

Going Beyond the Torah

Introduction

In this week's Torah portion, *Va'etchanan*, we read [Deut. 6:17-18]:

שְׁמֹר תִּשְׁמְרוּן אֶת־מִצְוֹת יְהוָה אֱלֹהֵיכֶם וְעֻדְתֵּי וְחֻקֵּי אֲשֶׁר צִוָּךְ

Be sure to keep the commandments, decrees, and laws that the Lord your God has enjoined upon you.

וַעֲשִׂיתָ הַיָּשָׁר וְהַטֹּב בְּעֵינֵי יְהוָה לְמַעַן יֵיטֵב לָךְ

Do what is right and good in the sight of the Lord, so that it may go well with you.

Why the apparent repetition? Isn't what is "right and good" the same as following the commandments? Evidently not quite, because nothing in Scripture is superfluous.

What is "right and good"?

The Talmud's interpretation is that you must sometimes go beyond what is strictly commanded in the Torah to "do what is right and good". The rabbis illustrate with a very practical matter. A man sells his land to a stranger. His neighbor, who owns adjoining land, wanted that land to extend his domain. Legally, he has no claim to it. But Jewish law, citing our verse, says the neighbor has the right to give the buyer what he paid and evict him. [Bava Metzia 108a] The Rambam summarizes:

Even if the [distant] buyer is a Torah scholar, a [more distant] neighbor, or [even] a relative of the seller, and the [neighbor...] is ignorant and distant, the neighbor nevertheless has priority and may lawfully evict the buyer. This rule is derived from the biblical expression: "Do what is right and good in the sight of the Lord" [Deut. 6:18]. The Sages have declared: Since the purchaser can as easily buy a similar field elsewhere, it is good and right that the owner of the adjacent land should buy this place rather than a distant person. [Mishneh Torah, Neighbors 12:5]

Also in the Talmud, Rav Yosef expounded on this verse in Exodus:

And you shall show them the way wherein they must walk, and the work that they must do. [Ex. 18:20]

He said that "the work" refers to behaving according to the law and "that they must do" refers to behaving beyond the letter of the law. [Bava Kamma 99b-100a; Bava Metzia 30b]

So we must sometimes go “beyond the letter of the law” (לפנים משורת הדין -- *lifnim mi-shurat ha-din*). The Talmud goes so far as to say:

Rabbi Yohanan says: Jerusalem was destroyed only for the fact that [courts] adjudicated cases on the basis of Torah law... [instead of] going beyond the letter of the law [in exercising mercy]. [Bava Metzia 30b]

The Shelah HaKadosh, from 17th-century Prague explains:

They should have taken into consideration the circumstances prevailing at the time and have made allowances before convicting certain people. [Shnei Luchot HaBrit, Shoftim, Torah Ohr 11]

The Ramban, from 13th-century Spain, summarizes:

Even regarding what God did not command, pay attention to do what is good and right in God's eyes, because God loves goodness and righteousness. And it is important because it is impossible to mention in the Torah what should be everyone's conduct with their neighbors and friends, in business, etc., in every single case. The Torah mentions many relevant laws explicitly, such as:

“Do not gossip” [Leviticus 19:16];

“You shall not take vengeance or bear a grudge” [Leviticus 19:18];

“You shall not stand idly by the blood of your neighbor” [Leviticus 19:16];

“You shall not insult the deaf” [Leviticus 19:14];

“You shall rise before the aged” [Leviticus 19:32]; etc.,

then goes on to state in a general way that in all matters one should do what is good and right, compromise and go beyond the strict requirement of the law ... One should behave in this manner to be worthy of being called “good and upright.”

So the Ramban is telling us that some aspects of a moral and ethical life are not, and cannot be, legislated. Nevertheless, destroying Jerusalem seems like awfully harsh punishment for going by the book and not knowing when to exercise flexibility.

What guidelines do we have in navigating this uncharted territory that lies beyond the Torah? Does our verse assume we have innate feelings of what is “right and good”, independent of the Torah? This would contradict the Mishna, in which Ben Bag Bag says:

הִפְךָ בָּהּ וְהִפְךָ בָּהּ דְּכֻלָּא בָּהּ -- Turn it and turn it [the Torah], for everything is contained in it. [Avot 5:22]

Let us explore some suggestions.

Speak pleasantly and follow good business practices

First, the Talmud says that one way to go beyond Torah is by speaking pleasantly and not engaging in questionable (even if legal) business practices, because what Jews do reflects on all of Judaism:

What do people say about one who reads Torah, and learns Mishna, and serves Torah scholars, but whose business practices are not done faithfully and who does not speak pleasantly with other people? [They say:] “Woe to so-and-so who studied Torah, woe to his father who taught him Torah, woe to his teacher who taught him Torah! See how destructive are the deeds and how ugly are the ways of one who studied Torah!” [Yoma 86a]

Indeed, Shammai says in the Mishna:

Greet everyone with a cheerful countenance. [Avot 1:15]

Do what is allowed only in moderation

Second, we must aspire to holiness. God tells us in the Torah that he wants us to be:

מַמְלֶכֶת כֹּהֲנִים וְגוֹי קָדוֹשׁ -- *Mamlechet kohanim vegoy kadosh*.

A kingdom of priests and a holy nation. [Ex. 19:6]

In parshat *Kedoshim*, God tells us:

קְדוֹשִׁים תִּהְיוּ כִּי קָדוֹשׁ אֲנִי יְהוָה אֱלֹהֵיכֶם

Kedoshim tihyu ki kadosh ani, HaShem elokechem.

You shall be holy for I, the Lord your God, am holy. [Lev. 19:2]

The Ramban tells us that holiness means doing everything in moderation, beyond what is allowed by the Torah:

The Torah prohibits certain sexual behaviors, and prohibits certain foods and drinks. But it permits sex between husband and wife, and the consumption of kosher meat and wine. This might allow a person to act in a lewd, lecherous manner with his wife [perhaps even in public], gorge himself with meat, inebriate himself with wine, and use vulgar language as much as he desires. The Torah does not forbid any of these things, and he would be allowed to be a vile, disgusting person with the permission of the Torah. [Ramban on Leviticus 19:2]

So, for the Ramban, “Be holy” means “Restrain yourself even with what is permitted.” A holy person is one who is not self-indulgent.

Be kind to others

Third, contemporary rabbi Yaacov Neiman commented on the Ramban’s point: Self-indulgence is related to a lack of holiness because it focuses

the mind on self-gratification, which eventually causes people not to be kind to others, that is, not to be “holy”. [Darchei Mussar]

So kindness to others is a key component of “going beyond the Torah”.

Actively seek to do more to help others

Fourth, the Ba'al ha-Turim, from 14th-century Spain, writes that we must go out and seek to do more to help others:

Our sages view the words “Do what is right and good”, as Moses introducing a new concept, especially in inter-personal relationships. This concept is known as “over and beyond the requirements of the law.” Up until now Moses had exhorted the people to be law-abiding, both in their ritual lives and in their relationships with their fellow man. Now, he asks them to do more than that. An Israelite, deserving of that title, is expected to seek out opportunities to demonstrate his concern for his fellow by voluntarily giving of himself or of his material wealth. The details are left open. [Ba'al ha-Turim on Deut. 6:18]

Give to charity

Fifth, giving to charity. Every Jew is obligated to give charity, usually about 10% of net income, after taxes. It is called a “tithe”. One would think that there would be no upper limit, and more is always better. Not so. The Talmud says one should give no more than 20% of income to charity:

Rabbi Elai stated: It was ordained at Usha that if a man wishes to spend liberally [for charity] he should not spend more than a fifth... [since by spending more] he might himself come to be in need... What [is the proof from the] Torah? [In Genesis, Jacob said to God:]

וְכָל־אֲשֶׁר־תִּתְּנֵנִי לְךָ -- And of all that You shall give me I will surely give the tenth to You. [Gen. 28:22]

[‘*Aser a’srenu lakh*. The repetition of the word ‘*aser*, “to give”, means one can give *two* tenths.] [Ketubot 50a]

One reason is the fear that the donor will himself become poor if he gives away too much. Another is that he should enjoy his wealth. Also, it takes money to make money. The poor end up getting more money over time if the donor gives less every year and wisely invests the rest. There are exceptions. One *may* give more money to save a life, ransom the captive, support Torah scholars, or atone for sin. Also, if one is near death, he may give up to 50%, depending on the needs of his family.

But, if so, how come the Mishna says:

These are [among] the things that have no definite quantity [no maximum amount]: ... the performance of deeds of lovingkindness (גְּמִילוּת חֶסֶדִים) and the study of the Torah. [Peah 1:1]

Bartenura answers from 15th-century Italy:

The deeds of lovingkindness that have no maximum are those performed with the body, such as visiting the sick, burying the dead, etc., but deeds of lovingkindness performed with money, such as the redemption of captives, the clothing of the naked, the feeding of the hungry, etc., have a limit of... one fifth of the profit from one's possessions, and beyond that, one is not obligated [to give]. [Even] a person who wants to be liberal in giving tzedakah on a large scale should not give more than 20%. [Bartenura on Peah 1:1]

Should we increase restrictions beyond Torah?

Adding restrictions in life to be more “pious” is discouraged by the rabbis. Some even consider asceticism sinful. The Jerusalem Talmud asks rhetorically:

Hasn't the Torah forbidden enough already that you want to forbid upon yourself other things? [Nedarim Y 9:1]

It adds that we may even be punished for not enjoying life to the fullest:

Rav said: In the World to Come we will have to account before the judgment seat of God for every pleasure we denied ourselves in this world, if it was permitted and affordable. [Kiddushin Y 4:12]

Should punishments ever go beyond the Torah?

Another area beyond the Torah is extra-harsh punishment. The Talmud says:

Rabbi Eliezer ben Ya'akov says: I heard that the court may administer lashes and capital punishment, even when not prescribed by the Torah. It may do so, not with the intention of violating the Torah, but [on the contrary] in order to safeguard it by erecting a fence around it, [so that people will fear sinning.]

[Sanhedrin 46a; Yevamot 90b]

He gave two examples. In the first, a man was flogged for having intercourse with his wife in public, which is not forbidden by the Torah. In the second, a man was stoned to death for riding a horse on Shabbat, which is only prohibited by the rabbis, not by the Torah, and so *cannot* carry the death penalty. The justification given was: “Because the hour required it.” In those days, Greek influence was so strong that it pushed Jewish observance to an all-time low, and extra-harshness was deemed necessary to make sure it did not sink even lower.

This practice was later accepted in the Code of Jewish Law [Shulchan Arukh, Choshen Mishpat 2:1].

-But are people not entitled to know ahead of time the precise legal consequences of their actions? *Are there times when the law must be broken in order to save it?*

The Shelah haKadosh [Shnei Luchot HaBrit, Shoftim Torah Ohr 12] asks:

Why does the Torah repeat the word “justice” in:

צֶדֶק צֶדֶק תִּרְדּוּ -- Justice, justice shall you pursue. [Deut. 16:20]

Because, he answers, the first “justice” is for those who judge according to the Torah and the second “justice” is for emergency decrees published for the world to continue to exist. That is why that same verse concludes:

לִמְעַן תִּחְיֶה וְיִרְשָׁתָּ אֶת־הָאָרֶץ אֲשֶׁר־יְהוָה אֱלֹהֶיךָ נָתַן לְךָ -- ...that you may live and inherit the land which the Lord your God gives you. [Deut. 16:20]

The Midrash says:

In creating the world God combined the two attributes of justice and mercy. Thus said the Holy One, blessed be His name: “If I create the world with the attribute of mercy, sin will abound; and if I create it with the attribute of justice, how can the world exist? Therefore I create it with both attributes, mercy and justice, and thus may it endure”. [Gen. R. 12:15]

How much justice and how much mercy should we apply in a given case? The Sources do not say, except to tell us that one of them can be negative, as in the case of extra-harshness: More than 100% of justice and a negative amount of mercy!

Conclusion

Traditionally, God has two attributes: Justice and mercy. The Torah captures the first and some of the second. Much of the second is too diffuse to be captured in words and laws. It must be felt. It’s entirely up to us. We are enjoined to go the extra mile without specific guidelines.

Shabbat shalom.