Legal But Not Fair

Rabbi Melanie Aron

September 7, 2019

Rabbi Levenberg once told a story about a father who took his three children, ages 5, 10 and 15, to a park. At the park there was a fence that was taller than they were, and on the other side, a ball game that the children wanted to watch. Fortunately, the father had brought six blocks with him for his children to stand on, but how should he distribute them?

It might seem that the fair way to divide them would be to give each child two blocks. That would be fine for the 10-year-old and the 15-year-old, but then the 5-year-old still wouldn't be able to see. However, if the father gave one block to the 15-year-old, two blocks to the 10-year-old, and three blocks to the 5-year-old, all three of his children would be tall enough to see over the fence.

Most of the time when we talk about fairness, we think about everyone getting the same thing. When we have a piece of pie that we are dividing between three children, we usually divide it into thirds so that everyone has the same amount. But a more sophisticated discussion of fairness has to consider whether fairness is, instead, giving everyone what they need. If you are distributing food in a refugee camp, maybe it is not about giving everyone exactly the same amount, but about giving each person enough food to sustain their life.

The most famous words in this week's Torah portion are the words *tzedek tzedek tirdof*: "Justice, justice shall you pursue." Unlike other mitzvot which we are to do if we happen to be in a particular circumstance, justice is something we must seek opportunities to do. For example, if we come upon a mother bird sitting on her eggs, we must follow the Biblical commandment to let the mother bird go, but we are not required to go out looking for birds' nests. That is not the case with justice, however. We are to take active steps to implement justice and not just wait for opportunities to fall into our lap.

Further, the rabbis wondered about the repetition of the word, *tzedek tzedek.* They provide many explanations, the most famous of which is probably that the achievement of justice must be pursued with justice—that is, just ends do not justify unjust means. This repetition has also been interpreted to mean that punishment must be proportional to the crime. If it is not, then the justice you impose will be unjust. Finally, the rabbis interpreted the repetition to mean that before you judge others, you must first judge yourself.

People often argue about whether Judaism is an inherently conservative or progressive religious tradition; that is, does it support the world view of the right or of the left? This question is different from asking how Jews vote. The voting record of Jews we know from demographers: In the United States since the Great Depression, which began in 1928, from 60-90% of Jews have voted with the Democratic party in Presidential elections, depending on the candidate. In addition, the Jewish vote was 85% Democratic in the recent 2018 midterms. But

what people debate is the more subjective question: where does Judaism stand as a political philosophy?

One could argue that in this morning's Torah portion, Shoftim, the laws concerning the king are inherently conservative in that they are concerned with limiting the power of government, a classical conservative concern. The Torah is afraid that, in his desire to benefit and enrich himself, a king might unnecessarily infringe on the rights and property of the people. Limiting the power of the king is one way of protecting the people.

In other ways though, the Torah seems more aligned with progressive political thought, especially in its concern for justice and equity. When someone is poor, in the Bible's view, it is the community's responsibility to provide for that person *dai machsaro,* sufficient to their needs; that is, the community should provide not only food and water to save a person's life, but also housing, medical care, education, even a caretaker if that is what is needed.

Jewish teachings around taxation also seem to fall in the progressive camp by insisting that those with more financial resources are responsible for helping meet the needs of those who have less. Here again, justice and equity don't mean the same thing; instead, justice requires a balancing of the tax burden with an individual's resources and needs.

Finally, the repetition of the words *tzedek tzedek* has been understood more recently to mean that we need to look at both intent and impact. It is not

sufficient to consider whether the intent of a law or policy was not originally biased or racist. We also have to consider what its impact has been and then judge it on that basis. In our personal lives, when apologizing, it is not enough to say, “I didn’t mean to hurt you”; rather, in order to really reconcile, we must recognize that we caused unintended hurt or damage and attempt to make good. This is also the case on the level of society. Damage, whether intended or unintended, needs to be acknowledged and remedied as part of the *teshuvah*, repentance, process.

The pursuit of justice was not considered optional by the Bible, and the achievement of justice was considered to have great impact on society. The prophet Isaiah, whose book is the source of our Haftarah this morning, viewed the pursuit of justice as pivotal in any society. If pursued, its rewards would be great. He wrote, “The work of justice will be peace: the effect of justice, calm and security forever.” So may it be for us. May our pursuit of justice, as individuals and as a community, bring healing and peace to our world.