfill these principles;
4. Hashem may acquiesce, but only to what Avraham explicitly demands, because
5. Hashem wants all this, wants this entire process of formulation, protest, and debate.

Chazal have clearly followed this model of Avraham; they do not accept that what is written in the Torah or what is Halacha, the representation of G-d's Will on earth, is necessarily Mishpat. When Torah, Halacha come into conflict with Mishpat or Chesed, as they understood Mishpat and Chesed, Chazal are Kanaim for Mishpat and Chesed and 'argue' with Halacha. Chazal would not learn lessons from what they did not consider to be Mishpat or Chesed, and they try, so to speak, to convince the Halacha, i.e., they try to find ways and arguments so that, without formally transgressing the Halacha, they could somehow reconcile the Halacha with their sense of Mishpat and Chesed, always with complete confidence that Hashem wants this of us.

Daniel the tailor feels that the Torah is treating the Mamzer unfairly; he calls Sanhedrin oppressors using the strength of the Torah when they forbid the Mamzer to marry within the community. "The father of this one committed adultery; this one, what did he do wrong and what is his responsibility?", argues Daniel the tailor. Chazal enshrined him and his words in Midrash Rabbah, and pointedly did not learn a lesson from the Torah that we should distance ourselves from the Mamzer. On the contrary, Chazal stress that greater a Mamzer who is a scholar than an ignorant Cohen Gadol.

Hillel Hazaken feels that the Sabbatical abrogation of private financial loans (שמיטת כספים) is not working well in his times: it prevents poor people from getting loans (נועל). So Hillel creates an institution, the Pruzbul, which turns a private loan into a court loan. For the sake of Tikkun Olam, Hillel creates an institution that effectively gets around the abrogation of private loans.

Rebbe Akiva and Rebbe Tarphon (but not Rabban Shimon Ben Gamliel) would not be party to capital punishment. If they were on the Sanhedrin, they would use legal tricks, relying upon what we would today call unreasonable doubt, all for the purpose of evading executing the death penalty, though that is what the Torah prescribes.

Chazal loosen the usual requirements for testimony to free an Agunah, allowing a single witness, a woman, the wife herself, etc. In all times, we find Rabbanim struggling with Halachah for the sake of the Agunah, to find some way to release her.

The Ramah performed the marriage of a young poor orphan girl on Shabbat in order not to humiliate a proper daughter of Israel. The girl's father had died in between the shiddukh and the wedding, leaving the girl alone, bereft of both father and mother. Ultimately, an uncle took her in, but did not take care of the arrangements for the wedding. As was the custom of the time, the wedding was on a Friday close to Shabbat, so that the Shabbat meal would constitute the Seudat Mitzvah. On the wedding day, the Chatan refused to marry because 1/3 of the dowry was lacking, despite the pleas of the town elders not to humiliate a daughter of Israel for 'cursed money'. When the girl's relatives finally chipped in, it was Shabbat. The Ramah lived nearby, and he married them on the spot.

The Ramah explains himself in a Teshuvah. Like Avraham standing before Hashem, he marshals argument after argument.

(First), The prohibition is only (sic!) a rabbinical edict, and Rabbanu Tam, among others, states that the edict does not apply in times of urgency. Though we do not follow them, in case of extreme urgency, we can rely upon them. And, continues the Ramah. “What could be of greater urgency than not to humiliate a daughter of Israel?”. She could be disgraced her entire life!

(Second) For the sake of human dignity (כבוד הבריות), rabbinical edicts are overridden.

(Third) Great is Shalom between man and wife, and though, here they are not yet married, but still, they are engaged.

(Fourth) The Ramah concludes: Of course, we should not plan a wedding on Shabbat, but if things happen, and it could lead to humiliation or the like, then one who is lenient should enjoy Shabbat, and the Mitzvah will atone for him—if his intentions were L'shem Shamayim.

Michah Hanavi presents the theological underpinnings for the position outlined in the model of Avraham. “What is good and what does Hashem demand of you, but doing *mishpat* and loving *chesed* and walking humbly with your G-D?” Michah bases all the Mitzvot, all that is good, all that Hashem demands of us, on three elements: Mishpat, Chesed, and “walking with Hashem”. All the Mitzvot, all those other than Mishpat and Chesed, we do because that is the way we walk with Hashem.

Of these Mitzvot, Rav has said that they were given to purify us, “Does Hashem care whether we shecht from the neck or the nape? The Mizvot were given to purify us,” says Rav. But Chazal would never say, Does Hashem care whether we do Mishpat or do injustice? Love kindness or love cruelty? “For it is Chesed I desire,” says Hoshea. Mishpat and Chesed we do, says Michah Hanavi, **because** they are Mishpat and Chesed. Hashem demands of us that we do Mishpat and love Chesed because they are Mishpat and Chesed, and not because they are Mitzvot; and that is why we will argue even with Hashem regarding Mishpat and Chesed. Because that is what Hashem demands of us!

Indeed, there is a great difference between one who does Mishpat or Chesed because it is a Mitzvah, and one who does Mishpat and Chesed in their own right. One who does Mishpat or Chesed because it is a Mitzvah, so to speak, looks over his shoulder searching for approval. Is this really a Mitzvah? Isn't there another more important Mitzvah? Whereas the one who does Mishpat and Chesed because they are Mishpat and Chesed, is focused on those in need. “What greater urgency can there be than not to humiliate a daughter of Israel?” says the Ramah. Only one focused not on the Mitzvah but on those in need, can have the chutzpah to say to the Ribono Shel Olam, “It would be a desecration were You should do such a thing!”.

This then is the Torah's response to the Socratic dilemma; this is the uniqueness of Mishpat and Chesed among the Mitzvot: Hashem demands of us that we formulate principles of Mishpat and Chesed and pursue them, even, if necessary, to argue with Hashem himself. Because that is *לעשות צדקה ומשפט*, *דרך ה'*, the way of Hashem is to do righteousness and justice.

ציון במשפט תפדה ושביה בצדקה