Justice

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"Justice, justice shall you pursue" (Deuteronomy 16:20) rings through the ages as one of the Torah's major principles. The biblical prophets rail against the people for their failure to achieve justice and issue clarion calls to reform that have shaped the conscience of Western civilization for thousands of years.

"Justice, justice shall you pursue" appears at the end of several verses in the Torah which demand the institution of courts located in all regions where the people dwell, prohibit bribes, and warn against prejudice in the judgments of those courts. By mixing procedural concerns (like the placement of courts in convenient places) with substantive issues (like the prohibitions against bribes and prejudice), the Torah indicates its awareness that the two are inextricably intertwined, that procedure affects substance and substance demands certain procedural rules.

No human being can always know whose cause is right; only God is privy to all the actions and intentions of every person. Nevertheless, the Torah obligates us to establish courts to dispense justice as well as we can, and it specifies procedural rules to help us do that well.

So, for example, at least two witnesses are required to establish a fact in court in order to forestall collusion (Deuteronomy 17:6; 19:15). To accentuate its prohibition of false testimony, the Torah includes it in the Decalogue (Exodus 20:13), announced amid thunder and lightning at Mount Sinai (see also Exodus 23:1-2; Deuteronomy 5:17). Moreover, a twenty percent fine is levied against witnesses who knowingly lie in a civil case (Leviticus 5:20-26) and full retribution is required of those who testify falsely in a criminal case (Deuteronomy 19:15-21). A judge's

acceptance of bribes is roundly condemned, "for bribes blind the clear-sighted and upset the pleas of those who are in the right" (Exodus 23:8; Deuteronomy 16:19). Each person is to be judged for his or her own actions exclusively (Deuteronomy 24:16), a principle assumed without question in modern Western societies but very much at odds with the practices of many societies in ancient, medieval, and even modern times, in which relatives were punished for the crimes of their family members. The Torah insists that neither rich nor poor may be favored: "You shall not be partial in judgment; hear out low and high alike. Fear no man, for judgment is God's" (Deuteronomy 1:17; see also Exodus 23:2, 6). The alien, too, is to be treated fairly: "Decide justly between any man and a fellow Israelite or stranger" (Deuteronomy 1:16).

The rabbis of the Talmud and Middle Ages added many more procedural rules to ensure impartial treatment. For example, one litigant may not be required to stand while the other is sitting, both parties to the case must wear clothing of similar quality, judges must understand the languages spoken by the people before them, and witnesses may not be related to each other or to the litigants. Through rules such as these, procedural justice is strengthened and made a reality.

Substantive justice speaks not to the method by which a judicial decision is made, but to the character of the results of court procedures and, more broadly, of society's policies. In Plato's Republic, substantive justice amounted to social harmony, which could be achieved only when everyone did what his or her station in society demanded. The biblical view of substantive justice is radically different, stressing the equality of all human beings and their right to equal protection of the law. Thus the Torah demands that aliens, widows, and orphans not be oppressed either in court (Deuteronomy 24:17) or in society generally (Exodus 22:21), that they be cared for since they have no protectors (Deuteronomy 14:29; 16:11, 14). Indeed, the mistreatment of the

defenseless and the failure to protect them in court was denounced by the prophets as a sign of the decadence of the Israelite society of their time (e.g., Isaiah 1:17, 23; 10:1-2; Jeremiah 5:28; Ezekiel 22:7). The poor were also to be treated honorably and justly (e.g., Deuteronomy 24:10-15; Jeremiah 22:16) and cared for (e.g., Deuteronomy 15:7-11), and the failure to do that was also part of the prophets' complaint against their society (e.g., Ezekiel 16:49; 22:29; Amos 2:6-7; 8:4-7).

It is not only the downtrodden, however, whose cause the Torah champions as part of its insistence on substantive justice. All members of society must be treated justly. The Torah, therefore, includes lengthy lists of civil and criminal legislation for society as a whole (e.g., Exodus 21-24; Deuteronomy 20-25), and the later rabbis developed this extensively, beginning with the Mishnah's Order Nezikin. By formulating rules of procedural and substantive justice, then, the Torah and its rabbinic heirs transform justice from a pious hope to a concrete reality.

Although the Torah and the later Jewish tradition went about as far as any society could go in translating its moral and spiritual commitments into legal terms, rabbinic authorities recognized that justice never can be captured totally in law. As a medieval Jewish phrase puts it, one can be a "scoundrel within the limits of the law," or, interpreted somewhat differently, "a scoundrel with the sanction of the Torah" (naval b'reshut ha-Torah). Consequently, while the Bible as a whole depicts the substance of the law as both life-giving and the source of goodness (Deuteronomy 30:15; Psalms 19:8-10; 119:33-40), in sharp contrast to the abominable acts of the other nations (e.g., Leviticus 18; 20), the Torah additionally requires the doing of "what is right and good in the sight of the Lord" (Deuteronomy 6:18). The rabbis of the Talmud take that and other verses in the Torah as the basis for declaring that people are obliged to act "beyond the letter of the law" (lifnim m'shurat hadin). Indeed, they state that the Second Temple was destroyed because people did not

acknowledge or fulfill such moral duties. Thus, while the Torah and the rabbinic tradition help to make justice a reality by giving it concrete expression in law, Jewish law itself recognizes that justice sometimes demands more than the law does, that moral duties go beyond the letter of the law. Moreover, those moral duties sometimes require reshaping the law so that in each new age it can continue to be the best approximation of justice.

The Torah thus goes beyond defining justice in its procedural and substantive aspects; it insists that justice is a divine imperative. In Western legal systems, justice is an instrumental good, a commodity important for social peace and welfare. That motivation to achieve justice appears in Jewish texts as well, but Jewish sources add another important motive. God demands justice and makes the existence of the world depend upon it because God Himself is just. In fact, He is the ultimate judge who "shows no favor and takes no bribe, but upholds the cause of the fatherless and the widow and befriends the stranger, providing him with food and clothing" (Deuteronomy 10:17-18). As Moses proclaims in his parting poem (Deuteronomy 32:3-4),

> For the name of the Lord I proclaim;
> Give glory to our God!
> The Rock! -- His deeds are perfect,
> Yea, all His ways are just;
> A faithful God, never false,
> True and upright is He.

It is precisely because God is just that Abraham can call Him to account for His plan to destroy Sodom, regardless of the innocent people in it, with words that ring through the ages: "Far be it from You to do such a thing, to bring death upon the innocent as well as the guilty, so that innocent

and guilty fare alike. Far be it from You! Shall not the Judge of all the earth deal justly?" (Genesis 18:25) God's justice is also at the heart of Job's complaint (Job 9:22), and God thunders in reply, "Would you impugn My justice? Would you condemn Me that you may be right?" (Job 40:8) God's justice may be inscrutable, but it is, for the Bible, undeniable, a core characteristic of the Divine.

God enforces His demands of justice. He hears the cry of those who suffer injustice and responds by punishing the perpetrators. Thus, the Torah admonishes: "You shall not abuse a needy and destitute laborer, whether a fellow countryman or a stranger in one of the communities of your land. You must pay him his wages on the same day, before the sun sets, for he is needy and urgently depends on it; else he will cry to the Lord against you and you will incur guilt" (Deuteronomy 24:14-15).

It is not enough, however, to be just from fear of punishment or hope for reward. Justice is necessary for holiness. All Israelites are obligated to aspire to a life of holiness: "You shall be holy, for I, the Lord, am holy" (Leviticus 19:2). In the verses which follow that divine demand, the Torah specifies that holiness requires providing for the poor and the stranger, eschewing theft and fraud, rendering fair and impartial decisions in court, treating the blind, the deaf, and the stranger fairly, and insuring honest weights and measures -- all components of a society which has both procedural and substantive justice.

One other aspect of the biblical concept of justice derives from its theological foundations. God loves the people Israel for reasons having nothing to do with their number or power, the usual marks of a nation's greatness, and He promises the Patriarchs to continue that relationship through the generations (Deuteronomy 7:6-11). The Israelites, in turn, are to love God and "always keep

His charge, His laws, His rules, and His commandments" (Deuteronomy 11:1). The commandments of the Torah are thus not legalistic formalisms, totally divorced from human compassion, moral values, and a spiritual relationship with God -- as some Christian writings portray them. Quite the contrary, the practice of justice is an extension of love, as demonstrated by commandments calling on all Israelites to "love your neighbor as yourself" (Leviticus 19:18), to "love the stranger" (repeated 36 times in the Torah), and to "love God" (Deuteronomy 6:5; 11:1).

In fact, one of the primary expressions of God's love is precisely that He provides human beings with rules of justice. Very much like parents who love their children enough to take the time and energy to insist on proper behavior because they know it will ultimately be in the children's best interests, so "the Lord commanded us to observe all these laws, to revere the Lord our God, for our lasting good and for our survival, as is now the case" (Deuteronomy 6:24-25). Again, "Bear in mind that the Lord your God disciplines you just as a man disciplines his son. Therefore keep the commandments of the Lord your God: walk in His ways and revere Him" (Deuteronomy 8:5-6).

The Torah itself, and the rabbis even more, appreciated the fact that justice, to become a reality in people's lives, could not be left as a general value to which one mouths allegiance, but had to be translated into concrete terms. By presenting specific cases, both the biblical and the rabbinic traditions made the demands of justice clear and binding. It was not enough to require a person who finds a lost object to return it (as in Deuteronomy 22:1-3). What if not one, but several, people claim it? How shall you determine the real owner? What happens if you cannot? What should you do, on the other hand, if nobody comes forward to claim the object? Must you keep it? If so, for how long? To what extent must you go to publicize that you have it? If it

requires care (e.g., if it is an animal), must you spend your own money to provide that care? To what extent? May you use the object in the interim? Returning a lost object is a relatively simple demand of justice, but, as these questions demonstrate, even a straightforward requirement easily becomes complicated -- and the rabbis, in fact, devoted an entire chapter of the Talmud to this issue (Bava Mezia, Chapter Two). Without that discussion, the Torah's imperative to return a lost object would remain imprecise and unworkable, demanding, in some understandings, too much and, in others, too little to make this aspect of justice part of the ongoing practice within Jewish communal life.

Justice in the Bible, then, is made a concrete reality by spelling out at least most of its demands in specific laws. The Torah and the later rabbinic tradition insist, though, that we do the right and the good even when the details of the law would permit us to do otherwise. The Jewish tradition thus recognizes both that the legal framework is indispensable in making justice a reality and also that the demands of justice extend beyond the law, however extensively it is defined. The Torah and the later Jewish tradition also place the demand for justice in a theological context, thereby undergirding the authority of the demand for justice and giving it a rationale: we are to be just because God requires it of us and because that is one important way in which we can imitate God's ways. These legal, moral, and theological parameters of the biblical and rabbinic concepts of justice make it an ongoing, living component of a life lived in loving covenant with God.