

LAW, ECONOMY, AND CHARITY

FORMATIONS IN TORAH AND TALMUD

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The aim of this chapter is to present a single case study, albeit a core moral one, that provides a religious and legal example of ethical orientation and character formation in late modern Jewish societies. Using the duty to give charity as that case, the chapter explores the aspects of moral development found in the laws of charity and the ways they have been shaped by social and cultural norms. The chapter reveals that Jewish Law took the simple role of charity—to provide for the poor—and, as the Western world and Jewish community evolved, shaped the laws regarding charity to contribute to the general ethical and educational formation of the community as a whole. Charitygiving became a legal category useful in shaping “the common good” and not only supporting the poor. What we see is the adaptation of a biblical tool—driven in premodern times by agricultural norms and tithing, with its related charitable idea of feeding the hungry—into a modern tool to help form the nucleus of modern Jewish society and its many institutions.

The chapter intentionally does not discuss charity in Israel today and confines itself to the community in the Diaspora. It does so for three reasons. First, Israel is a nation in economic transition to the First World, with basic modes of government-provided social services less clearly established than in Western Europe and North America. Second, one could advocate the idea that a Jewish state should adhere to a more insular, uniquely Jewish communal model of charity, more deeply confusing the distinction between the Jewish community and the general community in Israel than in England, France, or the United States. Third, the role of a society’s dominant community towards the underprivileged creates a more robust moral obligation in a society that is Jewish-dominant than in a society where Jews are a distinct minority. For all of these reasons, charity in Israel today deserves to be the subject of a different study.

INTRODUCTION

There is no doubt of a biblical obligation to give charity; however, basic Jewish Law issues are in dispute.¹ This chapter will show that there is disagreement over such fundamental questions as who may receive charity, how much money each person should give, what the nature of charitable duty is, and whether charity money should be spent on educational concerns rather than support of the poor. The conclusion of all of this is that the very parameters of “charity” in Western nations have changed during the last centuries as the government—and not the religious community—provides for the basic social welfare—food, shelter, and education—for all citizens.

Even more generally, the Talmudic and medieval issues relating to giving charity are a balance between abstract Jewish Law ideals and a concrete social and economic reality. Like many other areas of Jewish Law, certain aspects of charity law are designed to teach us a religious and ethical value, rather than be implemented routinely. An example is the concept of *dey machsoro* (as the needs were), suggesting that a poor person ought to be theoretically supported at a level that reflects his loss of dignity and not based on some objective formulation.² Former millionaires who become impoverished ought to be supported at their preimpoverishment level in some idealized model.³ In the real world, this practice could not routinely be done, and Jewish law notes that no individual is generally called upon to support another in such a fashion.⁴ Indeed, the consensus of authorities is that it is improper to distribute one charitable gift to a single person *dey machsoro*, but instead one should give smaller amounts to many people who are in actual desperate need.⁵ As an authoritative work in this area notes, “One should not give

¹ Shulchan Aruch, Yoreh Deah 247:1.

² This idea is actually based on the rabbinical exegesis of Deuteronomy 15:8, which states: לֹא יִחַרְךָ לּוֹ כִּי־פָתַח תִּפְתָּח אֶת־יָדְךָ לְוֹהֵעֲבֹט תַּעֲבִיטְנוּ דִּי מַחְסְרוֹ אֲשֶׁר יִחַרְךָ לּוֹ: “But you shall open your hand to him and lend him sufficient for his needs, whatever it may be.” The English term “sufficient for his needs” is a translation of the Hebrew term *dey machsoro*.

³ Another example of this is the concept that found objects, even after they were abandoned, should be held in escrow unused until Elijah arrives. On an ethical level, Jewish law mandates that a found object is not owned by the finder—but on a practical level, once it is clear that its original owner can never reclaim the object, the finder functions as if it is his. See Michael J. Broyde and Michael Hecht, “The Return of Lost Property According to Jewish and Common Law: A Comparison,” *Journal of Law and Religion* 12 (1996): 225–254.

⁴ Shulchan Aruch, Yoreh Deah 250:1, and Rama ad loc.

⁵ Taz, Yoreh Deah 250:1, and Shach, Yoreh Deah 250:1; but see Bach, Yoreh Deah 250.

all of one's charity to a single person."⁶ Indeed, there always was a fear that if the fallen wealthy were supported at a high level, there would be little incentive not to fall.

This tension between the ideals of charity, on one hand, to give as much as one can to as many in need to raise them to as high a level as possible and, on the other hand, the reality that money is limited and incentives are needed to elicit work and avoid dependence, is a central theme of Jewish law's approach to charity. This chapter explores that balance in light of the social, economic, political, and religious reality of modern Western life.

The remainder of this chapter is divided into six sections. The first explores the basic purpose of charity and notes the grand dispute about whether its fundamental purpose is to support the poor or communal institutions or both. The second section explores the fundamental dispute between Maimonides and others about whether charity should support education and study by scholars in addition to providing for the indigent. The third section explores the way many modern Jewish law authorities have responded to the rise of government-funded social services and the concomitant higher taxes in the context of duty to give charity. The fourth section examines the use of charity funds for unusual situations and the parameters of such uses according to Jewish Law. The fifth section touches on how much each person needs to give. The conclusion argues that what started as a basic construct of charity law within Jewish Law has evolved in modern times to reflect societal shift in charitable methods over time.

TWO VISIONS OF CHARITY: FOR THE POOR OR FOR THE COMMUNITY?

Even a cursory examination of charity law in Maimonides's code of Jewish Law (Mishneh Torah) would strongly suggest that that great sage limited charity as a duty only to support of the poor.⁷ Maimonides makes not a single mention of any way to fulfill the duty of charitable giving other than by gifts or loans to the poor.⁸

⁶ Yaakov Yishayahu Blau, *Sefer Tzedakah u-Mishpat 3:5* (Jerusalem: Beit Meir Press, 5740 [1979/80]).

⁷ Maimonides, *Law of Gifts to the Poor 7:1*; *Book of Commandments, Positive Commandment 195*.

⁸ This chapter does not discuss the theoretical matter of how the community ought to act were it to have the power to coerce payments for communal matters. See R. Moshe Feinstein, *Iggrot Moshe, Choshen Mishpat 1:41*, who defends the early compromise of half per capita and half wealth-based tax. Cf. Beit Yosef, *Orach Chaim 53* in the name of R. Hai Gaon and Aaron Levine, *Free Enterprise and Jewish Law* (New York: KTAV and Yeshiva

This approach to charity is also the view of many others, and is based on the fact that nowhere in the Babylonian Talmud is the idea of charity ever applied other than to aid the poor.

Rabbi Joseph Kolon (known by his Hebrew acronym Maharik⁹) formulates the counterview and maintains that charity ought to be used—first and foremost—for building communal resources, such as a synagogue or study hall. Maharik writes simply, “It is better to give charity money to a synagogue.” Rabbi Joseph Karo, the author of the classical 1563 law code, the *Shulchan Aruch*, in his subcommentary titled *Beit Yosef*,¹⁰ expands on the view of the Maharik as follows:

[The Maharik] wrote (*Shoresh* 128, vol. 3, part 4) that from the writings of R. Simeon b. Tzemach Duran (*Tashbetz Katan* 536), which cites the view of Rabbi Samuel of Bonburg based on *Y. Peah* (8:8) one can demonstrate that building a synagogue is more important than giving [ordinary] charity, for the Talmud states that Rav saw [alt. offered rebuke] for building a fancy entrance to the synagogue ... [and stated]: Were there no individuals studying Torah or sick people sustaining themselves from the refuse pile? To this he applied the verse, “Israel forgot its maker and built sanctuaries” (*Hosea* 8:14)—from here R. Samuel derived that it is preferable to give charity to young men to study Torah or to the ill and impoverished than to give to the synagogue. From the *Yerushalmi* saying “sick individuals sustaining themselves from the refuse pile” and likewise R. Samuel stating, “ill and impoverished” and not simply “the poor,” this implies that were such individuals not ill but simply poor, it would be preferable to give [the charity funds] to a synagogue.¹¹

This view is cited in the *Shulchan Aruch*,¹² a vital code of law still used in modern Judaism.

Others insist that this license to spend charity on other than poor people includes the building of other communal institutions such as hospitals. Indeed, one recent writer posits that from charity funds, “It is obligatory for members of a city to purchase all communal needs: to build a synagogue, purchase a Torah scroll and other books that people can study from, hire a rabbi as a Jewish Law authority,

University Press, 1980), 152; as well as Rama, *Choshen Mishpat* 163:3 and Chatam Sofer, *Choshen Mishpat* 159 (who presents a sophisticated and complex formula).

⁹ Rabbi Joseph ben Samuel Kolon [Cologne] (ca. 1420–80), Italian authority and author of numerous responsa. This one is found in *Responsa* 128.

¹⁰ *Beit Yosef*, *Yoreh Deah* 249[16].

¹¹ It is worth noting that our text of *Y. Peah* 8:8, as well as the parallel passage in *Y. Shekalim* 5:4, does not include the words “or sick people sustaining themselves from the refuse pile.”

¹² *Yoreh Deah* 249:6.

and a cantor; so, too, one can pay tuition for those children whose parents cannot pay tuition and to build a ritual bath.”¹³

Of course, as Rabbi Yeheil Epstein notes in his classic Jewish Law code of the late 1800 s, titled the *Aruch ha-Shulchan*,¹⁴ there is a difference between lavish construction of an extra synagogue—the one we do not worship in, as the joke goes—and the genuine needs of the community. But it is clear that many contemporary Jewish Law authorities rule that communal needs may be paid from charity funds.

Certainly, there are still dissenting voices to this approach. The great eighteenth-century sage Rabbi Elijah of Vilna (Gra)¹⁵ rejects the view that charity can ever be spent other than to aid the poor, as do others.¹⁶ However, as many note,¹⁷ there is an explicit passage in the Jerusalem Talmud that sides with the broader view.¹⁸ By the beginning of the twentieth century,¹⁹ Jewish Law conversations surrounding the question are focused on whether it is more important to build a hospital or a synagogue, or a synagogue in Israel rather than one in the Diaspora.²⁰ Charity to the poor becomes secondary. Of course, one could limit this—as Rabbi Epstein proposes—and insist on the supremacy of giving charity to the poor when their actual lives are at stake; but when charity merely is of benefit to the poor, then the building of a synagogue assumes priority.²¹

Thus, we have three models of the duty to give charity in Jewish Law:

1. Charity is exclusively for the benefit of poor individuals.
2. Charity’s highest priority is the building of communal institutions.
3. Charity’s highest priority is saving the lives of those in danger. Its next-highest priority is the building of communal institutions. The third-highest virtue is benefiting the poor.

¹³ Rabbi Yacov Yashaya Blau, *Tzedakah u-Mishpat* 3:28.

¹⁴ Yoreh Deah 249:18–20.

¹⁵ Yoreh Deah 249:20.

¹⁶ See Yikrei Lev, Yoreh Deah 5, who appears to reject Maharik. Indeed, the view of Tosafot appears to agree with Rambam that charity to the poor is more important than synagogue construction; Tosafot, Bava Batra 9a, s.v. *she-ne’emar*.

¹⁷ See Rabbi Yeheil Mikhel Epstein *Aruch ha-Shulchan*, Yoreh Deah 249:18–19.

¹⁸ Y. Peah 8:8. Undoubtedly, the resolution of this matter relates to the more general subject of the status of the Talmud Yerushalmi within normative halacha, which is the subject of an observation of mine titled “The Yerushalmi as a Source of Halacha,” at <https://www.torahmusings.com/2011/05/the-yerushalmi-as-a-source-of-halacha/>.

¹⁹ See, for example, Sedai Chemed *Kelalim* 2:44.

²⁰ Chatam Sofer, *Orach Chaim* 203; Maharsham 4:147.

²¹ *Aruch ha-Shulchan*, Yoreh Deah 149:20.

This dispute is a central one. If the purpose of charity and the exclusive beneficiaries of charity are the poor, then many of the complex questions of this chapter disappear, and the solution is simple. However, if charity funds may be used for general communal projects—even when poor people need charity, or only when the lives of the poor are not in actual danger—then a much greater variety of projects are eligible for charitable funding.²²

SHOULD CHARITY FUNDS BE ALLOCATED TO THOSE WHO COULD WORK BUT STUDY INSTEAD?

The second important issue is the use of charity funds to support ongoing Jewish study. Three views are found. The first view is that of Maimonides, who—consistent with his insistence that charity only be used to benefit poor people—insists that a Torah scholar may not choose a life of poverty so that he may study Torah and accept charity. Maimonides’s harsh words indicate that he is all too familiar with the practice. He states:

10. Anyone who decides to occupy himself with Torah and not work but obtain his livelihood from charity desecrates God’s name, denigrates the Torah, extinguishes the light of the faith, brings evil upon himself, and excludes himself from life in the world to come, for it is forbidden to benefit from Torah matters in this world. The Sages stated: Anyone who benefits from Torah matters excludes himself from life in the world to come. They also commanded and stated: Do not make them a crown to magnify oneself, nor an ax to chop with. They further commanded and stated: Love work and hate the rabbinate. And any Torah that is not accompanied by work will be nullified in the end and lead to sin, and ultimately such a person will come to steal from others.

11. It is a great virtue for one to earn one’s livelihood from one’s own handiwork, and a positive quality of the early pious ones. By doing so, one merits all the glory and goodness in this world and the world to come, as scripture states, “When you eat the labor of your hands, happy shall you be, and it shall be well with you.” “Happy shall you be”—in this world—“and it shall be well with you”—in the world to come, which is completely good.²³

In this model, any scholar who accepts charity when he can work has forfeited the moral and ethical value of his contributions. This is true even if he really is poor because he studies all day. Maimonides maintains that such a Torah scholar

²² For an example of this, see Rabbi Moshe Weinberger, *Jewish Outreach* (New York: KTAV and NY Assn. of Jewish Outreach Professionals, 1990), chapter 9, “Is a Contribution to a Kiruv [Outreach] Organization Charity?”

²³ Maimonides, *Laws of Torah Study* 3:10–11.

should get a job and not accept charity rather than continuing to learn while accepting charity.

Even Rabbi Karo could not accept the words of Maimonides, and in his commentary *Kesef Mishneh* he takes pains to refute them, even as he acknowledges that they are grounded in numerous Talmudic sources. So, too, Rabbi Shimon ben Tzemach Duran states:

After we have explained all of the above, we must consider the view of Maimonides on this matter.... It seems that he overstepped his bounds and cast all the scholars and rabbis of his time and those who preceded him as being in error. And because he spoke in anger he came to err and to call them mad. "The Prophet is a fool; the man of the spirit is mad" [Hos. 9:7]. Just because it was his [Maimonides's] good luck to be close to royalty and honored in his generation, and—owing to his medical and scientific knowledge—he was not required to accept fees from the communities he served, what are the rabbis and sages who have not reached this level to do? Shall they die of starvation or demean their honor or remove the yoke of Torah from their necks? That is not the intent of the Torah, the commandments or the Talmud.²⁴

This view, which the great Spanish Jewish Law authority of the 1300 s Rabbi Asher ben Yechiel²⁵ endorses as well, albeit with much less enthusiasm, reflects a reality. It is well-nigh impossible to support serious scholarship and leadership while mandating that such leadership also work independently. If Maimonides could do it, it was because he was exceptional. Still, the ideal is that Torah scholars should earn a living if they can, by working.

Of course, as Rabbi Asher goes on to say, if one has no other choice, then one may take charity.²⁶ This is the view that Rabbi Moshe Isserless (Rama)²⁷ arrives at

²⁴ Tashbetz 1:147.

²⁵ Responsa of Rosh 15:10.

²⁶ Although this chapter is not focused on comparative religion, it is worth noting here the contrast between Catholic priests and Jewish rabbis in this area. The basic model of the Jewish tradition was—and still is—of rabbis leading lives that are "regular" but simply "more holy." This is quite in contrast to the Catholic model of priests having unique rules of conduct. Two excellent examples of this are priestly celibacy and priestly poverty, neither of which is part of the Jewish tradition. The Jewish tradition, while it ponders rabbinic celibacy and recognizes the religious plausibility of it (see *Shulchan Aruch Even Haezer* 1:4), rejects that model as normative, and it is never practiced in fact. The same is true for the poverty model, as this chapter shows. There is no tradition of rabbis being supported by charity unless it is desperately needed.

²⁷ *Yoreh Deah* 246:6.

as well, albeit with a great deal of hesitation, as does the *Aruch ha-Shulchan*.²⁸ Rabbi Epstein states:

41. Our master Rabbi Isserless wrote, “The custom in all Jewish communities was for the rabbi of the city to receive income and sustenance from the city’s inhabitants so that he not need to occupy himself publicly with work, and the Torah be thereby denigrated in the eyes of the populace.” This is true specifically with regard to a needy scholar, but a wealthy person is forbidden to do so. Some are more lenient and allow a scholar and his students to accept contributions from donors in order to strengthen the hands of those who study Torah, for by doing so they are able to involve themselves in Torah with ease. Nonetheless, one who is able to sufficiently support himself through his own handiwork and study Torah, this is the nature of the pious and a gift from God—but it is not the nature of all people, for it is impossible for every person to involve oneself in Torah and become wise while at the same time supporting oneself. All of the above which is permissible is limited to instances when a person receives his fare from the community or a set allocation, but one may not accept gifts from people. When the Talmud states, “anyone who gives a gift to a sage is considered as if he has offered first fruits,” this is with regard to small gifts, for the general practice is to bring small gifts to important people, even if they be unlettered.

42. Moreover, one of the great latter-day authorities has written: “We have seen that the practice of all Jewish scholars is to accept support from the community. I say that one who is a master of the academy and disseminates Jewish Law to the public and cannot leave his own home except for the purpose of a mitzvah, it is a sin for such a person not to accept funding from others, even if he knows a particular trade or discipline that he can toil in and make money in order to support his household, for the love of Torah will surely be denigrated. However, if one already had sufficient resources to support oneself and earn interest on the funds, in a manner which does not involve neglecting Torah study at all, then one should not benefit from public funds but rather consume the labors of his own hands, and whatever he does receive from the public he should spend on the expenses of teaching Torah.”

This view reflects an unfortunate reality that Rabbi Epstein sadly acknowledges. Charity needs to be collected to pay for Jewish law study, so that people can be learned scholars; otherwise they will work, and we will have a community with fewer scholars.

A third view presents such charity as the ideal. In this view, it is more important to spend one’s charity funds to support Torah scholars than to support poor people. As the contemporary Jewish law authority Rabbi Jacob Isiah Blau states, in *Charity and Justice (Tzedakah u-Mishpat)*: “Charity to strengthen the study of Jew-

²⁸ Yoreh Deah 246:38–42.

ish Law is superior to charity for the poor.”²⁹ The basic explanation for this view is logical at some level. If building a synagogue is a greater form of charity than supporting the poor, the building of a study hall—whose holiness is greater than that of a synagogue³⁰—is an even greater form of charity. Supporting people to use the study hall must then be a still greater religious obligation.

Thus, we have now encountered our second fundamental dispute about charity. Are charity funds to be spent to support study or not? Three views are again presented:

- Maimonides maintains that charity funds may never support Torah study.
- Many maintain that if the times require it, such funds should be spent to support study, but it is better that they not be.
- Some maintain that it is the ideal to spend such funds to support Torah study.

The essence here can be distilled. Maimonides’s formulation of the charitable obligation is structured and clear: charity is exclusively for the poor. It may not be spent for communal needs or to support Jewish law study. Others disagree and rule that charity may or should be spent for communal needs.

THE MODERN SOCIAL WELFARE SYSTEM, TAXES, AND GOVERNMENTAL “CHARITY”

The classical medieval Jewish Law was clear: a Jew should never take charity from a non-Jew.³¹ If one must take charity from a Gentile, because the powerful Gentile would be angry otherwise, then one should take that charity and secretly give the money to poor Gentiles.³² If one will get into trouble by doing even that, then one may grudgingly accept the charity.³³ While the exact reason for this rule is in some dispute, the consensus remains that the taking of charity from a Gentile is a sign of moral failure, and it is a desecration of God’s name for Jews to be seen as moral failures.

Notwithstanding this clear recitation of the law, most Jewish law authorities aver that “modern times are different.” Governmental welfare, the argument goes, is not charity. As Rabbi Blau puts it:

²⁹ *Tzedakah u-Mishpat* 3:26. He adds that such is not true when the poor might actually perish.

³⁰ Shulchan Aruch, Orach Chaim 90:18.

³¹ Shulchan Aruch, Yoreh Deah 254:1.

³² *Ibid.*, 254:2.

³³ Rama ad loc.

In our times, Jews live among the nations [in the Diaspora], and if, according to the secular laws, the poor are entitled to accept government support (social welfare and the like), it seems that it is permissible for a Jew to accept it, according to the reasons mentioned above. And also because Jews, too, live in the state, and they, too, pay taxes, and this support comes from tax revenues, it is not considered taking charity from Gentiles.³⁴

The claim is that Jews, as members in good standing of modern society, are entitled to participate in the social welfare system as per the law. The basic rationale of desecration of God's name through wholesale Jewish poverty is dismissed, as governmental welfare is an entitlement. Still, one could argue with this rationale and insist that Jews being comfortable participants in the social welfare safety net still is a desecration of God's name, even in a just democracy, since taking charity is still a sign of moral failure.³⁵ But as far as research suggests, this view has yet to be put forward by a Jewish law authority in the last half century.

The same observation can be made with regard to what is income for Jewish law purposes. Rabbi Feinstein's observation³⁶ that money one pays as taxation on income does not count as income from which one needs to give charity, is the only logical result in the construct of our modern community. The contrary view—considered by Rabbi Eliezer Waldenberg³⁷—is that money one pays in taxes counts as a form of charity. This view has considerable support,³⁸ but in high-tax nations such as England, France, Germany, Canada, and the United States, this approach would reduce the obligations of charity to zero and be untenable as a matter of normative ethical practice. Who could imagine a Jewish society without charity?

Not surprisingly, these voices within Jewish law recognize that since very little charity is needed to fend off starvation in Western nations—where the government provides, more or less, nearly all the social services needed to function on a basic level—charity should be directed elsewhere. Where should the charitable giving be directed? One should invest in the form of charity that is better than alleviating the plight of the poor (whose lives are not in danger)—that is, one should give to institutions that increase Jewish Law study.

³⁴ Tzedakah u-Mishpat, ch. 1, end of n. 68.

³⁵ Welfare still comes with the social stigma of failure and poverty. This might be different for other governmental awards, such as education benefits.

³⁶ Igrot Moshe, Yoreh Deah 1:143.

³⁷ Tzitz Eliezer 9:1:5.

³⁸ See Taz, Yoreh Deah 249:1. For a defense of the Tzitz Eliezer's position as proper normative halacha, see Yitzchak Yaakov Weiss, *Minchat Yitzchak* 5:34(9).

It is difficult to find a contemporary work in English dealing with charity that does not make this point in one way or another.³⁹ Essentially, as the Jewish community has been relieved of the great burden of autonomy—to feed, clothe, cure, and shelter the impoverished solely through the means of the Jewish community—charity can now be used for a different purpose: study of Jewish law, worship in synagogues, and supporting institutions that facilitate these goals.

What supports much of this conclusion, both in this section and the previous one, is the acceptance of the idea that studying and facilitating the study of Jewish Law is a core precept in the Jewish tradition. As recounted directly by the first Mishnah in the first chapter of the section of agricultural laws—which were all gifts to the poor or the priests:

אלו דברים שאין להם שעור: הפאה, והבכורים, והראיון, וגמילות חסדים, ותלמוד תורה.... ותלמוד תורה כנגד כלם.

These are the things that can be done without upper measure: The corner charity of the fields (to the poor), the first fruits given at the Temple, the appearance [at the Temple in Jerusalem on pilgrimage festivals], acts of kindness, and the study of the Torah.... But the study of Torah is equal to them [maybe correctly translated as: greater than them] all.

Deeply rooted in the central aspects of the Jewish tradition is that studying Jewish Law, engaging in acts of kindness, and observing ritual law are all of approximately equal value and should all be done consistently. As Chaim Saiman shows in his recent work,⁴⁰ the theoretical study of Jewish Law—divorced from its practice—has been a hallmark of the Jewish tradition for nearly two thousand years. In this model, it is not at all surprising that Torah study as a religious duty can serve as a substitute for charity when basic needs of the poor are provided by the government.

Indeed, the data—at least for North American Jews and likely all Jews in Western Europe as well—support three basic ideas: Jews give charity at heightened levels as compared to others; those who identify with the traditional Jewish law community support scholars of Torah study as appropriate recipients of charity; and charitable giving is or becomes a central focus of manifesting one’s religious identity, which is possible only if the government provides the basic social services which are not aspects of Jewish identity but of basic human necessity.⁴¹ Indeed,

³⁹ For example, see Moshe Goldberger, *Priorities in Tzedaka: Higher Forms of Giving* (New York: Judaica Press, 2007), 66–74.

⁴⁰ Chaim N. Saiman, *Halakha: The Rabbinic Idea of Law* (Princeton: Princeton University Press, 2018).

⁴¹ See, for example, Hanna Shaul Bar Nissim “American Jews and Charitable giving: An enduring tradition,” at <https://theconversation.com/american-jews-and-charitable-giving->

the numbers are not small: “Total American giving to Jewish causes in the United States and Israel amounted to \$5.5 billion to \$6 billion in 2015.”⁴² However, if people are actually endangered by a lack of resources, charity to the poor becomes the central obligation.

UNUSUAL BALANCES OF CHARITY LAW

The previous sections have discussed balancing aid to the poor with the needs of the community. This section emphasizes one important limitation in that balance: the obligation to give the highest priority to situations that actually save lives. The classical codes⁴³ are clear that in situations where the spending of charity money actually and directly saves lives, that action has the highest priority, and one may divert money from general charity matters or law study to preventing the loss of life. This is the clear lesson of the rabbinic understanding of the duty to redeem captives whose lives are endangered. The critical priority the Talmud and codes give to this obligation reflects the fact that this situation entails not only charity but also fulfillment of the obligation “not to stand idly by while one’s neighbor’s blood is shed.”⁴⁴ Where life is in danger, little else takes higher priority.

Still, this application of charity has some limitations, in that a community need not sell its assets to raise money to save lives.⁴⁵ However, the suggestion of a lone scholar⁴⁶ that the support of scholars even takes priority over saving lives is nearly universally rejected under the rationale that “nothing ought to stand in the way of saving lives.”⁴⁷ Why does a community not have to actually sell its own assets to save lives? The two great Jewish law commentators Rabbi Shabtai Hacohen (*Shach*)⁴⁸ and Rabbi David Halevi Segal (*Taz*)⁴⁹ both seem to in-

an-enduring-tradition-87993. Note that the undergirded data for these claims are derived from the general study of the Jewish community found in the well-regarded Pew Charitable Trust findings published in October 2013 as “A Portrait of Jewish Americans” found at “<https://www.pewresearch.org/wp-content/uploads/sites/7/2013/10/jewish-american-full-report-for-web.pdf>.”

⁴² See <https://www.timesofisrael.com/mega-donors-are-taking-over-jewish-philanthropy-study-says/>. For more general figures, see <https://nonprofitssource.com/online-giving-statistics/>.

⁴³ See Shulchan Aruch Yoreh Deah 252:1.

⁴⁴ Lev. 19:16; as well as several other commandments. See Hil. Matnot Aniyim 8:10; Shulchan Aruch, Yoreh Deah 252:2.

⁴⁵ Shulchan Aruch, Yoreh Deah 252:1.

⁴⁶ Rabbi Joshua Falk Cohen Deresha Commenting on Tur, Yoreh Deah 252.

⁴⁷ Taz, Yoreh Deah 252:2; Tzedakah u-Mishpat 3:27, note 83; Shevut Yaakov 2:84.

⁴⁸ Yoreh Deah 252:1.

time that giving up assets that one cannot otherwise replace and that are no longer charity funds but communal assets, is simply not covered by the rules of charity.⁵⁰ Once a poor person or a communal institution actually receives charitable money, it is no longer charitable funds and then cannot be diverted.⁵¹ The same is true when the donor has expressly limited his donation to a particular cause. In such a case, the beneficiaries of that cause take possession at the time of the pledge and cannot be deprived of their ownership except by dint of “consent of the community.”⁵²

HOW MUCH CHARITY SHOULD A PERSON GIVE?

Jewish law seems clear that the exact amount of charity that a person must give is not fixed and established. At the minimum, one must give at least one-third of a small biblical coin (a shekel) each year (less than ten dollars), and one who gives less than that amount has not fulfilled his formal technical duty.⁵³ In the close-to-ideal world—one in which many individuals have enormous amounts of wealth and the inclination to give such wealth away—Jewish law is also clear that a person may give away as large a sum of money as the poor need.⁵⁴ Shulchan Aruch goes on to state the general formulation for how much a person should actually give in the real world: “If one cannot afford to give to all the poor as much as they need, one can give up to 20 percent of one’s possessions, and that is the ideal; 10 percent is the average way to fulfill this mitzvah, and less than that is considered miserly.”⁵⁵

⁴⁹ Yoreh Deah 252:1.

⁵⁰ Why such conduct is not obligatory under the rule of *lo taamod al dam reiecha* is beyond the scope of this chapter.

⁵¹ Taz, Yoreh Deah 256:4; Shach, Yoreh Deah 252:2. But see Bach, Yoreh Deah 252.

⁵² Rama, Yoreh Deah 252:1.

⁵³ Shulchan Aruch, Yoreh Deah 249:2

⁵⁴ See the formulation in Shulchan Aruch, Yoreh Deah 249:1, which makes it clear that the 20 percent limitation does not apply in such a case. See also Rabbi Ezra Batzri, *Dinei Mamot*, vol. 4, 218 (chapter 3:1 of *tzedakah*). Rabbi Blau notes (*Tzedakah u-Mishpat* ch. 1, n.8) that there are some who disagree with this formulation and think that the rabbis capped charity at 20 percent. This approach is fraught with some difficulty, as he indicates. See Igrot Moshe, Yoreh Deah 1:143 (final paragraph).

⁵⁵ Shulchan Aruch, Yoreh Deah 249:1. On whether 10 percent is a Torah obligation, a rabbinic obligation, or merely a recorded proper practice, see Maharshag, Yoreh Deah 36; Maharit 1:127; Ahavat Chesed 19:4; and Minchat Yitzchak 5:34.

However, even this construct is tempered by the comments of the Rama,⁵⁶ who writes:

Providing for one's own livelihood takes priority over all others, and one is not obligated to give charity until one's own livelihood is secured. After that, one should give priority to the livelihood of one's parents if they are poor, and they take priority over the livelihood of one's children. After that, one's children, and they take priority over one's siblings, who take priority over other relatives. Relatives take priority over one's neighbors, who take priority over the residents of one's own city, who in turn take priority over residents of another city. The same priorities apply to the redemption of captives.

As one reads Isserless's words, one could well imagine that a reasonable person might never, in fact, give charity to anyone outside one's near family.

The great Rabbi Epstein (in *Aruch Hashulchan*)⁵⁷ notes the problem and asserts:

Thus, it seems clear to me that what Rabbi Saadia Gaon wrote, that one's own livelihood having priority is limited to an individual who earns only sparing bread and scant water. That is why he elicited proof from the Zarephathite widow, for in that case lives were indeed hanging in the balance as there was a famine throughout the land, as described in I Kings (17:8–24). In such a case, if one has any bread or water left, one's parents take priority, then one's children, etc. However, it is obvious that a person who earns a prosperous living like an important householder; who eats bread, meat, and other cooked items as befits him; and clothes and cloaks himself appropriately is obligated to disburse 10 or 20 percent of his income as charity. A greater portion of the charity should be given to one's relatives and the residents of one's own city, but a small portion must be given to nonrelatives and the poor of other cities, for otherwise the inhabitants of an impoverished city would die of starvation, God forbid. Rather, it is certainly as I have outlined. This formulation must be correct, otherwise there would be no limit on one saying that one's own livelihood takes priority, and everyone would claim that they need all of their income for their livelihood—for there is no limit to expenses, as we know. Rather, it must be as I have presented, that this rule applies only to one who has but a small amount of food to sustain his own life and the lives of his wife and young sons and daughters.

This is exactly the problem in the world of giving: almost no one ever really feels that he or she has enough income to give away, and everyone senses that there are still more things that he or she *really, really, really* needs. Further, there can creep in an equivocation and self-serving conclusion that the poor are hardly really

⁵⁶ Yoreh Deah 251:3.

⁵⁷ Yoreh Deah 251:5.

poor. Measuring when a person has “enough,” so that he ought to give away more is extremely difficult. As Rabbi Blau notes—and this is from a man who has spent his life clarifying many narrow details of Jewish law in his numerous volumes⁵⁸—“The measure of suitable livelihood is unclear to me.”⁵⁹

It is also true that there is little discussion in the modern Jewish tradition of how poor a person must be to receive charity. Since governments provide basic needs now in all Western societies, one could flip this discussion and argue that almost no one should receive charity due to poverty, as basic needs are all provided for. Curiously, this would imply that it is better to support the study of Jewish Law and its scholars than the poor, “since the poor are not really needy anymore.” Yet it is clear that there remain institutions that profess need and individuals whose needs are not provided for even under any of the current elaborate welfare systems.

CONCLUSION

First, the general structure of the entire Jewish community in the modern Western world is unique. Identification and support of Jewish causes is voluntary. No Jewish community has the power to tax, and no community has a functioning court that can compel the giving of charity. Because of this, if we wish to have communal institutions, they must be funded by voluntary contributions. Therefore, it is the normative practice within the community to reject the view of Maimonides that limits charity to poor people and instead to accept the view that all public needs are charities. Thus, everyone funds Jewish institutions with charity funds.

Second, the Jewish community can function this way, in fact, because the governments of nearly all Western nations (England, France, Germany, the United States, and Canada) are just and honest governments which provide for the basic needs of all of their citizens. These nations provide for the social and economic necessities for the poor on a consistent basis. This allows the Jewish community to allocate its funds less to the poor and more to institutions that support the study and observance of Jewish Law. This posture would be untenable if the poor were starving.

⁵⁸ On such complex topics as all of Choshen Mishpat, Ribit, Eruvin, etc.

⁵⁹ Tzedakah u-Mishpat, ch. 1, n. 15. For one example of how to compute one’s income and tzedakah obligations, see Rabbi Dovid Bendory, “Computing Maaser—How Much *Tzedakah* do I Owe?” (online at <http://rabbi.bendory.com/docs/maaser.php>). (It is far from obvious to me that the detailed calculations found in this article can be explained with reference to normative halacha, even as the general principles presented seem to be correct.)

Third, our society is a relatively opulent one, with a great deal of pressure placed on individuals to be materialistic. To put this another way, a thousand years ago, society sensed that “God loves the poor,”⁶⁰ and those Jewish and Christian communities ennobled poverty, allowing the poor to look down on the wealthy. Our Western society—and certainly our American and European Jewish society—has not accepted this message, and it does not think that we can raise committed Jews in a religious community with that message and at a standard of living significantly lower than that of our neighbors.

Fourth, since Jewish Law accepts that the needs of the community in a general sense are to be considered charity, and since we lack any firm communal hierarchy for determining and prioritizing communal need, there are no clear guidelines establishing which communal institutions ought to be funded once the public charities that feed and clothe the poor are funded. It is difficult say with any certainty whether investing in medical research or funding a rabbinical seminary should have a higher or lower priority. Each donor decides. Unquestionably, it is better that they donate to one cause or the other rather than spend the same money on themselves.

Fifth, the concentric circles of charity found in the classical codes (self, family, city members, Israel, strangers) is of no basic importance, as it is clear that they are limited to funding the desperately poor and are of no relevance to the question whether a person should give money to United Synagogue of the UK, Yeshiva University, the ACLU, or a political party, none of which directly feed the poor.

Sixth, charity has become such a source of competition for scarce resources exactly for the reasons noted in the above five paragraphs. Since there are no firm Jewish law guidelines, each person uses his own judgment; once the needs of the poor who are profoundly hungry or others whose lives are at stake are taken care of, there are few guidelines left in Jewish law that compel giving of a specific type. This discretion encourages donations and should ideally make for a more charitable community (I hope).⁶¹

⁶⁰ See Bava Batra 10a. (See also James 2:5; and Luke 6:20–21, from which James’s question actually derives.)

⁶¹ In the course of the review of this chapter, one of the reviewers asked, “There is an interesting point about competition in charity. How does that competition work in practice? Is it allowable for community institutions to ask for contributions?” As I reflected on it, I found this a fascinating question from a different sociological point. Within the Jewish community, it should come as no surprise that there is a fierce competition to receive charity—overt and aggressive solicitation of charity and very comfortable and robust asking for money. There is little or no gentle tithing as is found in some churches. Indeed, when I was a synagogue rabbi, one of the tasks I regularly had was to write letters of endorsement to charities, so as to inform congregants that this charity was worthwhile.