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## Think Local, Act Global: Tzedaka in a Global Society

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### INTRODUCTION

One of the allures of the *Beit haMidrash* is its ability to mute the cacophony of voices in the academic street and allow one to focus on the timeless disputes of Abaye and Rava. In its hallowed precincts, one avoids the excesses of contemporary intellectual fashion. Denizens of the Talmudic study hall are not immune, however, to the broad economic, political, and cultural forces that shape secular society. Our Orthodoxy may cushion their effects, but we and those who seek our guidance are ourselves often buffeted by the strong winds that swirl haphazardly through civilized society.

Globalization is one of those forces. There are few places in the world, if any, that have not felt its effects. One has only to navigate

the Neturei Karta website to feel its irresistible pull. The philosopher Francis Fukuyama suggests that globalization is in fact born of the same spirit that energizes religion. It was religion, he writes, that first taught human beings to look beyond their narrow spheres of family, tribe, and people to perceive universal humanity. The Jewish experience is otherwise. Rather than Fukuyama's top-down promotion of universalism, the Torah enforces a notion of our particularity, a unique position in the world that defines us as a people.

As society confronts the good and bad effects of globalization on the quality of human life, religious thinkers write frequently on its moral dimensions. Foremost among them has been the Chief Rabbi of Great Britain, Sir Jonathan Sacks. Rabbi Sacks avers that the religious perspective cannot contribute to the discussion of globalization at the level of detail, because the world's religions arose long before the rise of modernity. His learned discussions of globalization are general applications of Biblical values, relying heavily on the Prophetic tradition as a source for universal morality. As a world religious leader, the Chief Rabbi often enters into theological conversations with counterparts in other faith communities. Perhaps it is our natural hesitancy toward theological discourse with the Gentile world that underlies the Chief Rabbi's interest in keeping matters at the very general level. I am not a world religious leader, and my audience is a narrowly defined one. With deep respect, then, I have adopted Rabbi Sacks's comments as my point of departure for an analysis of some halachic considerations related to globalization in the practice of philanthropy.

*Halacha* is the most characteristic and developed expression of Jewish thought. Although one cannot acquire a complete picture of the rabbinic mind without knowledge of *midrash aggada*, its rhetorical style, particularly its use of hyperbole, can make it an unreliable source of rabbinic theology. Jewish tradition has always expressed itself most rigorously through *halacha*. The rabbis of the Talmud are never more themselves than when they are operating in the realm of *halacha*. The intent of this paper is to explore the utility of Jewish law in presenting normative models for public policy in an area where *halacha* is not directly applicable.

**RAMBAM ON PRIORITY AND PRECEDENCE IN TZEDAKA**

Rambam offers the clearest exposition of the laws of *tzedaka* in the seventh chapter of Laws Pertaining to Gifts to the Poor.<sup>1</sup> We focus herein on a single *halacha*:

XIII. A poor person who is a relative takes precedence over any other person; the poor of one's household take precedence over the poor of one's city; and the poor of one's city take precedence over the poor of any other city, as it has been said "to your brother, to your poor, and to your impoverished in your land."

The *halacha* appears to endorse the inverse of the spirit identified by Fukuyama as characteristic of the religious impulse. In the distribution of charity, the Jew is instructed to give preference to the narrowest of social contexts applicable. Apologists and critics may attribute this to the insular parochialism of a persecuted people. Intellectual rigor demands that we not so facily dismiss the law without deeper analysis.

The verse cited by Rambam is Deuteronomy 15:11: "For the needy shall never cease from your land; therefore I command you saying you shall surely open your hand unto your brother, your poor, and your needy in your land."

The context in Deuteronomy is worth noting, since it specifically relates to something more than the general requirement to support the poor. The smaller *parasha* in which the verse appears consists of five verses whose principal purpose is to teach the obligation to lend funds to the poor even when the imminent arrival of the *Shmittah* year may require forgiveness of the debt. Although the verse cited by Rambam may be read as a stand-alone requirement to give charity outright,<sup>2</sup> within its Scriptural context it refers specifically to interest-free funding. We will return to this observation below.

Rambam's reading of the verse interprets its last four words as three individual categories: unto your brother; unto your poor; unto your needy in your land.<sup>3</sup> The order of the phrases in the verse indicates precedence. Placing "your brother" before "your poor" teaches

that a relative's need takes precedence over other members of one's household. By including "your needy in your land," the Torah teaches that the impoverished in one's land also are entitled to preference in the distribution of charity.

As Ramban notes, the *ta'amim* suggest two groups. The first two words are linked together as a pair through the placement of a *darga* and a *t'vir*, making the phrase "your poor brother" a phrase appropriate for an obligation directed only to Israelites. Lest the word "brother" be interpreted in the strictest sense as denoting one's sibling, the Torah adds the phrase "and unto the needy in your land" to encompass *Klal Yisrael*.

Precedence based on relationship and proximity is found in the *Sifrei*, as Radbaz notes in his commentary to the *Mishneh Torah* on this *halacha*. The derivation is similar but not identical to that of the Rambam. Most notable is the fact that it is based on a verse other than the one cited by the Rambam. In verse 7 at the beginning of the same *parasha* in *R'eh*, the Torah commands: "If there be among you a needy man, within one of your gates, in your land which the Lord your God gives you, you shall not harden your heart, nor close your hand from your needy brother."

*Sifrei R'eh* 116

*A needy man*: one who is wanting takes precedence. *Your brother*: this is your brother from your father; when it says "from one of your brothers" it teaches that your brother from your father takes precedence over your brother from your mother; *in one of your gates*: the inhabitants of your city take precedence over the inhabitants of another city; *in your land*: the inhabitants of the land take precedence over inhabitants from outside the land . . .

Rambam's choice of source and proof-text is often problematic. This is not the place for a detailed exploration of this oft-discussed topic.<sup>4</sup> For the purposes of our discussion, let it suffice to note that Rambam imports a halachic exegesis in the *Sifrei* on one verse in order

to apply it to a similar verse. This is not the norm in *midrash halacha*, where each word in the Torah is assigned a unique function.

In his *Sefer haMitzvot*, Rambam enumerates three distinct *mitzvot* from this small *parasha*, one positive and two negative. Positive Precept 195 is the obligation to give charity and provide support to the weak. Rambam notes that it appears in several places. The first one he cites is in our *parasha* (verse 8). Negative Precept 231 prohibits Israelites from withholding loans in order to avoid their release during the Sabbatical Year (verse 9). Negative Precept 232 prohibits denying the poor of Israel charity when one has been made aware of the need (verse 7). You will note that Rambam lists the *mitzvot* in a different order than that of the verses. This, too, requires explanation.

In *Moreh Nevuchim*, part III, chapter 42,<sup>5</sup> Rambam explains the Torah's preference for providing charity to one's needy relatives before any other beneficiary. Rather than a concession to human nature, it is the exercise of a moral virtue. In Rambam's view, the Torah "safeguards and fortifies this moral quality—I refer to taking care of relatives and protecting them . . . [T]he text of the Torah when speaking of alms: Unto thy brother, to thy poor, and so on." The reference is, of course, to the same verse Rambam cites in *Mishneh Torah* as noted above.<sup>6</sup>

The halachic character of *tzedaka*, as presented by Rambam, is coherent and consistent. The verses that Rambam cites in *Sefer haMitzvot* as sources for the positive precept to give *tzedaka* (Deut. 15:8; Lev. 25) all emphasize the relationship between the donor and the beneficiary. The obligation is defined by the characteristics of each party to the relationship. The beneficiary is entitled to *tzedaka* according to his or her need; the donor is only obligated to give what he or she can afford. The bipolarity of this relationship, the need to receive balanced by the ability to donate, defines the obligation.<sup>7</sup> Finally, the order of preference is not a concession to the human spirit but a concretization of the moral principle that underlies the *mitzva* itself.

In light of this analysis, we can perhaps resolve certain difficulties in Rambam's presentation noted above. First, the shift of the proof-text for precedence in the giving of *tzedaka* from the *Sifrei's* choice of verse 7 to Rambam's choice of verse 11. Verse 7 deals with the negative precept

prohibiting denying charity when one is aware that there is need. It is the flip side of the positive requirement to give charity. Rambam exports the *drasha* from the negative precept to the positive one, given the identity of moral purpose and similarity in language. As he writes in Positive Precept 195: “The intention in all these expressions (*l’shonot*) is identical: that we assist our poor and strengthen them sufficiently.”

Furthermore, the negative and the positive precepts are, in fact, parallel to one another in conceptual structure as well:

**Positive Precept 195**

that He commanded us to perform *tzedaka* to strengthen the weak and bring them relief.

**Negative Precept 232**

that He prohibited us from withholding *tzedaka* And relief from the needy among our brethren.<sup>8</sup>

**RATIONALE VS. RATIONALITY IN JEWISH LAW**

The term *tzedaka* does not appear in any of the verses Rambam cites as sources for the three precepts he enumerates in our *parasha* in *R’eh*. Its usage as an appellation for charity appears to be rabbinic. Associating the requirements to ameliorate the economic position of the indigent with the word *tzedaka* makes sense, but it is not the simple usage of the word.

For Rambam, *tzedaka* is *derech HaShem*, the Golden Mean that a human being is obliged to pursue: “. . . for this is what our father Abraham taught his children, as it is said: ‘for I have known him, that he will command his sons and his household after him, and they will keep the way of God, doing *tzedaka* and *mishpat*.’”<sup>9</sup>

Prior to Har Sinai, Israel lived a life of moral aspiration. This is the *derech HaShem* that *Avraham Avinu* taught his descendants. It proved to be an impossible standard. From the receipt of the Torah, the Jewish people have lived under a system of Divine Law in which aspiration has become obligation.

In an oft-quoted passage in his *Commentary to the Mishnah*,<sup>10</sup> Rambam takes note of the change that took place at Sinai:

Pay close attention to the great principle brought forward in this *mishnah* and this is what the sages have said [that the sciatic nerve] was prohibited from Sinai. This is its meaning: you need to know that everything that is either prohibited to us or that we do today, we only do because of HaShem's command through Moshe, and not because HaShem so commanded any prophets who preceded him. For example, we do not eat flesh from a living animal, not because HaShem prohibited it to the children of Noach, but rather because Moshe forbade us to eat flesh from a living animal through what was commanded at Sinai, that flesh of a living animal should remain forbidden. Similarly, we do not practice circumcision because Avraham circumcised himself and the men of his household but rather because HaShem commanded us through Moshe to be circumcised as Avraham, may he rest in peace, was circumcised.

The removal of the sciatic nerve from the thigh of kosher meat is first mentioned as the consequence of the wrestling match between *Yaakov Avinu* and an angel. It occasions Rambam's observation that all *mitzvot* linked to events before Sinai are observed today only by virtue of their inclusion in the Torah given Israel through Moshe. Notable among them is *Brit Avraham Avinu*, which since Sinai should more properly be called *Brit Moshe Rabbenu*.

Rambam has embraced a form of legal positivism, the approach to jurisprudence which declares that the essence of law is that it has been posited. Positivism asserts that law must be distinct from moral aspiration. Deciding to obey the law is not the same as following one's conscience. These two human responses to duty and obligation, obeying laws and exercising one's conscience in a just society, may result in the same action. The fact that they may have the same outcome does not make them the same thing.

The confusion between the right thing and the legal thing can be seen in the modern American dictionary definition of a *mitzva*.<sup>11</sup> The

first meaning: a commandment of Jewish law; the second: a worthy deed. This ambivalence in popular usage is, even though we know better, endemic to law itself.

The most well known description of the events of Sinai is the midrashic description in Tractate *Shabbat*:

“And they stood below the mountain.” R. Avdimi bar Hama bar Hasa said: This teaches that the Holy One Blessed be He overturned the mountain over their heads like a tub, saying to them: If you accept the Torah, all well and good; and if not, there will be your grave.<sup>12</sup>

A curious take on the Giving of the Law: the people of Israel had to be threatened with death in order to accept the Torah. This *midrash* introduces a negative note into the account, depicting God, as it were, as a bully writ large. The *midrash* is coherent, however, with Rambam’s analysis in *Chullin*. Every incident in the life of the *Avot* that occasions the observance of a *mitzva* is superseded by *Mattan Torah*. The rationale for *mitzva* becomes command, not content or custom.

The contemporary philosopher of law Ronald Dworkin is no friend of legal positivism.<sup>13</sup> In his critique, however, he provides the classic articulation of principles that flow directly from the notion that law is primarily command.<sup>14</sup> A valid law is established by tests related not to its content but to its pedigree. This should be familiar even to casual students of the Talmud: we ask, *m’na hani milei? man tana d’hai matnita?* The pedigree of a law is necessary in order to understand how to apply it. By examining sources in which the author’s view is more explicit, like a *baraitta*, we see the full dimensions of the authority’s approach, often in a more complete statement. In a positivist system, the source of the law is its most important feature. It establishes not only its claim to authority but also the claim of a potential application to legal validity.

A second tenet described by Dworkin also helps explain features of the halachic system: “the set of these valid legal rules is exhaustive of the law.” There is no source of law other than command. If it is not found in the rules commanded by the system, it is not law. This leads



us to a third tenet: “To say that someone has a ‘legal obligation’ is to say that his case falls under a valid legal rule.”

For Jews, the law supersedes the demands of morality. This statement will no doubt catch the eye of many readers and bears clarification. In Rambam’s construction, the morality of *tzedaka* in the days of *Avraham Avinu* has been transformed to the *halacha* of *tzedaka* following *Mattan Torah*. This does not negate the role of *halacha* as an instrument of moral perfection. It is simply that law lives in the details, precisely where Rambam saw the positivist nature of the *mitzvot*. This is also precisely where Chief Rabbi Sacks did not see a role for Biblical morality. Our analysis is an attempt to show a way through this complexity.

What are we to do, however, when an area of public policy critical to the Jewish community does not fall under a valid legal rule? Many philanthropic programs do not strictly qualify as *tzedaka*. Can *halacha* provide guidance in the pursuit of policy, or must we rely on homiletical interpretations of Biblical and Prophetic morality in order to craft a Jewish response?

Stated in other terms, does a system in which the rationale for observance is the fact of its command preclude the incorporation of rationality in the law? If not, can the rationality of the law provide a basis for policy in areas in which the law does not strictly apply?

### THE IMMANENT RATIONALITY OF THE LAW

Rambam argues in a very general sense that Torah law is purposive and therefore rational: “The Law as a whole aims at two things: the welfare of the soul and the welfare of the body.”<sup>15</sup> The Torah may delineate reasons for only a few *mitzvot*; God’s perfection demands that the entirety of His Law must perforce be rational. The claim of rationality is general and, in the main, offers guidance at only the most general levels to which Chief Rabbi Sacks refers above. In fact, Rambam notes that there may be no apparent reason for the details of a *mitzva* even as its general reason may be identifiable. This is the category of rationality that we general describe under the broad term *ta’amei ha-mitzvot*.

It is not the rationality to which I refer as a potential model for policy. This model of rationality hardly differs from the homiletical

applications of Biblical and Prophetic morality. Like the latter, it is broad and general. The rationality which I intend has been described by Ernest J. Weinrib as immanent rationality.<sup>16</sup> It is a postulate of the legal philosophy known as formalism, often viewed as the logical consequence of legal positivism. Again, our analysis is not intended to describe what law ought to be but to describe empirically the theoretical underpinnings of Jewish law as it is conceived by the masters of the *halacha*.

Formalism conceives judicial decision-making as a deductive process in which judges infer the correct answer implicit in legal materials received by them. The treatment of these materials is rational and constrained by accepted norms of analysis. Judicial decision-making is a conceptual practice that works from “institutionally defined materials of a given collective tradition.”<sup>17</sup>

Law therefore can be seen as “proffering the possibility of an ‘immanent moral rationality.’” If law is not identical with morality, it is not politics either. “The content of law is elaborated from within.” Its internal rationality has a moral dimension in that it claims to be normative.

At first glance, this argument may appear circular. We argue that law exhibits an immanent rationality because it is not politics. We then assert that the moral dimension of this immanent rationality allows for the creation of policy norms. This confusion is due to the imprecision of language. When we argue that law is not equivalent to politics, we assert that it is rational and driven by analysis of legal materials. Those materials display a moral dimension which, we argue, should be used to drive policy for a fundamental reason. Norms driven by law concretize deeply held moral structures built into the fabric of the legal tradition. Weinrib later applied the notion of an immanent moral rationality to tort law.<sup>18</sup> To simplify this analysis, let us introduce the notion through a well-known case in American tort law analyzed by Ronald Dworkin.<sup>19</sup> In *Escola v. Coca-Cola Bottling Company of Fresno*, the plaintiff was a waitress in a restaurant who was injured when a glass bottle exploded in her hand. In finding for the plaintiff, Judge Roger J. Traynor, considered one of the greatest judges in the history of the

American judiciary,<sup>20</sup> introduced the theory that manufacturers should be responsible for protection from defective products even when there is no evidence of negligence. Implicit in the decision was the notion of loss-spreading as a justification in tort law. Weinrib argues that the juridical relationship between plaintiff and defendant embedded in tort law is inconsistent with the notion of loss-spreading. Juridical relationships “bear the stamp of an immanently unifying form.”<sup>21</sup> This account of law “provides an internal standpoint of intelligibility” and ensures coherence. It is not that Weinrib is opposed to loss-spreading on political or economic grounds. His objection is rather to the incorporation of an external standard into the law. This is often the case when Orthodox scholars read the legal opinions written by non-Orthodox rabbinic bodies. It is not that we object to the ethical and political sensitivities of the authors, but rather that we adjudge them to be extralegal and outside the bounds of halachic analysis.<sup>22</sup>

### THE JURIDICAL RELATIONSHIP IN *HILCHOT TZEDAKA*

*Tzedaka* is built on the bipolar relationship between donor and beneficiary. The presence of an obligation is dependent on the need of the beneficiary and the resources of the donor. Indeed, one argument offered for the absence of *birkat ha-mitzva* is this partnership between the donor and the beneficiary. Since the performance of the *mitzva* is dependent upon the willingness of the beneficiary to accept a donation, the *mitzva* may be said to depend on the cooperation of both parties in its fulfillment.<sup>23</sup>

The Talmud learns from the dual-infinitive form of the verb in Deuteronomy 15:11 (“you shall surely open your hand”) that one is obligated to give *tzedaka* to the poor of another town.<sup>24</sup> Had the verse only used a single verb, one would have assumed only the poor of one’s own town. The use of the double form implies that one should open one’s hand whenever one encounters a needy person. The Maharsha explains the thesis that the normative case is the poor of one’s own town by noting that verse 7 includes the phrase “in one of your gates.” Whether we interpret the Talmudic exegesis as the response to an explicit reference to local poor or as a generalized observation that

local poor may be assumed to be the only candidates for *tzedaka*, the result is the same. The base case for *tzedaka* is the support of the local poor.

This is the force of the *Sifrei* that we analyzed above. The *drasha* envisions charitable responsibilities in widening social and geographic circles while respecting the local nature of the primary obligation through the notion of precedence. *Tzedaka* is essentially a relationship between two human beings, one needy and the other able to provide.

### RECOMMENDATIONS HALACHIC AND OTHERWISE

Many Jews may be surprised to discover that they may not be fulfilling the *mitzva* of *tzedaka* even if they write regular checks to nonprofit institutions. *Tzedaka* is the extension of support to a poor Jew.<sup>25</sup> The Jew's obligation to provide *tzedaka* is determined by the level of need of the poor in his sphere of movement constrained by his ability to pay. Supporting charitable organizations around the world while one's own community is home to needy Jews leaves one with an unfulfilled obligation.

Given the juridical relationship between the donor and the beneficiary, there does not seem to be any reason to suspend the requirement of precedence by proximity. The power of this relationship is such that R. Yitzchak Abalia ruled in the eleventh century that Jews visiting a city qualify as local poor for the rules of precedence, an opinion rejected by the *Tur*.<sup>26</sup> In our own day, despite modern air travel and inexpensive international telecommunication, we still organize our social lives around family and community. Even as we act globally, the *mitzva* of *tzedaka* calls upon to think locally, seeking personal opportunities to support our local poor.<sup>27</sup>

Religious communities must find a way to organize opportunities for their members to provide *tzedaka* to the local needy. In our affluent Orthodox communities, the needy are often invisible out of choice by both parties to the *tzedaka* relationship. A person suffering economic hardship may be embarrassed by his or her situation and hesitant to come forward, just as those who can help may themselves be embarrassed by a neighbor's discomfort. Community initiatives like Project Ezra in Teaneck, New Jersey, founded by the visionary Rabbi

Yossie Stern, are the embodiment of the highest form of *tzedaka*. Its model needs to be adopted around the world.

The religious community must find a way to reform the *m'shulach* process that encourages families to avoid answering the doorbell on Sunday afternoons. The model is an old one put in place before the world became a smaller place. Many Jews do not relate to the traditional model of an agent who shares in the funds he collects, precisely because it places an intermediary between the needy and the donor whose motive appears to be profit. While many communities have attempted to regulate this activity, there is still a considerable measure of *chillul ha-Shem* both in the way *m'shulachim* operate and the manner in which many Jews treat them.

Some readers may be surprised that we have not discussed at all the responsibility of the Jew toward non-Jewish society. We have been satisfied with the general observation that *tzedaka* flows from the immediate obligation of Jews toward their brothers both in the filial sense and in the national one. The issue of Jewish responsibility toward the world requires careful analysis but that is not the topic we have chosen.

Similarly, we should observe that many of the policy issues associated with globalization in the broader society are not directly applicable to Jews as Jews. There is typically not a Jewish community in third-world emerging economies. The Jews who do live there are usually agents of globalization rather than its victims. As such, the issue has little relevance for the allocation of *tzedaka* to poorer countries. The morality of the promotion of global capitalism by Jews, however, is an important topic not within our mandate.

In the policy realm, Jewish philanthropic organizations worried about attracting new generations to replenish their leadership ranks and add to their endowments in the decades ahead might consider the juridical relationship that underlies the *mitzva* of *tzedaka*. For many Jews, particularly younger ones for whom Jewish dislocation and poverty are matters of history and not experience, Jewish philanthropy has lost its sense of *mitzva*. Federations appear like corporations with their own executives and lavish headquarters. It may be that Jewish philanthropies need to operate centralized infrastructures in order to

be economically efficient. Writing a check to a conglomerate, however, does not evoke the same sense of fulfilling a *mitzva* that working in a soup kitchen or handing cash to an indigent street person does.

Let us close as we began with thoughts from the pen of Chief Rabbi Sacks. “[C]ivilizations survive,” he writes, “not by strength but by the care they show for the poor; not by power but by their concern for the powerless.”<sup>28</sup> This contemporary sage’s words evoke those of the giant who preceded him:

We are obligated to carefully observe the *mitzva* of *tzedaka* more than any other positive commandment, for *tzedaka* is emblematic of the righteous descendants of *Avraham Avinu*. . . . The throne of Israel is firmly established and the true religion survives only by virtue of the *mitzva* of *tzedaka*, and so will Israel only be redeemed through the merit of *tzedaka*.<sup>29</sup>

## NOTES

1. For the centrality of Rambam’s formulation, see *Beit Yosef* on the *Tur Yoreh Deah* 251.
2. *Sefer haChinuch* also locates the general *mitzva* of *tzedaka* in this verse (479). Note the *Chinuch*’s explicit reference to lending as a form of *tzedaka*. The next verse is a related but separate precept, i.e., not to avoid lending to the poor because of the impending *Shmittah* year.
3. Compare *Targum Yonatan*.
4. For example, see Yaakov Levinger, *Maimonides’ Techniques of Codification* [Hebrew] (Jerusalem: Magnes Press, 1950), chap. 4.
5. *The Guide of the Perplexed*, trans. Shlomo Pines, (Chicago: University of Chicago Press, 1963), p. 569.
6. In this context, one can unapologetically note that the laws of *tzedaka* apply only within the Jewish family, i.e., from Israelite to Israelite. The Torah is the constitution of a nation living together in sovereignty in its own land. As such, its principal focus is on the moral, spiritual, and legal imperatives internal to Jewish society. We will discuss below how the rabbis have crafted policy in order to actuate the principles implicit within Jewish law.
7. *Mishneh Torah*, Laws of Gifts to the Poor VII, 1.
8. See Avraham Feintuch, *Sefer Pikudei Yesharim* (Jerusalem: Maalot Press, 1992).
9. *Mishneh Torah*, Foundational Principles of Torah, I, 14.

10. *Chullin* 7:6.
11. *American Heritage Dictionary*.
12. Fol. 88a.
13. See, for example, “The Model of Rules I” in *Taking Rights Seriously* (Cambridge: Harvard University Press, 1978), pp. 17–28. Dworkin argues with the weak-form version of legal positivism promoted by H. L. A. Hart in his canonical *The Concept of Law*. Both Dworkin and Hart propose models of law based on the law as it is and not as it ought to be. The characterization of the positivist nature of Jewish law is intended here as an empirical observation of its salient characteristics, i.e., Jewish law as it is conceptualized in its authoritative sources. The thrust of this analysis is phenomenological and not theoretical.
14. *Ibid.*
15. *Guide of the Perplexed* III, 27.
16. “Legal Formalism: On the Immanent Rationality of Law,” *Yale Law Journal* (May 1988). As with legal positivism, formalism is most effectively described by one of its vocal critics. Roberto Unger, doyen of the critical legal studies movement, offers a definition of formalism which Weinrib adopts before launching its defense.
17. *The Critical Legal Studies Movement* (Cambridge, Harvard University Press: 1986), pp. 8-11.
18. *The Idea of Private Law* (Cambridge: Harvard University Press, 1995).
19. *Taking Rights Seriously*, pp. 278-90.
20. *California Law Review* 71 (July 1983): 1053.
21. Weinrib, “Legal Formalism,” 974.
22. For another view, see Hanina Ben-Menahem’s “Is There Always One Uniquely Correct Answer to a Legal Question in the Talmud?” *Jewish Law Annual* 6 (1987): 169–173. I have addressed Professor Ben-Menahem’s arguments on other occasions, including in conversation with him when he presented an updated version as the Annual Ivan Meyer Lecture in Jewish Law at the Center for Jewish Law and Contemporary Civilization at the Benjamin N. Cardozo School of Law. I hope to publish a rejoinder in a future article.
23. *Teshuvot ha-Rashba* I:18.
24. *Bava Metzia* 31b.
25. The only nonprofit institutions that can ever take precedence over the poor are Torah institutions, and then only when the poor have their basic needs. Nothing takes precedence over a poor Jew without the necessities of food, shelter, and clothing. In this, too, the poor of one’s city take precedence over the poor of any other place, including Eretz Yisrael (*Likutei Shu T Hatam Sofer* 29, cited in R. Yaakov Yeshaya Blau’s *Tzedeka u’Mishpat*).
26. *Tur Yoreh Deah* 251.
27. In the hands of his commentators, Rambam’s Eight Degrees of *Tzedaka* in Chapter 10 of the Laws Pertaining to Gifts to the Poor are a model of abstracting immanent

rationality from legal texts. Rather than an ethical codicil, these *halachot* represent principles embedded within a broad range of *sugyot* throughout the Talmud and *midrashei halacha*.

28. *The Dignity of Difference: How to Avoid the Clash of Civilizations* (London, Continuum Press: 2003), p. 195
29. Laws Pertaining to Distribution of Gifts to the Poor 10:1.