

Three Types of Commandments

Introduction

This week’s Torah portion is *Mishpatim*, meaning “Laws”. The Israelites have just heard the Ten Commandments, and now they learn the details. The parasha has no less than 53 commandments. It begins with:

When you acquire a Hebrew slave, he shall serve you for six years; but in the seventh year he shall go free, without paying anything. [Ex. 21:2]

And the next four verses give more details on how the slave is to be treated. That’s odd... Why begin with a validation of slavery, albeit with restrictions, when the Israelites themselves have just been rescued from slavery? We expected the Torah to say: “You shall not enslave another person, because you yourselves were slaves in the Land of Egypt.” But it doesn’t. Why not?

God figured that Jews would not have accepted Torah if some allowances were not made for existing practices.

Three types of commandments

There are three types of injunctions in the Torah:

1. You must not do this
2. You may do this, within limits
3. You must do this

Over the centuries, the rabbis treated them differently.

1. You must not do this

Negative commandments were never qualified. They were the limits of behavior. The rabbis could not find a logical basis for allowing that which is forbidden, except to save a life, and even then with exceptions:

-Pikuach nefesh: You may violate any commandment to save a life, except those against idolatry, sexual immorality and murder.
That's why traditional Judaism cannot allow homosexuality.

2. You may do this, within limits

Over time, the rabbis limited or banned practices that were allowed in the Torah, on various grounds, particularly when the law of the land did not permit them.

No slavery

- Slavery allowed but heavily regulated in Torah (akin to indentured servitude).
- Talmud added many humane requirements, such as: Slaves should get food, drink, lodging, and bedding similar to master's; which leads it to conclude:
Whoever buys himself a slave buys himself a master. [Kidd. 20a]
- Now slavery is illegal everywhere.

No polygamy

- Polygamy very rare since biblical times.
- None among the prophets or the 1,569 rabbis in the Talmud/Midrash.
- Banned 1,000 years ago among Ashkenazim by Rabbenu Gershom [Herem de-Rabbenu Gershom ben Yehudah, Me-Or haGolah (The Light of the Diaspora)] "to prevent matrimonial strife". Ban has expired.
- Very rare among Sephardim in Muslim countries.
 - At any rate, almost no Jews live there today.
- Clearly on its way out.

No sotah

- Woman suspected of adultery by her husband was made to drink bitter waters, and if she died she was deemed guilty.
- Discontinued by Rabban Yohanan Ben Zakkai in 1st century, because too many men were adulterers [Mishna in Sotah 47a].

No levirate marriage

-Torah: When a man dies childless, his brother must marry the widow. If either refuses, both must do halizah, a symbolic act to renounce the marriage. [Deut. 25:5-10]

-Jewish law strongly encourages halizah. In Israel, halizah is mandatory and levirate marriage is prohibited.

No Nazirite vows

-A nazirite is one who voluntarily takes a vow to abstain from grapes and derivatives, refrain from cutting his hair, and refrain from being near corpses. [Numbers 6:1–21]

-It's for a set period of time, but it can only end with a sin offering, which cannot be offered today (no Temple), so today a nazirite remains so for life.

-But the Talmud says:

Rabbi Elazar HaKappar the Great says... the nazirite sinned by the distress he caused himself when he abstained from wine... He is called a sinner and requires atonement. [Ta'anit 11a]

-Maimonides also adopts this view. [Mishneh Torah, Sefer Hafla-ah, Nazariteship 10:14]

-No known Nazarites known since Middle Ages

-The practice is heavily discouraged.

No astrology

Astrology was common among Jews. The Talmud accepts it, but the rabbis were divided as to whether the power of the stars extends to the Jews, and whether virtue could change what the stars decree.

Maimonides very strongly opposed belief in astrology, going against the tide of his time and later:

-Know, my masters, that I myself have investigated... astrology... It is stupidity... The wise men of Greece and Persia ... mock and scorn and ridicule them... The assertions of the stupid astrologers, they are nothing...

I know that you may... find sayings of... sages in the Talmud and Midrashim whose words appear to maintain that at the moment of a man's birth, the stars will cause such and such to happen to him. Do not regard this as a difficulty... Possibly the matter was hidden from them. Or there may be an allusion in those words. Or they may have been said with a view to the times and the business before him. (You surely know how many of the verses of the Torah are not to be taken literally...) [Letter on Astrology]

-Astrology is a disease, not a science... It is a tree under the shadow of which all sorts of superstitions thrive. ... Only fools and charlatans lend value to it.

[Responsa 2, 25b]

In time, the Code of Jewish Law took a clear stand against astrology, but without saying it is without value:

One should not consult astrologers, nor should one cast lots to determine the future. [Shulchan Aruch, YD 179:1]

No marriage to captive woman

-Torah: If a soldier captures a woman in war, he may marry her or let her go free after a month, during which time she shall be made unappealing (shave head, let nails grow, wear shabby clothes, mourn for her family).

[Deut. 21:10-14]

-Talmud: Concession to evil inclination. [Kidd. 21b]

-Talmud: King David had four hundred captive wives. [Sanhedrin 21a]

-Midrash: The Torah verses for the captive woman are followed by the verses on the hated wife and then by the verses on the rebellious son. This means: One who marries the captive woman will eventually hate her, and will have wicked children with her. [Midrash Tanchuma, Ki Tetze 1; Sanhedrin 107a]

-Universal disapproval among commentators.

3. You must do this

Many positive commandments are severely restricted today, for various reasons. Examples:

No animal sacrifices

They can only be done in the Temple, which the Romans destroyed in the year 70:

Take care not to sacrifice your burnt offerings in any place you like, but only in the place that the Lord will choose... and there you shall observe all that I command you. [Deuteronomy 12:13-14]

Nevertheless, Maimonides, in his *Guide for the Perplexed*, downplays the value of sacrifices, arguing that they were a necessary transitional step between the human sacrifices of the pagans and the kind of worship God really wanted, which is prayer. If God had asked only for prayer back then, the people would not have followed. They were not ready to confine their worship to something so abstract:

The custom in those days among all men...consisted in sacrificing animals. God did not command us to give up these services; for this would have been contrary to the nature of man, who generally cleaves to that to which he is used.

Sacrifices [however] are not the primary object [of the commandments about sacrifice], prayers are. [To wit,] we were not commanded to sacrifice in every place, and in every time, or to build a Temple in every place, or to allow anybody to become a priest and sacrifice. Only one Temple has been appointed, and only, [as the Torah says,] “in the place which the Lord shall choose” (Deut. 12:26). In no other place are we allowed to sacrifice. [The Torah says,] “Be careful not to give your burnt-offerings in every place that you see” [Deut. 12:13]; and only the members of a particular family were allowed to officiate as priests. All these restrictions served to limit this kind of worship. But prayer and supplication can be offered everywhere and by every person. Because of this, the Prophets rebuke people for being over-zealous in bringing sacrifices. [Moreh Nevuchim (Guide for the Perplexed) 3:32]

However, in his halachic work, the Mishneh Torah, he is careful not to remove sacrifices:

The King Messiah ... will build the Holy Temple and gather the dispersed of Israel, and reinstate all the laws of the Torah as before. The sacrifices will be offered, and the Sabbatical year and the Jubilee year will be instituted as outlined in the Torah. [Mishneh Torah, Laws of Kings 11-12]

In this, he is even contradicting the Midrash, which says that in the messianic age, all sacrifices will be discontinued, except for the thanksgiving offering. [Vayikra Rabbah 9:7]

No death penalty

-Mandated by Torah for various infractions: Idolatry, prohibited sexual behavior, murder, kidnapping, blaspheming, violating Shabbat, giving false testimony in capital case, etc.

-Mishnah: A court that sentences one person to death in 7 years is a bloody court. Rabbi Eleazar ben Azariah added: It should be once in 70 years. Rabbi Tarfon and Rabbi Akiva added: If we were on the court no one would ever be put to death. [Makkot 7a]

-Rabbis have required high levels of evidence

-Example: adultery. Need two independent, unrelated, observant eyewitnesses to the act; need evidence defendant was warned of consequences before the event.

-Different approach from secular/Reform (ignore injunction – breaks Jewish continuity) or Christian (“Let he who is without sin cast the first stone” – no Jewish requirement that judge/executioner be blameless)

-Rabbis added that if death sentence is unanimous among the 23 judges, the defendant goes free.

-Last death sentence given by a Jewish court was in the year 30 CE.

No mandatory forgiveness of debts in seventh year

- Torah: Every seventh year all debts are canceled. [Deut. 15:1-2, 9]
- Problem: Lenders reluctant to lend money to the poor, especially near end of 7-year cycle.
- Hillel (Mishna): Treat all debts as debts to the court, not to an individual. Such debts are not cancelled. It's called prozbul. [Sheviit 10:3]

No killing of Amelekites

- The tribe of Amalek attacked the Israelites in the rear in Sinai after the Exodus. They are the archetypal enemies of the Jews, a symbol of evil.
- Torah enjoins us to destroy all descendants of Amalek:
Remember what Amalek did to you on your journey, after you left Egypt ... You shall blot out the memory of Amalek from under heaven. Do not forget! [Deut. 25:17-19]
- Not done today. Why? Because we lost the ability to recognize the descendants of Amalek. Sennacherib, king of Assyria, deported and redistributed close to 5 million people in the 7th century BCE. Talmud:
Sennacherib came and [through his policy of population transfer] scrambled all the nations. [Ber. 27a]

Conclusion

- When Torah created a new practice, it endured. Examples: Shabbat, kashrut, mikvah, shaatnez, circumcision, ethical commandments.
- When Torah just regulated existing practice, it did not endure. Examples: Sacrifices, slavery, polygamy, sotah, death penalty, levirate marriage.

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Appendix: If you lived as a Jew in biblical days

You awake in the morning with a big headache because of loud sounds in the next room. You go in and find your three wives fighting bitterly over which one will sleep with you tonight. You pick one at random and send them off to their respective apartments to tend to their households.

Meanwhile, your slave-cooks are busily fixing your breakfast in the kitchen while your slave-dresser is helping you put your clothes on for the day.

You notice that one of his front teeth is missing and ask him why. He says he had an altercation with the slave-treasurer over his pocket money. (You, as a very benevolent slave-owner, give your slaves pocket money to buy whatever they wish in the marketplace.). You decide to investigate at once. You talk to many slaves, check the books, and discover that the slave-treasurer has indeed been skimming from the slaves' pocket money. You have him publicly flogged in front of all the other slaves. After twenty-five lashes on his bare back, he gets reassigned to latrine-cleaning duty.

You then go back to your breakfast, which included wine. You have been drinking a lot of wine since the end of your nazirite vow a few months ago. You then go to the Temple for services and to offer a sacrifice of Thanksgiving. You go there often, especially for the three pilgrimage festivals. You never heard of Purim or Hanukkah. The services don't include Lekha Dodi, Adon Olam, kEI Adon or Yigdal.

Afterwards, you go home, change clothes to look like a poor man, stuff your pockets with gold and silver coins, and go take a walk in the poor section of town to distribute the coins very discreetly. On your way, you see that a man is about to be publicly executed on sentence of the bet din. You join the crowd and pelt him with stones until he dies, happy to have served the cause of justice.

On your way back home, you see one of your wives come out of a strange house, all smiles. She is one of the two who had not been picked to spend the night with you. You suspect her of adultery and immediately take her to the rabbis to put her through the ordeal of sotah. She drinks the bitter waters and dies, proving her guilt. You are sad, but not too sad because, well, she WAS getting kind of old.

She was getting old, but your libido was not, so you go to the marketplace and discreetly observe many promising 16-year-old girls. You settle on one, declare your intentions, and she and her father quickly agree to the marriage as a way out of poverty.

After you marry her, your younger brother suddenly dies without children. So you follow biblical law and marry his young widow. You don't mind at all, as you had been observing her from afar for a long time.

You are particularly happy today because the seventh year is fast approaching, and all your debts will be cancelled, just like that! You always knew you would be lucky in business because an astrologer told you so: On the day of your birth, the alignment of the stars was very favorable.

The king decides to go to war against the Whateverites, who are massing at the border. You are too old to serve. Besides, you did serve in your youth against the Amalekites, and killed many of them as commanded by the Torah. So you volunteer two of your sons. They go to war and come back with two captive enemy women whom they want to marry. You don't like it one bit, but the Torah allows it, so you can't object.

Judaism sure has changed.