

Dear Community,

We intuitively see a clear demarcation between justice and kindness. Justice should be demanded, kindness requested. Justice is the mark of the decent person, kindness the brand of the exceptional one. But our usual sources to understand these concepts don't follow this comfortable definition.

Philosophies of justice have proliferated from the dawn of human scholarship. Rawls describes justice as 'the first virtue of social institutions.' Nevertheless, the nature of justice and how it differs from charity and kindness has been debated by philosophers for as many centuries. Most views seem to accept, in a broad sense, the definition of the Institutes of Justinian, a formulation of Roman law stating that justice ensures that all 'get their due.' Over the past centuries, humanity's sense of justice has broadened with the acceptance of ever more rights as the due of all humanity.

What is the Jewish concept of justice? What is the Jewish notion of kindness? What are we obligated to do, what are the Jewish courts obligated to enforce, and where does our autonomy to do voluntary good begin? We look, as Jews have for millennia, to the Torah and to our Sages to teach us what Jewish justice should be. However, when we turn to the Torah, many stories and directives seem to jar our sensibilities of fairness and justice. I will leave the questions regarding the seeming harshness of Judaism for another time, with one caveat: be sure that when you question the Torah's morality, you are not imposing your own reality on the conversation. If we want to, in any intelligent sense, discuss the Torah's morality, we need to first understand the spiritual and material claims about reality that Judaism is making. Without those foundational assumptions, the conversation seems vacuous.

I do want to examine the blurring of the line between justice and kindness that seems to take place in this week's Torah portion. Mishpatim, translated as 'statutes,' is a seemingly civil guide similar to the Hammurabi Code, Justinian Institutes, and more recently, English common law. Much of the text is indeed devoted to the seemingly mundane task of crafting a lawful society. We have laws of torts, personal injury, and permissible behavior. However, in the midst of this depiction of the just life, we are presented with laws that seem to fit under the rubric of kindness and charity.

We are all familiar with the Torah prohibition on accepting and charging interest on loans. This prohibition is presented in this week's Torah portion as law and statute, enforceable by the Jewish courts. This seems to be somewhat unjust. In all our Econ 101 classes we learned about the time value of money. One dollar today is worth more

than one dollar tomorrow, and interest serves to reimburse the lender for the risk and the loss of use of his dollar. What the Torah seems to be demanding is simple charity. Giving an interest-free loan is a great kindness, but how can the Torah demand that in the name of justice? As we go through this week's Torah portion, we find many similar examples of the Torah mandating charity, kindness as law, not simple virtue.

The Parsha starts off with "ואלה" *and these*, implying that this section is a continuation from the previous topic. Rashi explains that the Torah wishes to emphasize that these commandments were given at Sinai as well. Rabbi Yehuda Loew (the "Maharal") writes that not only were these statutes given at Sinai: they were as central to the revelation at Sinai as the Ten Commandments (see Gur Aryeh; a similar point is made by the 16th-century commentator Rabbi Eliyahu Mizrahi as well). Why is this important? Why would we think that these commandments are not divine?

When one thinks of a religious system, one tends to focus on the spiritual, esoteric teachings and rituals more than on how to behave when I dent my neighbor's car. The mystical, appealing ethical teachings of Judaism feel a lot more 'holy' than spending time dissecting the intricacies of contractual law. Many of us feel that we should leave the dry, mundane civil law in the hands of human lawgivers and let religion focus on higher realms and aspirations.

By placing the mindfully-chosen word 'ואלה', G-d seeks to educate us about how to relate to religion. Morality, justice, kindness, and any distinctions thereof based on our secular sense of our species' role to demand general conformity to our humanistic values is moot with regards to the Torah. G-d is telling us that we are Jews in the street as well as the home. We serve G-d in our place of work as we serve Him in the synagogue. The laws of damages, loans, and collateral are not simply human constructs for efficient societal function, but divine precepts similar to Shabbat and Kashrut. There is no place to distinguish between what is our 'due' and what we are giving out of the kindness of our hearts. We do kindness because we are commanded to be kind. We show compassion because we are commanded to care. We recognize our base emotional faculties of empathy as fickle -- here today, gone tomorrow, and dependent on our deeply sourced personal biases. The only way to ensure an abiding "just, kind" society is to lay it on foundations of objective law.

This concept is disturbing. Aren't we undermining the virtue of kindness and charity by turning it into an obligatory act, as opposed to my individual expression of empathy and caring? Isn't Judaism quenching the warm, pulsating humanity of ministering to the

poor, helping the sick, and uplifting the downtrodden by legislating it into a dry work of legal duty?

The Talmud writes “greater is the one who does out of duty than the one who acts voluntarily” (Kiddushin 31 a). This statement seems bizarre to us: how can obeying a law be worthier than doing something because you believe it is the right thing to do – for extra credit, so to speak? Rabbeinu Nissim (Drashot 7,8) explains that when we are commanded in a mitzvah, this transforms the act from an expression of the human desire to a manifestation of Divine Will. When we are commanded to do charity, the charity is elevated from an expression of our (in that particular moment) kind hearts into an act of cosmic, transcendent meaning. To act in accordance with Divine Will is the greatest virtue we can ask for: acting with G-d as opposed to indulging our momentary sense of guilt over drinking an over-priced latte next to a homeless man sleeping in the cold. By embracing and understanding our duty to be kind and caring, with a new sense of mission, we can uplift our world.

Good Shabbos,
Rabbi Shlomo Agishtein