



Beyond the Letter of the Law *Jewish Principles of Ethical Investing in the Light of Climate Change*

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Responding to a Dangerous Impasse on Climate Change

Climate change resulting from the use of fossil fuels poses a well-documented, grave threat to humanity and the ecosystems that support life. But in the United States, a real national response to climate change has been stymied by political inaction, cultural inertia, and the concerted effort of fossil fuel companies, which have funded propaganda and disinformation in opposition to limits on greenhouse gas emissions. Increasingly, environmental organizations have resorted to various actions meant to break this deadlock. One of these tactics is encouraging divestment from fossil fuel companies.

350.org, a leading climate advocacy group, has launched a nationwide campaign called Go Fossil Free (<http://gofossilfree.org/>) which seeks to have institutions (like colleges, pension funds, cities, religious organizations) divest their stock holdings from fossil fuel companies.

GreenFaith is launching an effort to address these issues in a specifically religious context. With long ties to the Jewish community, GreenFaith is well aware that many Jews are very uncomfortable with the use of the term “divestment” because of its association with the BDS movement (Boycott, Divest and Sanctions) against the State of Israel. Even though Jewish organizations were in the forefront of previous divestment campaigns against South Africa for apartheid, Sudan for Darfur and even against companies that cut down old growth forests, today “divestment” is such a divisive word that its use in many Jewish circles would likely doom any associated effort from the start.

Ethical Investing and Traditional Jewish Ethics

However, the principle of ethical investing is already part of Jewish discourse and is part of traditional Jewish ethics. It is imperative that Jewish communities address the morality of investing in fossil fuel companies, whose fundamental operations imperil humanity and functional ecosystems. Even if it may not be possible to have a completely ethically pure investment portfolio, we should strive to have our investments reflect our Jewish values as much as possible.

There are sufficient Jewish sources to warrant our examining this complex issue. Two particular issues bear closer examining.

- How does Judaism guide us to address products (like tobacco and fossil fuel) that are not illegal but are, clearly, harmful?
- To what degree is a shareholder morally responsible for the actions of a corporation in which they may have only a small share (or even more indirectly through shares in a mutual fund) which does not allow them to exercise any control on the actions of the company. Does this issue of indirect ownership distance us ethically from the actions of the corporation?

The following are Jewish teachings that address these questions and related issues.

The Theological Foundations of an Ethical Response

Ethics and Property Cannot be Separated

In Judaism one of the most fundamental concepts is that God created the universe and therefore one of its implications is that only God has absolute ownership over Creation (Gen. 1-2, Psalm 24:1, I Chron. 29:10-16). As such, humans do not have unrestricted freedom to misuse Creation, as it does not belong to them. We are in fact tenants and not owners. Since our ownership of any part of Creation is not absolute, we cannot divorce our use of our property from morality. Just because a product which we can purchase, own and use is legal does not make its use ethical.

Creation's Structure and Order Serve God and Demand our Respect

Secondly, Creation is sufficient, structured, ordered, and harmonious (the rabbis called it *Seder Bereshit*, the Order of Creation). It exists to serve God (Psalm 148), and reflects God's wisdom (Psalm 104:24, Proverbs 3:19-20, 8:22-31). All of God's creations are part of this order, including humans.

Humanity as God's Agents

Thirdly, humans have a special place and role in the Order of Creation expressed in the concept of them being created in God's image, *tzelem elohim* (Genesis 1:28, Psalm 8). In its original sense, *tzelem elohim* means that humans are God's agents meant to actualize God's presence in Creation through godlike characteristics given to them, especially power over the other members of the created Order. Human beings are supposed to exercise this power to be wise stewards of Creation even as they are allowed to use it for their own benefit within the limits established by God (Genesis 2:14). This need for stewardship applies both to human society as well to the natural world.

Tzedek

Lastly, the concept of proper balance is expressed by the term *tzedek*, which means righteousness, justice and equity. The rules of *tzedek*, try to correct the imbalances, which humans create in society and in the natural world. The Torah has numerous laws which are concrete expressions of *tzedek*, which attempt to redress the power and economic imbalances in human society and Creation. (E.g. Exodus 22:24-26, Leviticus 25:36-37, Deuteronomy 23:20-1, 24:6, 10-13, 17).¹

Ethical principles and Their Legal Expressions

Judaism sees a need for justice/equity in all aspects of life which include government and economic activity. As such there is no separation of ownership and liability. It has been long recognized in Jewish law that investments make us property owners. In Judaism, property owners have rights but also many responsibilities about how they utilize their property. These responsibilities include not only preventing immediate harm from occurring to others but also potential harm.

Jewish Ethics on the Responsibility of Shareholders

While biblical and classic rabbinic sources about property owners' responsibilities usually deal with single owners or small partnerships, for the last 500 years when stock markets and shareholder-owned corporations (like the Dutch East India Company in 1602) began to proliferate, Jewish religious authorities began to address the issue of shareholder responsibility.

Since a corporation - "a legally constructed entity which is independent of the people who own it,"² - is created to limit the liability of its shareholders, it became a matter of great discussion as to who is or are the owner(s) of the corporations and are therefore subject to the classical rules of ownership responsibility. The problem lay in the issue of corporate control. Since most shareholders do not have power over the company's actions or policies and are therefore not "owners" in the classic sense - they cannot be held morally responsible for its actions. In recent years, the creation of investment vehicles such as mutual funds has further weakened the traditional sense of ownership.

One way that ethicists deal with this weakening of traditional ownership roles is to hold directors and executives morally responsible for a company's actions. But while some ethicists asserted that shareholders did not bear ownership responsibility, another opinion also emerged. Because collective shareholder action can cause a change in a corporation's policies, it has argued that all shareholders (even those in mutual funds) must be considered owners and therefore subject to ethical responsibility.³

Ethical Responsibilities of Property Owners

If we accept that there is some ownership dimension to shareholding, then it follows that we should explore the ethical responsibilities of property owners, and consider how these relate to the issue of fossil fuel companies.

The classic ethical responsibilities of a property owner include not making a profit from prohibited activities such as theft or causing harm to another person's health. Even though the production of energy from oil, coal, and gas are not illegal (as in tobacco) it could be considered immoral from a Jewish activity because of the immediate damage it causes to Creation and human health. One is also prohibited from the harmful use of one's assets by others.

But our ethical responsibility extends even further. The general principle of the obligation to save and preserve life is called in Jewish legal sources, *pikuah nefesh* (see Leviticus 18:5 and its rabbinic interpretation in *Babylonian Talmud* Sanhedrin 74a). The extension of this principle forbids us from knowingly harming ourselves (Leviticus 19:28), mandates the proper disposal of waste and that noxious products from industrial production must be kept far from human habitation (see for example, Deuteronomy 23:13-15, *Mishnah* Baba Batra 2:9). The law of the parapet (Deuteronomy 22:8) is also used as an example of a general principle which requires us to prevent potential harm not only immediate harm (Moses Maimonides, *Mishnah Torah, Laws of Murder*, 11:4).

One of the most relevant principles to shareholder responsibility is the application of the law in Leviticus 19:14: not putting a stumbling block before the blind. This law was not only to be taken literally but since ancient times also understood as a moral principle: not intentionally giving bad advice to someone and not to assist someone in a wrongdoing. Maimonides used this principle to forbid the sale of weapons to people who may use them for violence or robbery (*Mishnah Torah, Laws of Murder* 12:12, 14). Some would utilize this principle to apply to investments; others see a more limited applicability.⁴

Beyond the Letter of the Law

Even if we were to accept only the limited view of shareholder responsibility and say that investing in carbon-based energy companies does not strictly violate Jewish law, there is another important principle which would call upon us to act. The principle is called *Lifnim m'shurat ha-din*, "[going] beyond the letter of the law."⁵ It is based primarily on Deuteronomy 6:18 (but also by some interpretations on Leviticus 19:2) which says: *Do what is right and good in the sight of the Lord*. As Elliot Dorff has pointed out:

...Jewish law itself recognizes that justice sometimes demands more than the law does, that moral duties sometimes require reshaping the law itself so that in each new age it can continue to be the best approximation of justice.⁶

Therefore, even if we can claim that our investments are technically not immoral, the Jewish tradition calls upon us to go beyond technicalities and act in a higher moral capacity. We must not only act legally but also act right.⁷

4. Final Thoughts

The philosopher Hans Jonas showed that one of the central problems in dealing with the environmental crisis was the inability of classical ethics to deal with issues that are

distant in time and space. In pre-modern times one's ethical relationships were with people who were physically and temporally close. Our actions today, through the power of modern technology, have an impact on people and non-human life that may be on the other side of world and distant from us in time. Jonas says that we must create a new ethics of responsibility in response.⁸ The carbon we emit today will remain in the atmosphere for about a hundred years and future generations will be dealing with the results of climate change. More than ever, we must seek to reduce the ethical distance between our actions and their impact. One way we can do this is through the ethical investing in sustainable energy and divesting from carbon-based energy companies.

Lastly, there is a moral imperative not only to act but to speak out. A rabbinic text says:

All who can protest against [something wrong that] one of their family [is doing] and does not protest, is held accountable for their family.[All who can protest against something wrong that] a citizen of their city [is doing and does not protest], is held accountable for all citizens of the city.[All who can protest against something wrong that is being done] in the whole world, is accountable together with all citizens of the world.⁹

Discussion Questions

1. The essay acknowledges the negative associations of the term “divestment” for the Jewish community today. In the face of this, can any members of your discussion group recall instances in which the Jewish community participated in past divestment campaigns because they represented a moral imperative?
2. The essay addresses the challenges of defining the extent of the ethical responsibility for shareholders who are “distant” from the activities of corporations whose shares they own. In what ways do these arguments apply to shareholders of fossil fuel corporations?
3. The essay notes that Judaism often demands that Jews go “beyond the letter of the law” in their response to a certain situation – that even if an activity is legal (e.g. owning shares in a fossil fuel corporation), it is not necessarily ethically acceptable to do it. Given the gravity of climate change, in what ways should we go “beyond the letter of the law?” Why – or why not?
4. What do you think are the strongest arguments in support of fossil fuel divestment and reinvestment in a clean energy future? What are the strongest arguments against it? Given the gravity of the climate crisis, if you do not support divestment and reinvestment, what approach do you believe is likely to create a solution to the problem?

Notes

¹ For a more complete survey of these principles see, Lawrence Troster, “Ten Jewish Teachings on Judaism and the Environment,” <http://greenfaith.org/religious-teachings/jewish-statements-on-the-environment/ten-jewish-teachings-on-judaism-and-the-environment>

² D.B. Bressler, “Ethical Investment: The Responsibility of Ownership in Jewish Law, in: Aaron Levine & Moses Pava, editors, *Jewish Business Ethics: The Firm and Its Stakeholders*, (Northvale: Jason Aronson Inc., 1999), p. 179.

³ Mordechai Liebling, “The Jewish Basis for Shareholder Activism,” *The Reconstructionist*, 69:2, Spring 2005, p. 33-4.

⁴ See Liebling, “The Jewish Basis,” p. 33 & Bressler, “The Responsibility of Ownership,” p. 185-190.

⁵ While this principle is a positive injunction, there is also a medieval negative version of it called *naval b’reshut ha-Torah*, “a scoundrel within the bounds of the Torah,” i.e. someone who does not technically violate Jewish law but nonetheless acts in an immoral way. For this idea see the commentary of Nachmanides to Leviticus 19:2. On the principle of acting beyond the letter of the law see *ibid* and also Nachmanides’ commentary to Deuteronomy 6:18 and Elliot Dorff, *A Living Tree: The Roots and Growth of Jewish Law*, (Albany: SUNY Press, 1988), p. 249f.

⁶ Elliot Dorff, *To Do the Right and the Good: A Jewish Approach to Modern Social Ethics*, (Philadelphia: The Jewish Publication Society, 2002), p. 118. The rabbinic sources about this principle are found primarily in the *Babylonian Talmud*, Baba Kama 99b; Baba Metzia 30b, 83a; Ketubot 97a; Berakhot 45b and the *Mekhilta D’Rabbi Ishmael* on Exodus 18:20, Yitro 2:182.

⁷ A good discussion of the application of this principle is Moses L. Pava, “The Talmudic Concept of ‘Beyond the Letter of the Law’: Relevance to Business Social Responsibility,” *Journal of Business Ethics* 15:941-950, 1996.

⁸ Hans Jonas, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age*, (Chicago: University of Chicago Press, 1984), p. ix-x, 1-24.

⁹ Babylonian Talmud, *Shabbat* 54b. I learned of this text some years ago from my daughter, Rabbi Rachel Kahn-Troster.