

# TOWARDS A MODERN IDEA OF CHARITY

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## **Introduction**

When studying the philosophy of property ownership in Jewish law (*halacha*), the issue of distributive justice arises. Even those who refrain from associating Judaism with socialist ideals explicitly use Jewish law's approach to the roots of ownership to determine the principles behind the relationship between society and the individual in Judaism (Falk 1980, 117, 119).<sup>1</sup> The more moderate scholars point to Jewish law's commitment to principles of social justice, which allow the individual liberties up to a certain point while obligating him to be socially responsible and to engage in give-and-take with others.

Such claims about the imperative of social justice are often based on the limitations placed by Jewish law on personal ownership, the land-connected commandments of aid to the poor, and the custom of Jewish communities to enforce charity-giving. The prohibition against working the land in the Land of Israel during the Sabbatical Year, and the obligation to return land to its original owners during the Jubilee Year, point to the fact that in Judaism the individual is not considered to be master over his possessions (Tamari 1998, 37-38).<sup>2</sup> A similar claim has been heard concerning distributive justice, based on the explanation of the rule of *kofin al middat Sodom* (literally: coercing over the trait of Sodom), according to which an owner's unwillingness to help another person is overridden by a court of law, if he himself will not lose anything by complying (Lichtenstein 1972, 362-382; Dagan 1999, 179).

Claims in favor of distributive justice are not generated from concern for legal sources. Many of the prophets' preachings were focused on charity. Perhaps Isaiah is the most explicit in regarding charity as the utmost value, even more than faith in God:

“What need have I of all your sacrifices?” says the Lord. “I am sated with burnt offerings of rams, and suet of fatlings, and blood of bulls; and I have no delight in lambs and he-goats.”... Wash yourselves clean; Put your evil doings away from My sight. Cease to do evil; Learn to do good. Devote yourselves to justice; Aid the wronged. Uphold the rights of the orphan; Defend the cause of the widow (Isaiah 1:11-17).

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To be sure, they ask Me daily, eager to learn My ways. Like a nation that does what is right, that has not abandoned the laws of its God, they ask Me for the right way, they are eager for the nearness of God: Why, when we fasted, did You not see? When we starved our bodies, did You pay no heed? Because on your fast day you see to your business and oppress all your laborers! Because you fast in strife and contention, and you strike with a wicked fist!... No, this is the fast I desire: To unlock fetters of wickedness, and untie the cords of the yoke, to let the oppressed go free; to break off every yoke. It is to share your bread with the hungry, and to take the wretched poor into your home; when you see the naked, to clothe him, and not to ignore your own kin (Isaiah 58:2-7).

The number of scriptures which are concerned with charity and found their ways into liturgy as well had always a strong effect on the priority of values. It is indeed no wonder that many give the value of charity an upper hand over a right for private property, and that is why this discussion has led to the conclusion that the Jewish concept of ownership, since it limits the right to private property when a social cause is involved, rejects the classical liberal approach that sees people as absolute masters of their possessions. Both the claim and the conclusion are expressed in the following quote from Rabbi Aharon Lichtenstein:

Coercion over the trait of Sodom completely contradicts the widespread idea that man is the supreme ruler over his possessions, that his property is his to do with it as he pleases; as long as he is not causing direct damage to another person, no one can hinder him. Jewish law has a different spirit to it... In Jewish Law there is almost none of the aversion to private property that the Church Fathers expressed... But Jewish Law never idolized this concept, and other moral necessities may occasion its limitation. Though Jewish Law is extremely removed from Proudhon's statement that "Property is theft," on the other hand, it refuses even to agree with the popular expression that "An Englishman's home is his castle."... We must differentiate between ownership for the sake of usage and ownership for the sake of sovereignty; we must agree with the first statement, and condemn the latter (1972, 380-381).

On the other hand, radical scholars more inclined to socialism claim that the injunctions to charity, the commandments relating to the Land, and the matter of

forcing a person to help his fellow if he himself is not inconvenienced by it—all evince Jewish law’s social agenda. According to these radicals, Jewish law is not satisfied with placing general limitations on the right to private ownership, but rather demands its implementation in a distributive policy applicable to the possessions in society, the goal being to decrease poverty or even do away with it altogether (Federbush 1952, 126-127). In this context, charity has been seen as one of the expressions of a social plan for balancing class gaps. It seems that all property belongs to God, and man is entrusted with it for his own use, and for sharing it with the needy. A claim repeated time and again is that the words *tzedaka* (charity) and *tzedek* (justice) are one and the same (Kister 1968, 168-169). It must be noted that this claim is not completely accurate, for the word *tzedaka* in the Bible is merely a different form of the word *tzedek*, and is not the same as the term *tzedaka* in the language of the Talmudic sages and in Modern Hebrew (Frisch 1924, 77).<sup>3</sup>

According to one of these opinions, the dynamics of the commandment to give charity bring about the transfer of the individual’s personal obligation to the society as a whole, and then the society is permitted to collect funds from its members beyond the sum they are obligated to give as individuals—and not only as a moral obligation but rather with the goal of establishing social justice (Tamari 1998, 52).<sup>4</sup> According to yet another opinion, charity is proof of Jewish law’s social policy, which is binding on the social organization and obligates it to engage in distributive policies according to equal basic needs determined by the society’s culture and resources (Walzer 1983, 3-6, 75-78, 92).

The attempts of radical social commentators to prove the value of Jewish law as a relevant social message would have been praiseworthy if only they had not taken such an extreme stance regarding distributive justice, which has led them to misrepresent Jewish law’s approach, namely, the overall picture of commandments and rulings that deal with the definition of ownership and the moral nature of charity. Their conclusions are based on a selection of sources which are presented as the social manifest of Jewish law, but they ignore other sources from which other conclusions arise.

As I have shown elsewhere (Lifshitz 2004, 34-66), Jewish law does not present in any way the limitations on the right to private property and the individual’s obligation to be considerate of others as two sides of the same coin. In other words, Jewish law does not put charity to the test of adversary relationship. Jewish law does sometimes limit the individual’s mastery over his

possessions, but it does not do so from a stance of distributive justice and does not place these limitations within its judicial system. The wealthy man's moral conscience does not translate into a judicial right of the needy person, and the needy person—and society in his name—may not demand anything from the wealthy man. Moreover, the effort to find distributive justice misrepresents the Talmudic approach to social welfare and the process of development of the concept of welfare as expressed in Jewish communities in the Middle Ages.

Where, then, do the limitations on property rights come from, and how can they be reconciled with the legal definition of ownership as sovereignty over property? Jewish law's complex attitude toward property rights is connected to the complex relationship between man and God. Limiting man's freedom in the face of the Divine reflects the unequal relationship between them. Curtailing man's mastery over his possessions is derived solely from man's religious obligation, and not from his status vis-à-vis other human beings. His rights over his property are limited by the religious obligation to leave the land fallow on the Sabbatical Year and to return land to its owner during the Jubilee. Similarly, acting in accordance to the trait of Sodom is considered a defiance of a religious value, since it is construed as a tendency to identify with the values of the city of Sodom, the moral antithesis of Jewish law.<sup>5</sup> So too, giving charity is a religious norm, one which channels the natural God-given tendency to be merciful into personal responsibility and generosity; this in no way lessens a person's mastery over his possessions.

All the limitations placed by Jewish religious law on property rights are of a moral nature—they provide for no legal standing or enjoin no monetary obligation, and there is nothing in them that changes the legal definition of property rights. Therefore, any interpretation that claims the existence of distributive justice in Jewish law as separate from the individual's religious identity, and defines individual obligations in legal terms and not in moral ones, must be merely a reduction of Jewish law's theological principles to an anachronistic political manifesto; and this reduction distorts the judicial principle as well.

Public responsibility regarding charity-giving arises from viewing the Jewish People as a religious body whose existence as a collective group has intrinsic meaning. The Jewish People has a covenant with God and is committed—as a people—to Torah values; it is also obligated to force the individuals within the collective to perform those commandments that apply to them as individuals.

Thus, the collective has obligations of its own. The obligations of each individual are translated into collective obligations as well, owing to the

collective's obligation to force individuals to observe the commandments. This is how Maimonides defined the obligation to perform the commandment of giving charity, seeing one's belonging to a religious collective as the root of this commandment: "All of Israel and those who join them are like brothers, for it says, 'you are children of the Lord, your God.' If a brother will not have mercy on his own brother, who will have mercy on him? And to whom do the poor of Israel look to? To the non-Jews who hate them and persecute them? Obviously, they look only to their brethren" (10:2; see also 10:1).

The fulfilling of a moral obligation expresses the Jewish spiritual ethos, and the mutual help enables the continued physical existence of the Jewish People. And so, the existence of the political entity is demanded by the religious entity and nourishes it.

### ***The Concept of Welfare in the Talmud***

The concept of welfare in the Talmud leans, to a great extent, on the agricultural-social commandments as they appear in the Bible. There are almost no commandments to give charity that are not connected to agricultural produce. That being said, the Torah does specifically command to give charity to the poor and forbids ignoring their distress: "If there shall be a destitute person among you, any of your brethren in any of your cities, in your land that the Lord, your God, gives you, you shall not harden your heart or close your hand against your destitute brother. Rather, you shall open your hand to him; you shall lend him his requirement, whatever is lacking to him" (Deuteronomy 15:7-8).

But besides this commandment and others that demand that one be considerate of the poor when it comes to legal actions and collecting loans, the Torah does not mention the commandment to donate money to the poor many times. On the other hand, the Torah does mention many agricultural-social commandments. It commands to leave a *pe'ah*—a corner—of the field for the poor, to leave them also *leket* (stray wheat stalks that fall from the hand of the harvester) and *shichechah* (stray bushels left behind in the field); a further commandment is to leave the poor the small bunches of grapes as well. The Torah also commands to set aside one tenth of the crops for the poor in the third and sixth years of the Sabbatical Year cycle.

It is possible that until the time of the Mishnah, the Jewish society being a basically agricultural one, these measures were sufficient for supporting the destitute. But the changes wrought by the Hellenistic period, specifically the

creation of an urban society, caused the poor to lose their sources of livelihood, and this brought the sages to fill in what was missing by expanding the commandment to give charity; it became not only a matter of providing food for the needy but also giving money and other means of subsistence.

The changing of the commandment to give charity from one that has a connection to rural life to one connected to urban living is apparently what added a public and monetary aspect to it, as opposed to the personal and agricultural aspect that this commandment had until then. This was the background to the appearance of the institution of charity collectors (*gabba'ei tzedaka*) and the right of the community to force individuals to give charity in the Mishnah and the Talmud. The term "*gabbai tzedakah*"—charity collector—appears already in the Mishnah<sup>6</sup> and the Tosefta<sup>7</sup> as a known entity, and there are even rules laid down regarding ethics and transparency. Talmudic law even mandates the establishment of a charity organization in every town: "Any town that does not have the following ten things, no Torah scholar is permitted to live in it: the court flogs and punishes, and charity is collected by two and distributed by three, and a synagogue, and a public bath, and a lavatory, a doctor, and craftsman, and scribe (and cook), and a teacher for the young children" (BT Sanhedrin 17b).<sup>8</sup>

This law recommends aboveboard distribution of charity and determines the number of people required for it. On the other hand, one can also note the authority given to these collectors, placing their role within the context of the public's obligation to care for the needy. The collectors are given a certain degree of authority to enforce their collecting, and the Talmud even calls them *ba'alei serarah*—bearers of authority, for they have the authority to take collateral from those who refuse to give to the poor "even on the Sabbath eve (=Friday)" (BT Bava Batra 8b). The role of the collector was to encourage the individuals to give charity, and then to collect it and to distribute it. This task was dealt with by a number of authority-bearing people, as stipulated by Jewish law when describing the establishment of a special court of justice that was placed in charge of the collection and distribution of charity: "The [charity] fund is collected only by two, for one may not invest [people] with the power to collect funds unless there are two ... and it is distributed only by three, because it is like monetary cases, for they give each one his needs for the Sabbath. Food for the soup kitchen is collected by three, for it is not a set thing, and is distributed by three" (Maimonides 9:5). Many Jewish laws in the Talmud guide the appointment and behavior of charity collectors: they must have a good name and lineage, and they are commanded to

conduct themselves particularly honestly, in a way that raises no suspicion of their having embezzled any of the money intended for charity (Mishnah, Kiddushin 4:5; BT Bava Batra 8a-9b). Two charitable institutions were established in the cities: the charity fund and the soup kitchen. Money was donated to the fund, and food to the soup kitchen. In this way, basic subsistence was guaranteed to every needy person.

The commandment to give charity is described as an obligation that is binding on any person, regardless of his social status and economic situation. Even a poor person who himself is supported by the charity fund is obligated to give to others. The pain and distress of the needy should touch everyone's heart and cause them to give of their money to him. The establishment's work for the poor people's welfare does not exempt the individual from his moral obligation to care for the needy.

There is one commandment, though, that seems to command distribution: the commandment of the Jubilee year. According to this commandment, every fiftieth year, all lands that were sold before should be redistributed to their original owner so every citizen should have land. But my claim is that this commandment as well should be understood within the rural context. That is why it was never used to extract from it any law but always stayed as a secluded commandment. It wasn't even practiced during the second temple period. The first reason for that is that the Jubilee year is not a social commandment but a religious one. Its purpose is not to enhance justice but sanctity. The second reason is that the Jubilee year is a typical rural commandment. In a rural society, selling land was usually connected to slavery. To own land was not only a matter of rights but a matter of lordship—of being a master over whoever works in the land. The commandment of the Jubilee year came to correct it. If land can't be completely sold, the same should be true of slaves. That is why we may deduce from such a commandment that it is slavery that should be eliminated, not poverty.

### ***The Custom of a Monetary Tithe***

In the Middle Ages, the "urban" welfare institutions were an inseparable part of Jewish communities. As Maimonides testifies, "We have never seen nor heard of a community of Jews that does not have a charity fund" (*Hilchot Matnon Aniyim* 9:3). One of the notable examples is the acceptance of the custom to give one-tenth of all profits to the poor, modeled upon the mitzvah of *ma'aser ani* (the obligation to give the poor one-tenth of the agricultural produce in the third and sixth years of every Sabbatical cycle). This obligation set a minimal standard for charity, and

allowed anyone who wished to do more, to give up to one-fifth of his profits. This institutional form of redistribution did not, however, uproot the role of private charity. The community collected a welfare tax from its members, and at the same time recognized the right of every individual to give charity to his family members and to other needy people according to his own wishes. Therefore, the community did not collect the full sum that it was entitled to from every individual, so that he would be able to fulfill his obligation by giving to his relatives as well.

The connection between the custom of a tithe taken from money and the land-based commandments arises from the custom of devoting to charity one-tenth of any profits, which was apparently common in the Middle Ages. An example is a Tosafot that quotes a *midrash* extrapolating from the verse that contains the commandment to tithe the crops the obligation to set aside one-tenth even from non-agricultural profits: “It says in the *midrash* in the Sifrei: ‘You shall surely tithe the entire crop of your planting, the produce of the field, year by year.’—I have only the crop of your planting that is obligated in a tithe. How do we know that interest and trade and all other types of profits [are also included in this obligation]? It says ‘the entire [crop]’; it would have been enough to say ‘the crop’. Why does it say ‘the entire’? To include interest and trade and anything else that profits a person” (Ta’anit 9a, “*Aser Te’aser*”).

The Tosafot attribute this *midrash* to the Sifrei. In the Sifrei that is extant today, this *midrash* does not appear. But in the *Peskita Derav Kahana* similar things are said: “‘You shall surely tithe’ (Deuteronomy 14:22), so that you will not be caused loss. Tithe so that you will get rich. The Holy One, Blessed be He, said: Tithe what is mine, and I will tithe what is yours. ‘The entire’—R. Abba bar Kahana said: this hints to the traders and the seafarers, that they should separate a tenth for those who labor in Torah” (1952, 172).

The custom of a monetary tithe was apparently common in Western Europe even before the thirteenth century—the *Sefer Chasidim* mentions it (1957, 144), as does R. Isaac of Vienna. R. Isaac offers as a source for this the *midrash* that promises blessing to he who is careful to tithe his produce:

In the first chapter of [tractate] Ta’anit [it says]: R. Yochanan says: aser te’aser? Tithe so that you should be rich (a play on words—te’aser—titasher). R. Yochanan saw the young son of R. Shimon ben Lakish. He said to him: “Tell me what verse you learned in school.” He said to him: “You shall surely tithe.” He said to him “Tithe so that you will be rich.” He said to him: “Is it permitted to test the Holy One,

Blessed be He? Doesn't it say 'You should not test the L-rd, your God'?' He said to him: "That is what R. Oshaya said: Except for this, for it says, 'Test me with this, said the L-rd of Hosts, [and see if] I will not open for you the Heavens and rain down on you blessing ad bli dai'. What is ad bli dai? Rami bar Chama said that Rav said 'Until your lips will be tired (yiblu) from saying "enough!" (dai).' We learn that a person is commanded to tithe his money, and the more he gives [as part of the] tithes, the richer he gets. And whoever gives charity more than the tithes, the better, as long as he does not spend more than a fifth... (1852, Pt. 1, 13).

Like R. Isaac of Vienna, his student the Maharam of Rothenburg related to the monetary tithe as a widespread custom:

It would seem that after the tithe-monies were set aside for the poor, they should not be used for fulfilling a different commandment, for it looks like he is stealing from the poor, for even though it (the money tithe) is not from the Torah, but rather a custom, we have a standing principle that things that are permitted, and others consider them forbidden, you are not permitted to allow them in their presence, for it says "He should not profane his words". And that is a Rabbinical law, as it says in [Nedarim] 15a. And it is not like the case brought at the beginning of the first chapter of Arachin (6b): a Jew who committed himself to donate a candle and a lamp to a synagogue, it is permitted to use it for fulfilling a different commandment; for that case is different, for in both cases it is a deed done for the High (for God), but the poor have already merited the tithe money by custom, for the entire exile has this custom, and one may not change [the usage] from [charity for] the poor to a different commandment for which the poor have no need, as it says in the second chapter of Shekalim (mishnah 5)—the remnants of the poor go to the poor (74).<sup>9</sup>

The Maharam relates to the custom of giving the tithe of the profits to charity as a custom and not as a commandment whose source is in the Torah or in the Rabbinical tradition. The custom creates an inferred stipulation, for the assumption is that anyone who sets aside money for a tithe intended it for charity alone. This assumption obligates the collectors to relate to this money as money intended only for charity.

The tension between this personal commandment and the public one can be explained by two Talmudic principles. According to one, charity is a personal

commandment—one's obligation to care for the needs of one's relatives first. This principle is learned from the commandment regarding lending money, where it says, "Your poor and your town's poor—your poor come first. The poor of your town and the poor of another town—the poor of your town come first" (BT Bava Metzia, 72a).<sup>10</sup> This obligation does not negate, of course, the individual obligation toward the poor of one's own town, but by placing the position of a person's close relatives above that of other needy people it weakens the ability to raise enough money for the town's poor who have no relatives.

And indeed, against this principle of "your poor come first" we have R. Abba bar Zevda's saying in the Talmud: "Whoever gives his gifts to one priest, brings famine to the world" (BT Eiruvim 63a). This saying expresses the sages' fear of denying the distant poor person his part, and recommends balancing the principle of "your poor come first" by giving part of the charity to more distant poor people—those of the town at large. But in the Talmud itself, I did not find an opinion that provides a balance between these two principles.

The existence of two obligations toward the poor—the individual's and the community's—raises a problem, for the individual strives to fulfill his obligation to others out of a feeling of personal involvement and prefers his relatives, while the collectors, who bear the public responsibility toward all of the town's needy, prefer an objective, fair distribution.

This problem is not limited to the question of charity. The relationship between the individual's freedom and the desire for centralized action is one of those problems that arise from the dynamic character of the public organism—a changing and developing entity—and from the awareness of its individual components. In spite of the value attributed to the community, Jewish law accepts the freedom of the individual as a value that must be preserved, and guides us to restrain ourselves when coming to the activation of community values. It grants an individual freedom of action whenever this will not bring about a collapse in the public arena.

A balance between the poor who is a close relative and the other needy people does appear in the works of the codifiers of the Middle Ages. Maimonides, for instance, related to this issue when dealing with the question of the tithes, and ruled that when giving *ma'aser ani*—the tithe intended for the poor—one must divide it into two equal parts. Half should go to one's poor relatives, and the other half "to any poor person going by" (6:11).<sup>11</sup>

The Rabbis' awareness of the tension between individual and community

generally led to matters being settled within the community. The laws of charity, like many of the laws relating to the community, were worked out through an inter-communal discussion between the individuals and the community at large, determined by the customs, the needs of the public, and the individuals' consent, as the Re'em (Constantinople, 1450-1526) wrote: "Since vows and pledges are dependent only on the will of the entire community or its majority, then vows and pledges have also become one of those things that belong to the community, such as city laws, enactments and decrees. And therefore, just like in matters of city laws and enactments we go by the majority opinion in the community, so it is right that in matters of vows and pledges we should follow the majority opinion in the community" (Mizrachi 1938, 53).<sup>12</sup>

The responsa of the Rabbis in the Middle Ages who ruled on questions in this matter reflect the various patterns of solutions used by the communities. Some ruled from a position that supported the idea of protecting the public, and some ruled from a position of concern for the liberty of the individuals. Those that supported the public's interests did so because of a pessimistic approach, fearing that too much freedom of the individual will endanger the public. Those that advocated protecting the individuals' right to donate as they saw fit were more optimistic. It seems that the pessimistic approach expressed a relatively extreme stance, whereas the optimistic approach became the mainstream in Jewish law. But both maintained the legal framework which protects the basic rights of both the individual and the community.

The discussion among the Rabbis in the Middle Ages was based on the interpretation of a law brought in the Tosefta, and, to a certain degree, on its various versions. The Tosefta deals with the way of distributing money for charity, and the collectors' authority in this distribution. The Tosefta discusses a case in which someone pledged money for charity but did not specify which charity. The Tosefta's assumption is that the individual prefers giving to the poor of his own town, over giving to the poor of another town, and similarly, the collectors prefer to give to the poor of their own town. Therefore, in the case of an unspecific pledge, the assumption is that the donator wished to donate to the local poor. At the end of the section, the Tosefta declares that in the case where the money has already been handed over to the collectors, the authority lies with the collectors, and not with the donator:

An individual, who pledged money to charity in his town, gives it to the poor of his town. In another town—he gives it to the poor of the

other town. The collectors that pledged charity in their town give it to the poor of that town. In a different town, they give it to the poor of the other town. Someone who pledged money to charity, and the collectors have not taken it yet, is permitted to change it (its usage) to another cause. Once the collectors have it, he is not permitted to change it to another cause, unless they agree (Megilla, 2:15).<sup>13</sup>

There is disagreement among the Rabbis regarding the ruling in the Tosefta that the individual has the authority to determine where the money will go as long as he still has it in his own hands—a disagreement arising from different versions of the text. It turns out that there is another version of the Tosefta, according to which the last section grants full authority to the collectors, from the minute the individual has made his pledge verbally: “Someone who pledged money to charity, and the collectors have not taken it yet, is not permitted to change [its use] to another cause, unless they agree” (Megillah 2:15).<sup>14</sup>

Anyone who has made a verbal pledge to give of his money to the poor, has thereby relinquished his right to determine the cause toward which it will go, and the authority is placed in the hands of the collectors.

This difference between two extant versions was apparently the basis of the disagreement between the authorities of the Middle Ages. Among the Western European authorities were the Ritzva, R. Isaac son of R. Abraham of Dampier (d.1210) (Auerbach 1976, 270 note 47)<sup>15</sup> and R. Isaac of Vienna (1180-1250). The Ritzva thought that the authority is in the hands of the collectors. As a general rule, he tended to side with the public against the individual and thought that usually it was permitted to force a person to give charity.<sup>16</sup> In a *responsum* to the heads of a community who demanded that they be authorized to distribute all donations for charity, he accepted their stance. He based his decision on a passage in the Talmud that grants the leadership of a central community the authority to collect from adjacent communities (BT Megillah 27a-b). He thought that this outstanding authority given to collectors over people not from their community indicates that the collectors have sole authority in the community itself, and therefore any donation to charity, of any individual in the town, should be given over to the collectors (R. Isaac son of R. Moshe of Vienna 1852, 23).<sup>17</sup>

The obligation to give charity monies to the collectors of the community depends, according to the Ritzva, on the assumption that they will act in accordance with Jewish law, and will give some of the money to the donator’s relatives as well, according to their judgment. The right of the donator to set aside

money for his relatives must be preserved: “But an individual who donated charity on his own initiative, may give it to anyone he wants to,” but this is only as an addition to the sum that he has given the collectors. The Ritzva adds that the limitation placed on the freedom of the individual to decide where his donations are going to go arises from a municipal decision, in which the individual participated and which he agreed to: “But only if he decided upon charity with the townspeople.”<sup>18</sup> The Ritzva’s opinion that power must be given to the collectors continues Rashi’s approach, according to which the collectors may use charity donations to buy even mats for the synagogue (see BT Bava Batra, 8b and Rashi *ibid.*).

Other halachic authorities held that as long as the money pledged for charity has not reached the hands of the town leaders, the decision regarding the destination of the monies remains in the hands of the donator, and he may do with his money as he wishes. R. Isaac of Vienna, for instance, held that in general the community institutions do not have the authority to take over all the fundraising for charity in the community, and giving money to charity should remain in the hands of the individual. According to him, the ruling to give the poor-tithe primarily to relatives should be teaching us the law about the commandment of giving charity in general (1852, Part I, 22).<sup>19</sup> R. Isaac of Vienna is of the opinion that the relative receives the charity by default, and therefore in any case of a donation to charity where the receiving cause was not stipulated, we can assume that the giver intended to give to his relatives and not to the town poor. Even if the giver stated explicitly that he wishes the donation to be given to the town poor, the collectors must distribute the monies according to the accepted compromises—half-and-half, or one-third vs. two-thirds.

When settling the disagreements, the responsa range from recognizing the greater power of the public to recognizing the individuals’ demands, but it seems that as a matter of course R. Isaac’s ruling was the one that was accepted as law in later times (Shulchan Aruch and the Rema, Yoreh Deah, 251:5).<sup>20</sup> In another place, his opinion is offered in similar words:

And from this I learn that a person who made a vow to give charity may give it to his poor relatives, up to half of all that he vowed to give, and according the other opinion even two parts he may give to his relatives from the tithe (even two parts...). And this is a *a-fortiori* assumption: If even the poor-tithe that the Torah said to give to poor people he can give it to his relatives, up to half or two parts, all the more so charity, that he gives on his own initiative; this is true if he set aside money for charity and said it was for the general poor but if

he pledged charity without specifying at the time of the pledge whom he wishes to distribute it to, he may give it to all to his poor relatives; and more, since he is wealthy, and the responsibility for the livelihood of his poor relatives is placed on him and not on the local collectors, as it says in chapter R. Eliezer in Nedarim. So the charity is his relatives', and therefore they take it. So it seems to me, Isaac the son of Moshe (R. Mordecai son of R. Hillel Hacoheh, Bava Batra, 659).

This discussion of the compromise—half or one- and two-thirds, is also discussed in the Mishnah and the Tosefta, and later on in the Jerusalem Talmud: "This measure is stipulated for the Priests, Levites and Israelites alike. Should he desire to save aught, he can only retain half and give the other half away. If he has only a very small quantity, then he must place it before them and then divide it among themselves" (Mishnah, Peah, 8:6).

According to this Mishnah, any person—whether a Priest, a Levite, or an Israelite—is permitted to give half of the Maaser to a needy relative and the other half to a stranger. The Tosefta quotes this possibility as well but adds another opinion—to give to the relative two-thirds (Peah 4:2; see JT Peah 8:6).

The various approaches of the authorities all recognized the social pact as a factor that lies at the base of the public decision, just like they recognized the obligation of the individual to be personally involved. The only limitations of the public decision are the limitations placed on it by Jewish law, and these determine that the total sum given to charity may not exceed one-tenth of a person's possessions and profits (or one-fifth of them, for those who wish to give more than is necessary). It is from this sum only that every person is obligated to help his relatives. The public decision will have to apply, therefore to a compromise within the framework of that 10 percent, so that the individual will be able to fulfill his obligation to his relatives and the public will fulfill its obligations to the town poor. The form of compromise achieved in each society gives its public welfare institutions their particular character. But in any community, whatever compromise was made should be perceived as a tax-deductible system. Accepting the wishes of the individual to devote some of the money he was asked to give to charity to his relative was perceived as meaning a deduction from the whole sum. Can we deduce from that a Halachik acceptance of the modern idea of tax deductibility? That question should only be answered in the context of an account of the transition which was made in the creation of the modern state, which I shall discuss in the next section.

### *Charity in a Modern State*

As we saw so far, the social obligations in the Jewish tradition went through a transition, due to changes in the market, from completely privatized charity in antiquity to a collective or public charity in the Middle Ages. Should we assume now, when the political sphere developed the modern state, that a change should be formed towards a welfare state? Should we accept policies of the sort we find in socialist countries? Should we accept social goals such as the elimination of poverty or more equal distribution? Should we accept the idea of distributive justice? In a nutshell—should we replace charity with justice? My claim in seeking answers to these questions is not that the state should abdicate responsibility and refuse to help the needy but rather that we must consider the nature of the responsibility the state assumes. A state does represent a collective responsibility of its members—but this responsibility is not different in its essence from the responsibility that falls upon the individual. It is a responsibility which is bottom-up and not top-down. The many never have a responsibility that the individuals don't have. They just take it upon themselves collectively.

In order to make any deduction from Jewish sources of antiquity to the Middle Ages to modernity, we must note that political thought underwent a massive transformation during the Enlightenment, and hence economic thought as well, abandoning its descriptive posture for a prescriptive one. If Aristotle, Augustine, and Aquinas focused upon describing the workings of the economy, Bernard Mandeville and Adam Smith directed attention to prescribing how the economy ought to run. This change in approach could arise only once the market had come to be perceived as a discrete entity. Prior to the modern state's historical emergence, the market was not conceived as an autonomous system susceptible of manipulation. Only when the modern state arose in the 17th and 18th centuries did particular Enlightenment ideas about the nature of liberty and equality combine with other concepts to give rise to our present notions of the polity and of the market economy. It was the idea of the state as a *political project*, as a creation of the many rather than simply something that is given, which enabled man to contemplate parallel ways of developing the market. The market came to be understood as a human project that should be directed and shaped by man. The idea that an entity as spontaneous as a market could be developed, improved, or regulated by man did not exist previously. Thus it is not surprising that neither the Talmudic Sages nor the Rabbinic authorities proposed these ideas before they rose to prominence in early modernity. To argue otherwise would be anachronistic.

However, the changes that the polity and the market have undergone are not moral but conceptual. They don't demand a new constitution of values, such as a quest to alleviate poverty, but can lead us instead to new applications of the old values, such as our ongoing individual responsibility to care for the poor. What should be deduced from the development of the modern state is a better and more sophisticated idea of how to provide for the welfare of the poor, not a moral change challenging us to eliminate poverty or equalize incomes. For some, the modern state came to replace the kings of the past; that is why they expect the state to have a total welfare responsibility. They neglect the fact that this responsibility should always be estimated to be the sort of responsibility that falls upon the individual, as was demanded in the past. This responsibility can be discharged through collective means, whether governmental or through charitable organizations, but there is no foundation in Jewish law to rationalize the expansive demands of social justice. The same principles of the Torah which don't include any responsibility to eliminate poverty are still standing.

Why does politics in modern times indulge a pretension to eliminate poverty? Where did ideas of economic equality and social justice come from? The source for such attempts is secularity. Modern man not only "killed" God but also wants to be his heir. Many responsibilities that used to be attributed to God came to be seen as man's responsibility, and the alleviation of poverty is one of them. I contend that such an undertaking is not only super-pretentious but also very unhealthy for individuals and for our political communities. Man should try to help his fellow man but should not expect the state to resolve all miseries. Every person is different, and as long as societies exist, all people will never be economically equal, and poverty will not be extinguished. Stewardship, compassion, charity, generosity—those are the values that fall upon man. Let's leave complete responsibility for justice to God.

#### NOTES

- <sup>1</sup> Falk 1980, 117, 119; Dagan 1999, 178-190; Federbush 1952, 23-25, 126-128, 138-140; Rabbi Lichtenstein 1972, 380-381; Tamari 1998, 36-38, 52-56, 210-211, 240, 242-243, 248-249, 277; Frisch 1924, 77, 80; Walzer 1983, 3-6, 75-78, 92.
- <sup>2</sup> Tamari 1998, 37-38; Ben Shalom 1998, 52-53.
- <sup>3</sup> Frisch was the first to point out the etymological connection between *tzedaka* (charity) and *tzadikut* (righteousness); according to him, it arises from the changing meanings between Biblical and Talmudic language. In the Bible,

*tzedaka* means *tzadikut*, in other words, the characteristic of a righteous person, whereas in the language of the Talmudic sages, it means giving money to the needy. See also Meir Tamari: “The Divine origin of wealth is the central principle of Jewish economic philosophy. All wealth belongs to God, who has given it temporarily to man, on the basis of stewardship, for his physical wellbeing” (1998, 36); and: “The ‘haves’ in Judaism have an obligation to share their property with the ‘have nots,’ since it was given to them by God partly for that purpose” (52).

- <sup>4</sup> Tamari 1998, 52: “Charity is not simply an act of kindness but rather the fulfillment of a legal obligation”; p. 240: “The community has a responsibility for the welfare of its members and a corresponding right to finance those needs through taxation over and above the individual’s duty to contribute to charity.” See also p. 277. Public responsibility does not allow the public to collect more than the amount that an individual is obligated for, since this is not a legal obligation. The community is allowed to oversee only the distribution (see more on this below). See also Dagan 1999, 179: “The giving of charity in Jewish tradition is not a matter of mercy, kindness, generosity or personal conscience, but rather a matter of justice (thus explaining the linguistic affinity between *tzedakah* and *tzedek*). Giving charity is a fulfillment of a legal obligation: the realization of the community’s rights and the rights of the unfortunates in the community, by way of the possessions of those who have.” Dagan’s main claim is based on a Talmudic discussion regarding a person who benefits from another’s resources, while not depleting them in any way; in his opinion, this principle is a result of the ruling that a person is forced to give if it does not harm him (“coercion over the trait of Sodom”). The problem with this claim is that according to most medieval scholars—and their opinion was accepted as the common ruling—there is no connection between benefit without any obligation attached and the coercion over the trait of Sodom. Therefore, his assumption that it is justifiable to force a rich person to give of his possessions to the poor person is mistaken. According to Dagan, only some loss that the poor person causes the rich one can absolve the rich man from the legal obligation of benefitting the poor. But according to Jewish Law, the virtual interactions that take place between the receiver and the giver who does not lose anything in the process are contractual, and based on the benefit. The minute the benefit causes loss, the virtual

contract translates into a legal claim against the one who has benefitted. Only a benefit that does not cause loss does not create a contractual obligation and does not entail any claim for payment.

- <sup>5</sup> Mishnah, Avot, 5:1: “There are four character types among people. He who says what is mine is mine and what is yours is yours is an average character; some say it is the character of Sodom (*middat Sodom*).”
- <sup>6</sup> Mishnah Demai 3:1; Mishnah Kiddushin 4:5; Mishnah Bava Kamma 10:1.
- <sup>7</sup> Tosefta Peah 4:15; Tosefta Demai 3:16-17; Tosefta Bava Kamma 11:6; Tosefta Bava Metzia 3:9.
- <sup>8</sup> The community records of Jewish communities in Europe indicate the wide prevalence of the charity collectors in Jewish communities. See, for example, *Pinkas Kahal Tiktin 5301-5566*, 1997, section 242, p. 152.
- <sup>9</sup> Responsa of the Maharam of Rothenburg (1608), 74: “The money of the tithe, it seems that if they were intended to be given to the poor, they should not be used for [fulfilling] a different commandment.” Also, see Rema, Shulchan Aruch Yoreh Deah 349:1, and the Shach there, 3.
- <sup>10</sup> This rule was stated originally in reference to lending money to a poor person.
- <sup>11</sup> Maimonides, *Mishneh Torah, Hilchot Matnot Aniyim* 6:11. R. Isaac son of R. Moshe of Vienna, *Or Zarua*, Part I, Laws of Charity, 22; see also Mishnah Peah 8:6. On the other hand, see Tosefta (Lieberman Edition), Peah 4:2: “Abba Yoseh son of Dustai said in the name of R. Liezer: If he wants, he places a third before them, and leaves two parts to his relatives.” This is the ruling that was later accepted. See, for instance, Shulchan Aruch Yoreh Deah 251:5: “The man who makes a living like an important person, who eats well—bread and meat and cooked foods—and is dressed and covered properly, certainly is obligated to give charity—one tenth or one fifth of his livelihood [for if he does not have a sufficient livelihood he should not be obligated even this sum] and a great part of the charity he should give to his relatives and the town poor, and a small amount he is obligated to give to far away people and to the poor of another town, for otherwise [in] a town of poor people they will starve to death, God forbid....”
- <sup>12</sup> See Shach, Shulchan Aruch Yoreh Deah 251:9.
- <sup>13</sup> Tosefta Megilla (Lieberman) 2:15. And in a similar version of that, in the London Manuscript: “An individual who pledged money for charity in his town, gives it to the people of his town. Elders who pledged in their city give it to the poor of that city. One who pledges money for charity, as long

as the elders have not taken it, they are allowed to change [its use] to something else. Once the elders have taken it, he may not change [its use] to something else, unless they agree.” Also in the JT, Megillah, 3:2, and Nachmanides in his *chiddushim*, Bava Batra, 8b.

<sup>14</sup> Tosefta (Lieberman), Megillah 2:15, according to the Erfurt manuscript. This same version appears in the Responsa of the Rashba, Jerusalem, 1997, Part I, 604.

<sup>15</sup> The Ritzva was French, but for the purpose of this discussion one should consider northern France and Germany as one unit. See, for instance, Chaim Soloveitchik 2003, 17-18.

<sup>16</sup> *Sefer Or Zarua*, Part I, Laws of Charity, 4. Tosafot, Bava Batra 8b, D”H Akfe.

<sup>17</sup> See also Mordechai, Bava Batra, 502, and the Beit Yosef on Tur Yoreh Deah, 251.

<sup>18</sup> The Maharam of Rothenberg presented a similar claim in his Responsa, Part IV (Prague), 918: “About Reuven who is separating himself from the community by not donating to the charity fund and not to pay taxes with them, if the townspeople had this custom from long ago [not] to give together but each one gives on his own, they cannot coerce him and change their custom if he does not agree, but if they had the custom of giving together, he cannot separate himself from them.”

<sup>19</sup> See also the Mordechai, Bava Batra, 500. In saying “It seems to me” the Or Zarua means to point to the fact that he does not agree with the Ritzva. In the Mordechai, on the other hand, he does not make a point that his opinion is different from the quote. He quotes Ritzva as though he expresses his own opinion as well.

<sup>20</sup> See also the Beit Yosef, Tur Yoreh Deah 251:5; R. Eliezer of Metz, the Shita Mekubetzet Nedarim 65b; the Kol Bo 82; and the Tashbetz Hakatan 405, in the name of the Maharam of Rothenburg. The Ritzva’s responsum was quoted with the addition of the words “he who separates money for charity,” and that is the way it is mentioned in the context of trying to determine the intentions of someone who pledged money for charity but did not specify his intentions. See the Mordechai: “He who pledges money for charity and has a relative in town is not permitted to give it only to his relative, but rather should give it to the town charity collectors and they will distribute it properly to each and every one.” Also see the quote in the Beit Yosef mentioned above.

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