Ethics in Philanthropy: Should Synagogues and Mosdot Chinuch Accept Tainted Funds?

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The purpose of this paper is to evaluate, through the prism of halakhah, whether it is permissible for a synagogue or educational institution to accept funds that may have been secured by the donor in improper ways.\(^1\) How does halakhah deal with the ethical challenge of accepting gifts that emanate from individuals involved in illegal or dubious practices? Is tainted money inappropriate to accept, or can a donation cleanse such funds? Do the motivations of the donor matter? Is there a difference if the gift is accepted with the source being anonymous, or is that irrelevant? When evaluating the acceptance of such a gift, does the holy work of the charitable institution outweigh
the intuitive inclination to return the donation? What are we to think of someone who earns money from tainted sources and then donates it to *tzedakah*? Does the “good” of the mitzvah outweigh the “bad” of the tainted source?

Nancy Wiener and Edward Elkin, in “Should a Synagogue Accept Tainted Gifts?” state the following:

Fundraising and charitable organizations today reluctantly admit that some donors may have less than ideal reputations. Nonetheless, *we were unable to find a single charitable or non profit organization* that had specific written guidelines regarding the donor. Fundraisers received no training, nor specific instructions regarding the restrictions or standards that they should apply to potential donors. . . . The larger non profit organizations that we contacted echoed these thoughts. (p. 321)

Let us evaluate sources in the Talmud and Rabbinic literature that may shed light on this issue.

**HALAKHIC CONCERNS WITH ACCEPTING SUCH FUNDS**

**The Prohibition of *Etnan Zonah***

The Talmud states that objects received due to inappropriate activity are prohibited to be used in service to God in the *Beit haMikdash*. “And what is a harlot’s wage? If one says to a harlot: ‘Take this lamb for your wage,’ even if there are one hundred lambs, all of them are forbidden for the altar” (*Temurah* 29a).

This prohibition is concretized by the Rambam:

What is meant by a present given to a harlot [should not be employed in the service of the Temple]? When one tells a harlot, “This entity is given to you as your wages.” This applies to a gentile harlot, a maidservant, a Jewish woman who is forbidden to the man as an *ervah* [incestuous and adulterous sexual relations for which one is liable for *karet*] or by a negative commandment. If, however, a
woman is unmarried, the present given to her may be used [as a sacrifice] even if the man is a priest. Similarly, if a person’s wife is a niddah, a present given to her may be used [as a sacrifice] even though she is an ervah. (*Mishneh Torah, Issure Mizbeakh* 4:8)

Based on comments in the Talmud (ibid.) the Rambam further states that the prohibition is limited to the specific object used to pay the prostitute, and if that object has been traded or changed in any way the prohibition is removed.

Only the actual physical substance of [the article given] is forbidden as “the present [of a harlot]” . . . Therefore, [these prohibitions] apply only to articles that are [in essence] fit to be sacrificed on the altar, e.g., a kosher animal, turtle doves, small doves, wine, oil, and fine flour. If he gave her money and she bought a sacrifice with it, it is acceptable. If he gave her grain and she has it made into fine flour; [he gave her] olives and she had oil made from them; [he gave her] grapes, and she had wine made from them, they are acceptable, because their form has changed. (*Mishneh Torah, Issure Mizbeakh* 4:14–15)

Since the synagogue receives its holiness from the Temple and is considered a mikdash me’at, R. Moshe Isserles makes the following comment:

It is forbidden to use the relations fee of a prostitute . . . for a mitzvah matter [any article in the synagogue], such as the building of a synagogue or the writing of a Torah Scroll. It is only forbidden to use the relations fee itself for a mitzvah matter, but if the prostitute was given money as her relations fee, it is permitted to purchase the requirements for a mitzvah matter with that money.” (*Shulchan Arukh, Rema, Orach Chayyim* 153:21)
It appears from these sources that the specific object received from inappropriate activity cannot be used in our holy institutions. However, should that object or money be used to purchase other objects needed in the institution, it might be permissible.

*Mitzvah ha’baah min ha’Aveirah*

The Mishna in *Sukkah* 3:1 states the following, “A stolen *lulav* is invalid.” Rabbi Obadiah ben Abraham (Bertinoro) explains the reason it is forbidden to use the stolen *lulav*. He states that this is due not only to the specific verse regarding the four species, that they must be your own (Leviticus 23:40), but because of the ban of performing a good deed through a sinful act, *Mitzvah ha’baah min ha’Aveirah*. This highlights the prohibition of using money or any physical object that has been acquired wrongfully in service to God. Thus, the *lulav* remains forbidden even after the owner of the stolen *lulav* has ye’ush (despair), giving up hope of finding the *lulav*. While this allows the title on the *lulav* to be acquired by the robber, removing the concern of the *lulav* not being “yours”, it does not obviate the issue of the *lulav* being wrongfully acquired, forbidding a mitzvah to be fulfilled with this tainted object.

**Pleasure from a Stolen Object, and Tainted Funds**

Maimonides states the following:

It is forbidden to buy from a robber property obtained by robbery, and it is also forbidden to assist him in making alterations to enable him to acquire title to it. For if one does this or anything similar to it, he encourages transgressors and himself transgresses the commandment “Thou shalt not put a stumbling block in front of the blind” (Leviticus 19:14). It is forbidden to derive any benefit from property obtained by robbery even after hope of recovery has been abandoned . . . (*Mishneh Torah, Gezelah v’Avedah* 5:1–2)

This idea is further developed in the *Sefer ha-Chinnukh*:
Mitzvah 429: That we should not attach anything from an idolatrously worshipped object to our possessions or [bring it] into our domain in order to benefit from it; about this it is stated “And you shall not bring an abomination into your house” (Deuteronomy 7:26). . . Included also in this prohibition is the rule that a man should not attach to the possessions which God has graciously given him in righteousness, other possessions acquired by robbery, forced purchase, interest charges, or by any ugly, repugnant business—for all this is included under things that serve in idolatry, which the evil inclination of a man’s heart covets, and he thus brings them into his house. (pp. 307–309)

By equating idolatrous practices to acts of thievery and inappropriate securing of funds, additional rabbinic literature become relevant to our discussion.

The Rambam writes:

A Jew who is worshipping false deities . . . we do not accept from any sacrifices from him at all. Even a burnt offering which is accepted from a gentile, is not accepted from this apostate. (Ma’aseh ha-Karbanot 3:4)

This is also adopted by the Rema, R. Moshe Isserles:

A Jew worships false deities who donates wax or a lamp to the synagogue, it is forbidden to kindle it [for use in the synagogue]. (Shulchan Arukh, Orach Chayyim 154:11)

As mentioned by the Sefer ha-Chinnukh, the prohibition of accepting material from one who worships false deities should also apply to one who is involved with tainted funds. This opinion of the Rema is not agreed to by all, and R. Shabbetai b. Meir Ha-Kohen, in his commentary on Yoreh De’ah (Sha-Kh 254:2), quotes R. Moses b. Joseph Trani, the
MaBit, permitting a synagogue to receive gifts from a Jew practicing idol worship. However the *Chaye Adam*, incorporating the ideas found in the context of *etnan zonah*, seems to amend the permissibility by stating:

A Jew who worships false deities . . . who donates a lamp or wax for the synagogue, it is forbidden to kindle, for it is comparable to offering a sacrifice [in the Temple]. However, if the Jew donated funds to write a Torah [or funds for any other object in the synagogue which is then purchased from the money of such a gift], it is permitted. (*Chaye Adam* 17:52).

In summary we have seen from the above sources that there is a distinction made between the actual object and the person. While halakhah rejects stolen objects, it seems that it would be permitted to donate an object not directly associated with inappropriate activity. Halakhah is looking for a means to allow the individual to participate without embracing the object that has been obtained through improper activities.

**Wrongful Flattery**

Despite the tension seen in the preceding sources, Jewish law is also concerned about recognizing a person who has been involved in illegal/dubious activities. In the fifteenth century, the anonymous author of the *Orchot Tzaddikim*, one of the most important works of Jewish ethical literature, wrote about the abuses of flattery and indicates the occasions in which flattering is forbidden.

The first category consists of a flatterer who recognizes his fellow man as wicked and deceitful . . . and who nevertheless comes and flatters him—not [only] flattering and praising him, but smoothing over his tongue for him, saying: “You committed no wrong in what you did.” In this there are several transgressions and many punishments. . . . The second category consists of he who flatters the
evildoer before others, whether or not in his presence, even though he does not justify his evil deeds, but simply says that he is a good man. . . . The sixth category consists of one who is in a position to protest but does not do so, and who does not take to heart the deeds of the sinners. This is akin to flattery, for the sinners think: Since they do not protest and they do not rebuke us, all our deeds must be good. . . Therefore, one who is a parnas [community leader], or a judge, or a disburser of charity must not be a flatterer. For if the parnas flatters someone instead of reproving him to do good and turn away from evil, the entire community will be spoiled, for each one will say: “The parnas [community leader] flattered that man,” and they will not accept his reproof. (pp. 408–410, 419, 429)

This concern mentioned in the fifteenth century is also articulated in modern times by Rabbi Walter Wurzburger:

Religious leaders and institutions can hardly avoid sharing a measure of responsibility and blame for the total disdain for moral standards which is so rampant in contemporary society. We may wax eloquent in extolling moral virtues, but a variety of ethnic and financial pressures have combined to bring about a state of affairs, where ethical considerations are shoved into the background. When it comes to the promotion of Israel, religious institutions, or other philanthropic causes, the promoters are frequently interested only in the “bottom line” and are totally indifferent to matters of character or ethical propriety . . . Have we forgotten the biblical precept that “he who praises the Botze’a (exploiter) commits blasphemy against God”? Religious leaders must face up to the fact that moral values cannot be inculcated by precept. It is only by providing inspiring models in a day-to-day behavior that ethical teachings can be effectively communicated. The “body language” conveyed by a congregation has
far greater impact than the formal abstract teaching it disseminates. (Sh’ma)

Cleansing Tainted Money
Yet at the same time that all these challenges are brought to the fore, the issue that needs exploration is whether there is any way to cleanse money. If the donation appears to be a sincere act of personal redemption may/should one accept it? Does it make a difference what recognition the donor wants in return, such as whether the gift will be anonymous, or if there is an expectation that the building/program will be named after the donor? Does it make a difference if the donor will be promoting the gift for public relations purposes to show rehabilitation or if the donor has no interest in any public acknowledgement? Is there a way to allow the donor to reenter the community without compromising the integrity of the institution?

The Talmud tells us the following law: “If someone stole, but does not know from whom he stole [and he now wishes to repent], he should use [the stolen money] for public needs” (Beizah 29a).

The Shulchan Arukh elaborates on this idea in the following statement:

Shepherds, charity collectors, and tax collectors [who have stolen], their repentance is very difficult, for they have stolen from the public and do not know to whom [specifically] to return the funds. Therefore [they should donate the stolen funds] to public works projects. (Shulchan Arukh, Choshen Mishpat 366:2)

In a responsum, Rabbi Mordechai Yaakov Breisch (Chelkat Yaakov, Choshen Mishpat, no. 16) suggests that an individual who was holding money for a friend who died in the Holocaust and was unable to locate any of the deceased’s heirs should complete his custodial responsibility by donating the funds to a communal charity.

Rabbi Moshe Feinstein concurs with this approach in a lengthy responsum in his Iggerot Moshe (Choshen Mishpat I:88). He states that if one cannot find the person robbed, and wishes to repent, the stolen
monies can be used for community projects, including the building of a mikveh or any other institution that serves the entire community. However, Rabbi Feinstein makes it clear that if an individual is returning stolen money through a community charity, no public recognition can be received for such a “gift.” The funds never belonged to the donor and therefore cannot be used to redeem personal pledges and must be donated in an anonymous fashion, as a form of cleansing for previous misconduct.

It seems appropriate to conclude that while such donations may be accepted, they should be received with the understanding by the donor that fanfare and public accolades will not be part of the acceptance of the gift. Such protocols honor all the ideas that we have seen heretofore. It reflects upon the nature of the business practices surrounding the gift, requiring one to be assured that the funds were not stolen (mitzvah ha’ba’ah min ha’aveirah). It allows for repentance and contrition from inappropriate activities and empowers the donor, while spiritually protecting the integrity of the charitable institution and its position in the community.

OTHER FORMS OF TAINTED GIFTS

The ethical concerns about funding sources find a voice in several other donor situations. Below are a few examples.

**Stealing from the Government**

Rabbi Feinstein writes in a very direct fashion that it is forbidden for any Torah institution to steal from the government.

We are surely warned from God, who commanded us in His holy Torah, to be warned from taking more funds than the rules and regulations of the government stipulate; even if officers of the government are willing to contrive ways to [help the institution] receive additional funds inconsistent with the rules and regulations that have been established by the governmental funding sources, [such activity is strictly forbidden]. Furthermore, it is also forbidden to deal falsely regarding the number
of students and other acts [of trickery to increase government funding]. Not only is this a prohibition of stealing, there are other additional prohibitions, including lying, genevat da’at, the desecration of the name of God, as well as an embarrassment to Torah and its students. There is no permission in this world to permit such activities. For just as God forbids the stealing of funds to bring a [burnt] sacrifice, so does God hate the support of Torah and its students through stealing. (Iggerot Moshe, Choshen Mishpat vol. 2:29)

Sadly, all too often these protocols of Rabbi Feinstein are trampled upon, causing great embarrassment to our community.

Familial Issues:
Receiving Funds without the Express Approval of the Donor
Rabbi Yosef Caro writes (Yoreh De’ah 248:4) that the community charity collector may not accept large gifts from a woman. This is based on the fact that if a woman does not have access to her own funds and is supported by the monies earned by her husband, she has no right to donate funds without his express permission. While a small donation is not a concern to the husband, a large donation without his permission would be considered a form of stealing, with the result that such funds would be considered tainted.

Rabbi Ezekiel Landau makes the following comments in his responsum:

A woman knows that her husband has great wealth, and is stingy in regard to donating charity and does not give according to his ability; and she supervises the entire home, including the finances, and disburses charity according to their wealth. However, she knows that her husband is strict [would be upset] regarding giving so much money. Is it permitted to accept such a donation? . . . It is forbidden to take such funds, chas v’shalom, for it
is considered stealing [to accept such funds]. Even though the Jewish court may force him to give charity consistent with his wealth [for the welfare of the community]. . . but without his knowledge [such a donation] is stealing. (Noda bi-Yehudah, vol. 2, Yoreh De'ah 158)

This matter is also discussed by Rabbi Moshe Shternbukh:

Case: A woman, whose husband is very rich, invites one seeking charity to come to her home when her husband is not present so that he can receive a substantial donation.

The issue here is that it seems that the husband does not agree to give [such donations] and there is a concern of stealing—for she is giving [the gift] without his permission. . . . Even though she claims that the money is hers—for she can use as much money as she wishes [of her husband’s] for her needs. (Her husband puts no limit on her personal spending.) Just that her husband is not willing to give to charity—and she is willing to skimp on her physical pleasures and give charity in the merit of her soul. The husband does not view this as a benefit to his wife and therefore will not agree [to charitable gifts]. However this is really her money—she can spend it on whatever she wishes—except for charity and she claims that she is giving from her money and that it is permissible for the donee to accept the gift, for it is like giving a “piece of her dough.” [In this situation] it is better not to take from the woman without the permission of the husband . . . (Teshuvot ve’Hanhagot 573)

Rabbi Jehiel Michal Epstein does not accept the above approach. In his Arukh ha-Shulchan he writes the following:

It seems to me that since it is permitted [for the Jewish court] to force a [person] to give charity [based on his/
her ability], and now in our times it is known that there is no power to force (for we no longer have an active Jewish court system). Therefore, if the husband is rich, but is a miser and the wife wishes to give charity without his knowledge—it would seem that [while] she individually cannot judge in this matter [to decide how much charity her husband should be donating]; if the rabbi of the community tells her that based on his [financial] worth if we had authoritative hands we would force him to give the following sum of money to charity—she is permitted to give such an amount [without his knowledge]. For why should we diminish [the amount of charity the community receives] because we do not have the power to force this man? (Yoreh De’ah 248:13)

Permissibility to Use Interest for Nonprofit Institutions

Until now we have focused on necessary donor scruples in order for an organization to accept funds. The sources below will focus on the organization itself. There seems to be some halakhic leniency available to nonprofit institutions to grow their resources which are not available to private Jews observing Jewish law.

Despite the biblical prohibition on loaning funds to fellow Jews with interest, there seems to be a tradition in the Middle Ages in which charity organizations (i.e., synagogues and schools) lent part of their corpus with interest to Jews as a means of raising funds. The logic is predicated on the fact that the Biblical prohibition is “but to your brother, do not pay interest” (Deuteronomy 23:20–21), and in this case the lender is not a specific individual but a corporation. This is why the Talmud explains (Bava Metzia 57b) that the concerns of interest do not apply to the funds of the Temple, for it is not in the category of “your brother.” Therefore, the practice was to allow even Biblical forms of prohibitive interest to be charged, such as lending money with a predetermined interest rate on the loan. Rabbinic interest was thought to be permitted based on the above logic as well as on the rabbinic dispensation found in the Talmud (Bava Metzia 70a). This source gives the custodians of an orphan’s estate permission to enter business
partnerships with other Jews where the partner would guarantee the loan principal (never a loss to the orphans), and if profit was made on the venture a percentage of the profit was returned to the lender, the orphans.

R. Meir b. Baruch of Rothenburg is very concerned about this practice and makes the following comments:

Regarding the question that you the leader and my acquaintance Rabbi Baruch haKohen have asked me on the lending of money with ribit ktzutzah [biblical interest], I say that this is an attempt to perform a positive act (mitzvah) through a sin (aveirah). The intention is to do a mitzvah [growing the corpus of the nonprofit], and it causes many sinful acts for the lender, borrower, loan guarantors, and loan witnesses. . . . For the money of charity for use to support the poor is called that “of your friends” and that of “your brothers,” and therefore it is in the category [of the Biblical violation found in the verse]. However I do know that as our sins have grown, [Jews think such activity is permitted] and throughout the kingdom there has been the license to loan money with biblical interest; and the gabaim [custodians of community charity] are sinning . . . and I do not have the power to stop them. (Teshuvot MaHaRaM m’ Rothenburg, vol. 4:73)³


The general rule [for synagogues and other nonprofits] in loaning funds is the following: nonprofits in our day may not lend money and receive biblical interest; however rabbinic interest is permitted. [For our nonprofits] are no different than the funds of orphans that the rabbis permitted to be loaned [with rabbinic interest]; therefore
all forms of rabbinic interest are permitted. (Sheilot u’Teshuvot haRosh, klal 13:17)

R Solomon Aderet, the RaSHBa, permits the practice of loaning with interest even of a biblical nature. He suggests (Sheilot u’Teshuvot haRaSHBa vol. 1:669 and Sheilot u’Teshuvot haRaSHBa, found in the collection of responsa attributed to Nachmanides, no. 222) that since the charitable organization is not considered an individual (“your brother”), the biblical restrictions are not applicable and therefore loans with interest can be made by the charity. However, in his conclusion he urges that while such practices are permissible, charitable organizations should not engage in them.

Rabbi Joseph Caro and R. Moshe Isserles codify the following law on this issue:

All forms of rabbinic interest are permitted with the funds of orphans, the funds of the poor, the funds of a school, or the funds of a synagogue; Hagah [comments of R. Issereles] and we are lenient [like R. Caro] in this matter even though there are some that suggest [that rabbinic interest] can only happen in the context of a beit din. . . . There are places which permit the custodian of orphan funds to engage in loan practices [to grow the corpus for the orphans] with biblical forms of interest. This is a mistaken custom and must not be followed. (Shulchan Arukh, Yoreh De’ah 160:18)

In a society in which wealth and status often define the stature of a person, it is important that we do not allow our charitable institutions to reify these values. The norms and mores of our ethical code must be honored even if doing so diminishes our wealth, and therefore the good we may accomplish. As Rabbi Wurzberger states: “Religious institutions must be extremely careful lest by their excessive pragmatism—in the belief that the end justifies any means—they create the impression
that moral propriety is totally irrelevant to one’s standing in a “holy community” (Sh’mah).

Let us remember that after 120 years the first question we are asked by the heavenly tribunal is: “Did you conduct your business transactions faithfully?” (Shabbat 31a). Let us pray that in the effort to empower our institutions we do not compromise their integrity or our own immortality.

NOTES

1. This article is dedicated in loving memory to my in-laws Izak and Miriam Tambor, who truly celebrated the ideals of ethics and derech eretz in all their business and personal practices. Anyone who knew them always begin by describing their scrupulous adherence to ethics. They have been true role models for their children and grandchildren.

2. I am indebted to Rabbi Dr. Ephraim Kanarfogel, who shared his insights on this issue with me. They are also discussed in his book Jewish Education and Society in the High Middle Ages.

3. Interestingly, the teacher of R. Meir b. Baruch of Rothenburg, the Or Zaru’a, comments (vol. 1, Laws of Charity: 30) that he initially permitted charities to lend money with interest and then subsequently forbade it.

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