



Beyond the Letter of the Law: Jewish Principles of Ethical Investing in the Light of Climate Change Sources and Commentaries

*Rabbi Lawrence Troster
Rabbinic Scholar in Residence*

1. The Theological Foundations of an Ethical Response:

a. I Chron. 29:10-16:

David blessed the Lord in front of all the assemblage; David said, “Blessed are You, Lord, God of Israel our father, from eternity to eternity. Yours, Lord, are greatness, might, splendor, triumph and majesty – yes, all that is in heaven and an earth; to You, Lord, belong kingship and preeminence above all. Riches and honor are Yours to dispense; You have dominion over all with Your strength and might, and it is in Your power to make anyone great and strong. Now, God, we praise You and extol Your glorious name. Who am I and who are my people, that we should have the means to make such a freewill offering; but all is from You, and it is Your gift that we have given to You. For we are sojourners with You, mere transients like our fathers; our days on earth are like a shadow, with nothing in prospect. O Lord our God, all this great mass that we have laid aside to build You a House for Your holy name is from You, and it is all Yours.

Commentary:

David’s prayer comes at the end of a narrative in which he has been told by God that he cannot build the Temple because he is a warrior with blood on his hands. David then decides to collect all the necessary materials to build the Temple and puts out a call for donations. The people respond so overwhelmingly to the call. (This story is parallel to Exodus 35:20-29 where the people donate the materials for the building of the Tabernacle.) David praises God and points out that what he and the people are doing is not a great thing since they are giving back to God what is already God’s. God, as Creator, is owner of heaven and earth and human beings are only tenants who live only a short time. The ethical implications of this idea are that we do not have absolute ownership of anything in this world and we are given what we have only temporarily to utilize properly.

b. Psalm 148

Hallelujah.
Praise the Lord from the heavens; praise Him on high.
Praise Him, all His angels, praise Him all His hosts.

Praise Him, sun and moon, praise Him, all bright stars.
Praise Him, highest heavens, and you waters that are above the heavens.
Let them praise the name of the Lord, for it was He who commanded that they be created.
He made them endure forever, establishing an order that shall never change.
Praise the Lord, O you who are on earth, all sea monsters and ocean depths,
fire and hail, snow and smoke, storm wind that executes His command,
all the mountains and hills, all fruit trees and cedars,
all wild and tamed beasts, creeping things and winged birds,
all kings and peoples of the earth, all princes of the earth and its judges,
youths and maidens alike, old and young together.
Let them praise the name of the Lord, for His name, His alone, is sublime;
His splendor covers heaven and earth.
He has exalted the horn of His people for the glory of all His faithful ones,
Israel, the people close to Him.
Hallelujah.

Commentary:

Psalm 148 is a creation hymn, a poetic map of the universe. It reflects the Israelite cosmology of a three-part universe: God, heavens and earth or heavens, earth and Sheol. The Psalm's structure portrays Creation as being divided between a heavenly choir and an earthly choir. The heavenly choir includes the sun, moon, planets and stars, whose role it is to praise God and to act as witnesses to a revelation of God. The earthly choir consists of the forces of the nature world, the landscape, animal life (both wild and domesticated) and all kinds of humans. They are copying the heavenly choir, uniting with them in the same role and singing the same song.

The universe reflected by Psalm 148 is a harmonious order in which humans have no primacy of place. They are part of the earthly choir and join in the activity of the heavenly choir in a unification of purpose. There is no dominant human power over the rest of Creation. Psalm 148 pictures human society as part of a community of worshippers, which includes animal life, the forces of the natural world, such as the weather, the landscape and the heavens. This order of Creation is something in which humans live and must help to maintain. In the Hebrew Bible, human immorality is portrayed as the disruption of this order which has actual effects on the environment (e.g. Deuteronomy 11:10-17).

c. Genesis 1:27

And God created man in His image,
in the image of God He created him;
male and female He created them.

Commentary:

The Hebrew term for “image,” *tzelem* has an equivalent term in Old Babylonian, *tzalmu* which means a statue, bodily shape, figurine or carving. It sometimes refers to an image of the king which is set up in various places in the kingdom to indicate that wherever the image of the king is, so is the king’s power or law. Thus, in Genesis 1:27, humanity is the *tzalmu* of God in that where humans dwell, the presence of God is to be found because they are God’s agents in actualizing the power of God; hence the need for humans to multiply and spread throughout the earth. As the stewards of the earth humans “bear witness to the activity of God in the life of the world.” (Nahum M. Sarna, *The JPS Commentary to Genesis*, p. 12) This power over the rest of the earthly creatures is not about exploitation but responsibility.

d. Genesis 2:15:

The Lord God took the man and placed him in the garden of Eden, to till it and to tend it.

Commentary:

This verse from the second creation story in Genesis depicts humans as farmers. The verbs “to till and to tend” have a root meaning of work and protect but the verb for “work” (*l’ovdah*) can also mean to serve. Therefore, the human both works and serves the land as the source of all humanity’s life giving sustenance. Thus this phrase defines both the possibilities of utilizing the earth for human benefit but also the limits of that use in order for it to be sustainable in the future.

e. Deuteronomy 16:18-20

Judges and overseers you shall set for yourselves within all your gates that the Lord your God is about to give you according to your tribes, and they shall judge the people with due justice/equity. You shall recognize no face and no bribe shall you take, for a bribe blinds the eyes of the wise and perverts the words of the innocent. Justice/Equity, justice/equity shall you pursue, so that you may live and take hold of the land that the Lord your God is about to give you.

Commentary:

This is one of the classical statements of *tzedek*, justice/equity in the Torah. *Tzedek* is required as part of the judicial and economic life of the covenant community. The upholding of *tzedek* is expressed in discrete commandments which attempt to redress the imbalances that inevitably grow in human society and which concentrate power and wealthy in the hands of the few. The existence of the covenant community on the land is not absolute but contingent on their moral state.

2. Ethical principles and Their Legal Expressions

a. Leviticus 19:9-10, 13, 15:

And when you reap your land's harvest, you shall not finish off the edge of your field, nor pick up the gleanings of your harvest. And your vineyard you shall not pluck bare, nor pick up the fallen fruit of your vineyard. For the poor and for the sojourner you shall leave them. I am the Lord Your God...

You shall not defraud your fellow man and you shall not rob. You shall not keep the hired man's wages with you through the night until morning...

You shall do no iniquity in justice. You shall not favor the wretched and you shall not defer to the rich. In righteousness/equity you shall judge your fellow.

b. Tosephta Pe'ah 1:6:

Rabbi Simeon said: There are four reasons why the Torah said that *pe'ah* should be at the end of the field: so that he will not rob the poor, keep the poor waiting, give the wrong impression, cause deception. How (can he) rob the poor? By waiting until no one is around and then telling his relative "come and take this *pe'ah*." Cause the poor to wait? The poor might sit and keep watch on his field all day, thinking "now he will set aside *pe'ah*, now he will set aside *pe'ah*;" however, if he sets aside the end of his field, the poor man does his work all day and at its end (comes) and takes it. Give the wrong impression? People may pass by his field and say, "See this person has harvested his field and has left no edge for the poor despite the Torah's injunction 'Do not destroy the edge of your field.'" Cause deception? So that they (the field owners) should not say "we have already given" or they will not leave the (part whose crop is) good but only the bad.

Commentary:

These texts from chapter 19 of Leviticus are part of what biblical scholars call the "Holiness Code" (Leviticus 17-26) which derives from the Priestly Tradition, whose leader(s) wrote and edited much of the Torah. In chapter 19, both ritual and ethical laws are seen as the way to live the holy life and thus imitate God's holiness. The laws of verses 13 & 15 mandate ethical behavior in business transactions and in the treatment of laborers. Verses 9-10 are part of a series of poor tithes that are required of the farmer. The commentary on this law from the *Tosephta* (a collection of rabbinic law from the early 2nd Century CE which is often parallel to the *Mishnah*) gives several good reasons as to why the corners of the farmer's field are the means to giving a tithe to the poor. The reasons emphasize the dignity of the poor, the obligation of the farmer to share his bounty (since it all belongs to God), the prevention of corruption, and even protecting the reputation of the farmer.

c. Leviticus 18:5

You shall keep my laws and my rules, by the pursuit of which man shall live: I am the Lord.

d. Babylonian Talmud Tractate Sanhedrin 74a

Rabbi Johanan said in the name of Rabbi Simeon ben Yehozadak: By a majority vote, it was resolved in the upper chambers of the house of Nithza in Lydda that in every [other] law of the Torah, if a man is commanded: ‘Transgress and suffer not death’ he may transgress and not suffer death, excepting idolatry, incest, [which includes adultery] and murder. Now may not idolatry be practiced [in these circumstances]? Has it not been taught: Rabbi Ishmael said: whence do we know that if a man was bidden, ‘Engage in idolatry and save your life,’ that he should do so, and not be slain? From the verse, *[You shall therefore keep my statutes and my judgments,* which if a man do] he shall live in them: (Leviticus 18:5) but not die by them. I might think that it may even be openly practiced. but Scripture teaches, Neither shall ye profane my holy name; but I will be hallowed?’ (Leviticus 22:32) — They ruled as Rabbi Eliezer. For it has been taught, Rabbi Eliezer said: *And you shall love the Lord your God with all your heart and with all your soul, and with all your might.* (Deuteronomy 6:5) Since ‘with all your soul’ is stated, why is ‘with all your might’ stated? Or if ‘with all your might’ be written, why also write ‘with all your soul’? For the man to whom life is more precious than wealth, ‘with all your soul’ is written; while he to whom wealth is more precious than life is bidden, ‘with all your might’ [i.e., substance].

Commentary:

Leviticus 18:5 is the primary biblical source in Rabbinic Judaism for the concept of *pikuah nefesh*, the obligation to save human life even if it means violating almost all of the commandments of the Torah. The text from the Talmud is the primary commentary to the biblical verse had how it is applied. There are limits to this concept (for idolatry, murder and sexual assault) but it has been used to develop a Jewish version of the Precautionary Principle, calling on us to carefully consider how we utilize our technology to prevent harm to human life.

e. Leviticus 19:16

You shall not go about slandering your kin. You shall not stand over the blood of your fellow man. I am the Lord.

f. Moses Maimonides (1135-1204, Spain, Egypt), *Book of Commandments*, no. 297.

By this prohibition [*Leviticus 19:16*] we are forbidden to neglect to save a life of a person whom we see in danger of death and destruction and whom it is in our power to save: as for instance if a person is drowning, and we are good swimmers and can save him; or if a heathen is trying to kill someone, and we are in a position to thwart his intention...

Commentary:

Maimonides reviews the rabbinic understanding of Leviticus 19:16 which takes it to be an obligation to not only to save life in the immediate sense but also to try to prevent the taking of life in a pre-emptory way.

g. Exodus 21:33-35, 22:5

When a man opens a pit, or digs a pit and does not cover it, and an ox or an ass falls into it, the one responsible for the pit must make restitution; he shall pay the price to the owner, but shall keep the dead animal.

When a fire is started and spreads to thorns, so that stacked, standing, or growing grain is consumed he who started the fire must make restitution.

Commentary:

These laws are part of a series found in the legal codes in the Torah which present the legal responsibilities of property owners not to do anything which may cause damage to other people's property.

h. Mishnah Baba Batra 2:2, 9

2. None may open a baker's shop or a dyer's shop under his fellow's storehouse, nor [may he keep] a cattle-stall [nearby]. They have, indeed, permitted those under a wine store, but [they have] not [permitted] a cattle stall. A many may protest against [another that opens] a shop within the courtyard and say to him, 'I cannot sleep because of the noise of them that go in and out.' He that makes utensils should go outside and sell them in the market. But none may protest against another and say, 'I cannot sleep because of the noise of the hammer' or 'because of the noise of the mill-stones' or 'because of the noise of the children.'

9. Carcasses, graves, and tanneries may not remain within a space of fifty cubits from the town. A tannery may be set up only on the east side of the town. Rabbi Akiba says: It may be set up on any side save the west but it may not be within a distance of fifty cubits.

Commentary:

The Mishnah (c. 200 CE), the law code of Rabbinic Judaism which is the core of the Talmud, expands the property laws of the Torah to include issues of toxic and noise pollution in industrial production.

i. Deuteronomy 22:8

When you build a new house, you shall make a parapet for your roof, so that you do not bring bloodguilt on your house if anyone should fall from it.

j. Moses Maimonides, *Mishnah Torah*, Laws of Murder and the Protection of Life, 11:3-4

3. The height of the parapet cannot be less than two feet so that [a potential] faller will not fall from it and each piece of the parapet has to be strong enough so that leaner can lean upon it and won't fall. Anybody who puts up his roof without a parapet has violated the positive commandment and transgressed a negative commandment -- "you shall not spill blood."

4. Both the roof and any other object of potential danger, by which it is likely that a person could be fatally injured, require that the owner take action... just as the Torah commands us to make a fence on the roof. ... and so, too, regarding any obstacle which could cause mortal danger, one [not just the owner] has a positive commandment to remove it... if one does not remove it but leaves those obstacles constituting potential danger, one transgresses a positive commandment and negates a negative commandment "You shall not spill blood."

Commentary:

This law in Deuteronomy is about a preventive measure by householders to prevent injury or even death from inadequate safety measures. Maimonides sums up the rabbinic expansion of this law to include any possible situation where there is potential for harm.

k. Leviticus 19:14:

You shall not insult the deaf, or place a stumbling block before the blind. You shall fear the Lord your God; I am the Lord.

l. Rashi (Rabbi Shlomo Yitzhaki, 1040-1104, Northern France), Commentary to Leviticus 19:14:

Or place a stumbling block before the blind. Do not give bad advice to one who is blind to the truth. For example, do not tell him, "Sell your property and buy a donkey," just because you want to finagle him out of the property. *You shall fear your God.* People cannot always tell whether a person's intentions were good or bad. He can always disclaim responsibility by pretending that his intentions were for the best. "You shall fear your, "therefore, who knows what you were thinking. Wherever a person's true intentions can be concealed from others, this phrase is invoked.

m. Moses Maimonides, Mishnah Torah, Laws of Murder and the Protection of Life 12:12,14:

It is forbidden to sell an idolater weapons of war, and we neither sharpen their knives, nor sell them knives, manacles, iron chains, bears, lions, and anything which is a public danger; but we may sell them shields which are only for defensive purposes.

Whatever is forbidden to sell to an idolater is likewise forbidden to sell to a Jew who is a robber, since in doing so we make ourselves an accessory to criminals and tempt him to unlawful acts. Whoever misleads an innocent party [literally the blind in a matter] and

gives him dishonest advice, or strengthens the hand of a transgressor, who is blind since the desires of his heart blind him from seeing the true path, violates a negative precept as it is written, “*You shall not put a stumbling block before the blind.*” Whoever comes to consult you, give him good advice.

Commentary:

From ancient times Leviticus 19:14 was not only understood literally but also as a metaphor for intentionally causing harm to someone by bad advice or other actions which may cause them harm. Rashi in his commentary explains the basic rabbinic understanding of this law. Maimonides, expands the law to include the prohibition of selling offensive weapons to people who may use them for violence or robbery. His central point is that we must not be in any way an accessory to criminal or immoral behavior.

n. Deuteronomy 6:18:

Do what is right and good in the sight of the Lord, that it may go well with you and that you may be able to possess the land that the Lord your God promised on oath to your fathers.

o. Moses Nachmanides (1194-1270, Spain, Israel) *Commentary on Deuteronomy 6:18:*

This refers to compromise [rather than judgment according to strict law] and conduct beyond the requirements of the Law. The intent of this that initially [in Deuteronomy 6:17] God had said that you should observe the commandments that He had commanded you. Now God says that, with respect to what He has not commanded, you should likewise take heed to do the right and the good in His eyes, for He loves the good and the right. This is a great matter, for it is impossible to mention in the Torah all of a person’s actions towards his neighbors and acquaintances, all of his commercial activity, and all social and political institutions. So, after God had mentioned many of them...He continues to say generally that one should do the right and the good in all matters through compromise and conduct beyond the requirements of the Law.

Commentary:

The text from Deuteronomy 6:18 is used in the rabbinic tradition as the source for the principle of *Lifnim m’shurat ha-din*, “[going] beyond the letter of the law.” It is not enough to be technically in compliance with the law but God wants us to go beyond the letter of the law to achieve a higher level of the right and the good.

4. The Need to Speak Out

Shabbat 54b:

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.

Commentary:

There is a long tradition of protest in classical Jewish sources. The prophets in the Hebrew Bible often spoke out against the ills and corruption in their society even at great personal cost. The Torah (Leviticus 19:17) tells us to carefully admonish our neighbors if they are acting immorally and rabbinic sources elaborate on this law, its applications, procedures and limitations (cf. Maimonides, Mishnah Torah, *Laws of Temperament* 6:7-10).