Toward a Renewed Ethic of Jewish Philanthropy

EDITED BY

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The Giving of Charity in Jewish Law: For What Purpose and Toward What Goal?

Michael J. Broyde

Know that the latter-day authorities have written that one may pay for a wedding ceremony with *ma'aser* funds if one would otherwise not be able to perform this mitzvah; they have written similarly with regard to being an honored participant (*sandek*) at a circumcision and paying for the expenses of the ceremony with *ma'aser* funds, or with regard to using such funds to write sacred texts and lend them to others—one may even study from them himself, provided that one writes that the books have been paid for by *ma'aser* funds in order that they not be considered

> property of the estate after one dies. Others have serious doubts about all this; see *Pitchei Teshuvah* (citing Chatam Sofer, *Yoreh Deah* 249), who wrote that according to Maharil and Rama, *ma'aser* funds are exclusively for the benefit of the poor, and not to be used toward any other mitzvah purpose. However, it seems that if by being the honoree of the circumcision, one benefits the baby's father, who is unable to support himself and lacks the ability to pay the expenses of the circumcision, and likewise with paying for the expenses of the wedding ceremony if the couple lacks the ability to support themselves, and similarly with regard to purchasing sacred texts and lending them to others who lack the ability to purchase books themselves—one ought not to be at all strict on these matters, for this is itself like charity. With regard to purchasing *aliyot* to the Torah with *ma'aser* funds—if the monies are then distributed to the poor, here too all would agree that one not be at all strict. But to pay the expenses of educating one's son from *ma'aser* funds is forbidden according to all, for it is a personal obligation to teach one's sons or pay for their education, and one may not pay one's debts with *ma'aser* funds; however, it is permissible to pay for the education of the children of the poor [with such funds]—indeed, this is a great mitzvah.
>
> —Rabbi Israel Meir HaKohen Kagan
> *Ahavat Chesed* 2:19(2)

INTRODUCTION

There is no doubt that there is a biblical obligation to give charity.[1] Beyond that, however, basic halachic issues are in dispute. This paper will show that there is disagreement over such fundamental questions as who may receive charity, how much money each person must give as charity, and other essential questions about the nature of the mitzvah of *tzedakah*. Indeed, this paper concludes that the very parameters of charity have changed during the last century in America as a matter of practice, since the government of the United States provides for the

basic social welfare—food, shelter, and secular education—for all of its citizens.

Even more generally, halachic issues relating to giving charity are a balance between an abstract halachic ideal and a concrete social and economic reality. Like many other areas of Jewish law, there are aspects of *hilchot tzedakah* that are designed to teach us a religious or ethical value, rather than be implemented routinely. An example of this with regard to the laws of charity is the concept of *dey machsoro*—that a poor person ought to be supported at a level that reflects his loss of dignity, and not based on some objective formulation. Based on this concept, millionaires who become impoverished should be supported to the extent of their pre-impoverishment level.[2] Of course, in the real world such cannot by routine be done, and halacha notes that no individual is generally called upon to support another in such a fashion.[3] Indeed, the consensus of halachic authorities is that it is unwise to distribute one charitable gift to a single person *dey machsoro*, but instead one should give smaller amounts to many people.[4] Indeed, as one notable modern restatement of charity law states: "One should not give all of one's charity to a single person."[5]

This tension between the ideals of charity, which is to give as much as one can to as many in need, with the reality of life, which is that money is quite limited in supply and none of us really has enough of it, is a central theme of Jewish law's approach to charity. This paper will explore that balance in light of the social, economic, political, and religious reality of modern American Orthodox life.

This short paper is divided into six (even shorter) parts. The first section explores the basic purpose of charity in Jewish law and notes a grand dispute among Rishonim about whether the fundamental purpose of *tzedakah* is to support the poor or to support communal institutions (or both). The second section explores the fundamental dispute between Rambam and others about whether charity's purpose is to support Torah study rather than poor people. The third section explores how *poskim* have responded to the impact on *hilchot tzedakah* from the rise of government-funded social services and the concomitant higher taxes. The fourth section examines the use of charity funds for unusual situations and the halachic parameters of such uses. The

fifth section touches on how much charity each person needs to give. The sixth section seeks to answer the specific questions posed by the organizers of the Orthodox Forum, and the Conclusion argues that the basic construct of charity law within halacha has changed in modern times in light of the expanded role of the welfare state.

TWO VISIONS OF *HILCHOT TZEDAKAH*: FOR THE POOR OR FOR THE JEWISH COMMUNITY

Even a cursory examination of *hilchot tzedakah* in the *Mishneh Torah* gives one the distinct sense that Rambam limited the mitzvah of *tzedakah* to donations given in order to support the poor.[6] Indeed Rambam makes not a single mention of any way to fulfill the mitzvah of *tzedakah* other than by giving gifts or loans to the poor.[7] This approach to charity is the view of the *Tur* as well,[8] and is based on the fact that nowhere in the Babylonian Talmud is the mitzvah of *tzedakah* ever applied to aid other than for the poor.

Maharik[9] (Shoresh 128) formulates the counterview and maintains that charity ought to be used—first and foremost—for the building of communal resources, such as a synagogue or study hall. Maharik writes

> טוב יותר ליתן צדקה לבית הכנסת
> it is better to give money to a synagogue [than to the ordinary poor][10]

The *Beit Yosef*[11] summarizes the view of the Maharik as follows:

> ובשורש קכ"ח (ענף ג, ד) כתב שמתוך מה שכתב התשב"ץ (תשב"ץ קטן סי' תקלו) בשם הר' שמואל מתוך הירושלמי דזרעים (פאה פ"ח ה"ח) יש להוכיח דמצות בית הכנסת עדיפא ממצות צדקה דגרסינן שם אחזי לרב תרעא דבי כנישתא וכו' וכי לית תמן בר נש למילף אורייתא או חולים המוטלים באשפה וקרא עליו (הושע ח יד) וישכח ישראל [את] עושהו ויבן היכלות מכאן אומר הר' שמואל שטוב ליתן צדקה לנערים ללמוד תורה או לחולים עניים מליתן לבית הכנסת עכ"ל

> מדקאמר בירושלמי חולים המוטלים באשפה וכן הר' שמואל אומר חולים עניים ולא קאמר עניים סתם משמע דאם לא היו חולים כי אם עניים דטוב יותר ליתן לבית הכנסת:
>
> [The Maharik] wrote (Shoresh 128, vol. 3, pt. 4) that from the writings of R. Simeon b. Tzemach Duran (*Tashbetz Katan* 536), which cites the view of Rabbi Samuel of Bonburg based on Y.Peah (8:8), one can demonstrate that building a synagogue is more important than giving [ordinary] charity, for the Talmud states that Rav saw [alt. offered rebuke to] others building a fancy entrance to the synagogue . . . [and stated]: Were there no individuals studying Torah or sick people sustaining themselves from the refuse pile? To this he applied the verse "Israel forgot its maker and built sanctuaries" (Hosea 8:14)—from here R. Samuel derived that it is preferable to give charity to young men to study Torah or to the ill and impoverished than to give to the synagogue. From the Yerushalmi saying "sick individuals sustaining themselves from the refuse pile," and likewise R. Samuel stating "ill and impoverished" and not simply "the poor," this implies that were such individuals not ill but simply poor, it would be preferable to give [the charity funds] to a synagogue.[12]

According to Tashbetz, whom the Maharik cites approvingly, building a synagogue takes priority over the ordinary needs of the poor, and it is only the urgent needs of the poor who are sick or otherwise in danger of dying which take priority over synagogue building.

Rabbi Karo cites this view in the *Shulchan Aruch*.[13] Others insist that this license to spend charity on other than poor people includes the building of other communal institutions such as hospitals. Indeed, the contemporary *posek* R. Yaakov Yeshaya Blau posits that from charity funds,

> It is obligatory for members of a city to purchase all communal needs: to build a synagogue, purchase a Torah

> scroll and other books that people can study from, hire a rabbi and halachic authority, and a cantor; so too, one can pay tuition for those children whose parents cannot pay tuition and to build a mikvah.[14]

Of course, as the *Aruch ha-Shulchan* notes,[15] there is a difference between lavish construction of an extra shul—the one we do not worship in, as the joke goes—and the genuine needs of the community. But it is clear that many contemporary *poskim* rule that communal needs may be paid from charity funds.

Certainly there are still dissenting voices to this approach. Gra[16] rejects the view of the Maharik, as do others.[17] Indeed, the view of Tosafot appears to agree with Rambam and his adherents that charity to the poor is more important than synagogue construction.[18] However, as the *Aruch ha-Shulchan* notes,[19] there is an explicit passage in the Jerusalem Talmud that sides with the Maharik.[20] Undoubtedly, the resolution of this matter relates to the more general subject of the status of the Talmud Yerushalmi within normative halacha.[21] Suffice it to note that as a general matter, an explicit Yerushalmi is accepted as normative halacha when the Bavli is silent. By the time of the *Sedei Chemed*,[22] one typically finds conversations about whether it is more important to build a hospital or a synagogue, or a synagogue in Israel or the Diaspora.[23] Charity to the poor is secondary.

Of course, one could limit this—as the *Aruch ha-Shulchan* proposes—and insist on the supremacy of giving charity to the poor when their actual lives are at stake; but when charity merely is of benefit to the poor, then the building of a synagogue assumes priority.[24]

Thus we have three models of the duty to give charity among contemporary *poskim*:

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

This dispute is a central one. If the purpose of charity and its exclusive beneficiaries are the poor, then much of the purpose of this paper disappears and the halachic framework is very simple. However, if charity funds may be used for the sake of general communal projects (even when poor people need charity or only when the lives of the poor are not in actual danger), then there is a much greater variety of projects that are eligible for charity.[25]

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

The second important issue is the use of charity funds to support Torah study. Three views are found.

The first view is that of Maimonides, who—consistent with his insistence, as indicated above, that charity only be used to benefit poor people—insists that a Torah scholar may not choose to study Torah and accept charity rather than earn an income. Rambam's harsh words indicate that he is all too familiar with the practice. He states:

> י כל המשים על לבו שיעסוק בתורה ולא יעשה מלאכה ויתפרנס מן הצדקה הרי זה חלל את השם ובזה את התורה וכבה מאור הדת וגרם רעה לעצמו ונטל חייו מן העולם הבא, לפי שאסור ליהנות מדברי תורה בעולם הזה, אמרו חכמים כל הנהנה מדברי תורה נטל חייו מן העולם, ועוד צוו ואמרו אל תעשם עטרה להתגדל בהן ולא קרדום לחפור בהן, ועוד צוו ואמרו אהוב את המלאכה ושנא את הרבנות וכל תורה שאין עמה מלאכה סופה בטילה וגוררת עון, וסוף אדם זה שיהא מלסטם את הבריות.
>
> יא מעלה גדולה היא למי שהוא מתפרנס ממעשה ידיו, ומדת חסידים הראשונים היא, ובזה זוכה לכל כבוד וטובה שבעולם הזה ולעולם הבא שנאמר יגיע כפיך כי תאכל אשריך וטוב לך אשריך בעולם הזה וטוב לך לעולם הבא שכולו טוב.
>
> 10. Anyone who decides to occupy himself with Torah and not work but obtain his livelihood from charity desecrates God's name, denigrates the Torah, extinguishes the light of the faith, brings evil upon himself, and excludes himself from life in the world to come, for it is forbidden to benefit from Torah matters in this world. The Sages stated:

> Anyone who benefits from Torah matters excludes himself from life in the world to come. They also commanded and stated: Do not make them a crown to magnify oneself, nor an ax to chop with. They further commanded and stated: Love work and hate the rabbinate. And any Torah that is not accompanied by work will be nullified in the end and lead to sin, and ultimately such a person will come to steal from others.
>
> 11. It is a great virtue for one to earn one's livelihood from one's own handiwork, and a positive quality of the early pious ones. By doing so, one merits all the glory and goodness in this world and the world to come, as Scripture states, "When you eat the labor of your hands, happy shall you be, and it shall be well with you." "Happy shall you be"—in this world, "and it shall be well with you"—in the world to come, which is completely good.[26]

In this model, any Torah scholar who accepts charity when he can work has forfeited any merit. This is true even if he really is poor because he learns all day. Rambam maintains that such a Torah scholar should get a job and not accept charity rather than continue to learn while accepting charity.

Even Rabbi Karo could not accept the words of Rambam, and in his commentary, *Kessef Mishneh*, he takes pains to refute them even as he acknowledges that they are grounded in numerous Talmudic sources. So too, Rabbi Shimon ben Tzemach Duran[27] states:

> ואחר שנתפרש כל זה יש לנו לחוש לדברי הרמב"ם ז"ל במ"ש בזה הענין ... כי מהנראה שהוא הפריז על מדותיו והטעה כל הגאונים והרבנים ז"ל אשר היו לפניו ובזמנו ומתוך שבא לכלל כעס בא לכלל טעות עד שקראם משוגעים. אויל הנביא משוגע איש הרוח. ואם הוא ז"ל עזרו המזל להיות קרוב למלכות ונכבד בדורו מפני רפואתו וחכמתו ולא נצרך ליטול פרס מהקהלות מה יעשו הרבנים והחכמים אשר לא באו לידי מדה זו הימותו ברעב או יתבזו מכבודם או יפרקו עול התורה מעל צוארם אין זאת כונת התורה והמצות והתלמוד.

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

This view, which the Rosh[28] endorses as well, albeit with much less enthusiasm, reflects a reality. It is well-nigh impossible to fully engage in serious Torah scholarship while working. If the Rambam could do it, it was because he was exceptional.[29] Of course, the ideal is that Torah scholars should earn a living if they can by working. As Rosh notes,

> וזקן זהו שקנה חכמה, והיינו ת"ח שתורתו אומנותו, והיינו שקובע עתים לתורה ואינו מבטל למודו אלא בשביל מזונותיו, כי אי אפשר לו ללמוד בלא מזונות; כי אם אין קמח אין תורה, וכל תורה שאין עמה מלאכה סופה בטלה וגוררת עון. הילכך, כל אדם שעושה תורתו קבע ומלאכתו עראי, כגון שיש לו עתים קבועים ללמודו ואינו מבטלם כלל, ושאר היום כשהוא פנוי, שאינו צריך לחזר על מזונותיו, הוא חוזר על הספר ולומד, ואינו מטייל בשוקים וברחובות אלא כדי להשתכר פרנסתו ופרנסת אנשי ביתו, ולא לאצור ולהרבות ממון, לזה אני קורא ת"ח . . .
>
> An elder is one who has acquired wisdom, namely a Torah scholar whose craft is Torah, meaning that he sets regular periods for Torah and cancels none of his studies, except for his work. For it is impossible for him to learn without work, for "if there is no flour, there is no Torah," and "any

> Torah that is not accompanied by work ultimately will be nullified and lead to sin." Thus, any person who makes his Torah study steadfast and his work impermanent, e.g., he has regularly set times for his studies and never cancels them, and the rest of the day, when he is free and not required to seek after his work, he returns to his books and studies, and he never strolls in the markets and roadways except to earn his livelihood and that of his household, nor does he hoard or accumulate much money—such a person do I call a scholar . . .

Of course, as Rosh goes on to say, if one has no other choice, then one may take charity. This is the view Rama[30] arrives at as well, albeit with a great deal of hesitation, as does the *Aruch ha-Shulchan*.[31] Rabbi Epstein states:

> מא וז"ל רבינו הרמ"א שנהגו בכל מקומות ישראל שהרב של העיר יש לו הכנסה וסיפוק מאנשי העיר כדי שלא יצטרך לעסוק במלאכה בפני הבריות ויתבזה התורה בפני ההמון ודווקא חכם הצריך לזה אבל עשיר אסור ויש מקילין עוד לומר דמותר לחכם ולתלמידיו לקבל הספקות מן הנותנים כדי להחזיק ידי לומדי תורה שע"י זה יכולין לעסוק בתורה בריוח ומ"מ מי שאפשר לו להתפרנס היטב ממעשה ידיו ולעסוק בתורה מדת חסידות הוא ומתת אלקים היא אך אין זה מדת כל אדם שא"א לכל אדם לעסוק בתורה ולהחכים בה ולהתפרנס בעצמו וכל זה דשרי היינו שנוטל פרס מן הציבור או הספקה קבועה אבל אין לו לקבל דורונות מן הבריות והא דאמרינן [כתובות ק"ה ב] כל המביא דורון לחכם כאלו מקריב ביכורים היינו בדורונות קטנים שכן דרך בני אדם להביא דורון קטן לאדם חשוב אפילו הוא ע"ה ושרי לת"ח לטעום מהוראתו מעט כדי לברר הוראתו אבל ליקח מתנה דבר חשוב ממה שהתיר אסור ודאשתמש בתגא חלף וי"א דזהו המשתמש בשמות ומותר לצורבא מדרבנן לאודועי נפשיה באתרא דלא ידעי ליה אם צריך הוא לכך עכ"ל [ובמגילה כ"ח ב איתא דזהו המשתמש במי ששונה הלכות]:
> מב וגדולי אחרונים כתבו ביותר מזה וז"ל וראינו כל חכמי ישראל נוהגין ליטול שכרן מהציבור אומר אני מי שהוא בעל הישיבה ומרביץ תורה ברבים וא"א לו לילך מביתו רק לדבר מצוה עון הוא בידו אם לא

יקבל מאחרים אפילו יודע מלאכה וחכמה שיוכל לייגע בהן ולהרויח כדי לפרנס בני ביתו בוז יבוזו לו באהבת התורה אכן אם יש לו ממון מכבר המספיק לו לחיות עצמו ולהלוותם בריבית וכדומה לזה שאין לו ביטול תורה כלל אז לא יהנה משל ציבור אלא יגיע כפו יאכל ומה שמקבל מן הציבור יוציא להוצאות ת"ת . . .

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

> known in a place where he is unknown if necessary." [The Talmud in Megillah 28b considers this as one who makes use of a teacher of the law.]
> 42. Moreover, one of the great latter-day authorities has written: "We have seen that the practice of all Jewish scholars is to accept support from the community. I say that one who is a master of the academy and disseminates Torah to the public and cannot leave his own home except for the purpose of a mitzvah, it is a sin for such a person not to accept funding from others, even if he knows a particular trade or discipline that he can toil in and make money in order to support his household, for the love of Torah will surely be denigrated. However, if one already has sufficient resources to support oneself and earn interest on the funds, in a manner which does not involve neglecting Torah study at all, then one should not benefit from public funds but rather consume the labors of his own hands, and whatever he does receive from the public he should spend on the expenses of teaching Torah.

This view reflects an unfortunate reality which the *Aruch ha-Shulchan* sadly acknowledges. Charity needs to be collected to pay for Torah study so that men and women can sit and learn (and perhaps teach); otherwise they will work, and we will have a community with fewer Torah scholars.

A third view presents such charity as the ideal. In this view, it is more important to spend one's charity funds to support Torah scholars than to support poor people. As Rabbi Blau, author of the multivolume *Pitchei Choshen*, states clearly in his classic work *Tzedakah u-Mishpat*:

> צדקה להחזקת תורה גדולה מצדקה לעניים . . .
> Charity to strengthen Torah study is superior to charity for the poor.[32]

The basic explanation for this view is logical. If building a synagogue is a greater form of charity than supporting the poor, the building of a

study hall—whose holiness is greater than a synagogue's[33]—is an even greater form of charity. Supporting people to use the study hall must then be an even greater mitzvah.

A similar view, clothed in a different garment, is found in the *Mishnah Berurah*, Biur Halacha 156:1, where he posits that the Yissachar/Zevulun partnership is a practical model that Torah scholars should use. In this model, people who work pay to support people who learn, and people who learn transfer divine reward to those who support them.[34] Similar views are repeatedly taken by Rav Moshe Feinstein.[35] Rabbi Feinstein posits that this arrangement is not really even charity—but rather, payment for vicarious Torah services rendered by one party while the other one works.[36] Indeed, Rabbi Feinstein posits that paying someone to study Torah or to learn for someone who works is a completely ideal manifestation of how Torah is supposed to function.[37]

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

- Rambam maintains that charity funds may never support Torah study.
- Rama maintains that if the times require, then such funds should be spent to support Torah study. But it is better that they not be.
- Rabbi Feinstein maintains that it is the ideal to spend such funds to support Torah study.

Let me summarize up to this point: Rambam's formulation of the mitzvah of *tzedakah* is structured and clear: Charity is exclusively for the poor. It may not be spent for communal needs or to support Torah study. Others disagree and rule that charity may be spent for communal needs other than support of the poor, and to support Torah study.

THE MODERN SOCIAL WELFARE SYSTEM, TAXES, AND GOVERNMENTAL CHARITY

The classical halacha is clear: A Jew should never take charity from a non-Jew.[38] If one must take charity from an agent of a non-Jewish government—for by declining to accept, one will ruffle the authori-

ties—one should take charity and secretly redistribute it to Gentiles.[39] If one will get into trouble by doing that, then one may grudgingly accept the charity.[40] While the exact reason for this halacha is in some dispute, the consensus remains that the taking of charity is a sign of moral failure, and it is a desecration of God's name for Jews to be seen in such light.[41] Of course, this concern is waived when lives are at stake or when the ill will generated by turning down a gift exceeds the ill will engendered by accepting it.

Notwithstanding this clear halacha, vast segments of the community have embraced a rationale that modern times are different. Governmental welfare, the argument goes, is not charity. As Rabbi Blau puts it:

> ובזמננו בישראלים הדרים בין האומות, ולפי חוקי המדינה רשאים עניים לקבל תמיכה מן השלטון (עזרה סוציאלית וכדומה), נראה שמותר לישראל לקבל, עפ"י הטעמים שהוזכרו לעיל, ועוד כיון שגם ישראלים דרים שם וגם הם משלמים מסים, ותמיכה זו מכספי המסים היא, אין זה בכלל קבלת צדקה מעכו"ם.[42]
>
> In our times, Jews who live among the nations, and according to the secular laws the poor are entitled to accept government support (social welfare and the like), it seems that it is permissible for a Jew to accept, according to the reasons mentioned above. In addition, because Jews also live in the state and they too pay taxes, and since this support comes from tax revenues, it is not considered taking charity from Gentiles.

The claim is that we too, as members of society in good standing, are entitled to participate in the social welfare system as per the rules of the game. The basic rationale of desecration of God's name through wholesale Jewish poverty is dismissed, as governmental welfare is an entitlement.[43] Of course, one could argue with this rationale and insist that comfortable participation of Jews in the social welfare safety net is still a desecration of God's name even in a just democracy,[44] but as far as I can tell, this view has yet to be put forward by a halachic authority in the last half-century. Indeed, the social normalcy by which

large segments of Orthodox Jewry freely take welfare from the secular government in some communities is astounding.[45]

The same observation can be made with regard to income tax. Rabbi Feinstein's observation[46] that money one pays as taxation on income does not count as income from which charity should be given is the only feasible conclusion, given the construct of our community. The alternative view—considered by Rabbi Eliezer Waldenberg[47]—is that money one pays in taxes counts as a form of charity. This view has considerable support,[48] but in a high-tax nation, this approach would reduce the obligations of charity to zero and thus becomes untenable as a matter of normative halachic practice. One finds a deep consensus that charity must be calculated after taxes whenever the tax rate is higher than 20 percent.[49]

Not surprisingly, the voices within halacha who are accepting of widespread Jewish poverty and dependence on welfare also recognize that because very little charity is needed to fend off starvation in the United States, since in our society the government provides nearly all the social services needed to function on a basic level, charity should be directed elsewhere. What then should one do with one's charity? One should invest in a form of charity that is better than alleviation of the plight of the poor (whose lives are not in danger)—that is, one should give to institutions that increase Torah study and pay Torah scholars to learn. One is hard-pressed to find a contemporary work in English dealing with charity that does not make this point in one way or another.[50] Since the modern state has done away with Jewish autonomy, it has essentially relieved the Jewish community of its concomitant burden of providing the necessities of life to the poor (food, clothing, medical care, and shelter)—the single greatest use of charity funds centuries ago. Charity dollars are now able to be directed to other purposes.

UNUSUAL BALANCES IN *HILCHOT TZEDAKAH*

The preceding sections have discussed balancing aid to the poor with the needs of the community. This section emphasizes one important limitation in that balance: the obligation to give the highest priority to situations that actually save Jewish lives. The *Shulchan Aruch*[51] is clear

that in situations where the spending of charity money saves lives, that action has the highest priority, and one may actually divert money from general charity matters to prevent the loss of life. This is the clear lesson of the rabbinic understanding of the duty to redeem captives. The very high priority the Talmud and codes give to this mitzvah reflects that this situation entails not only charity but also a fulfillment of the obligation "not to stand idly by while one's neighbor's blood is shed."[52] In cases where life is in danger, little else takes higher priority.

Even this application of charity has limitations, in that a community need not sell its assets to raise money to save lives.[53] The suggestion of the Drisha[54] that the support of Torah scholars takes priority over saving lives is nearly universally rejected under the rationale that "nothing ought to stand in the way of saving lives."[55] In that case, why does a community not have to sell its own assets in such a situation? Shach[56] and Taz[57] both seem to intimate that giving up assets that one cannot otherwise replace, and which are no longer charity funds but communal assets, is simply not covered by the rules of charity.[58] Once a poor person or a communal institution actually has the money, it is no longer charitable funds and may not be diverted.[59] The same is true when the donor has expressly limited his donation to a particular cause. In such a case, the beneficiaries of that cause take possession at the time of the pledge and cannot be deprived of their ownership except by dint of the "consent of the community."[60]

HOW MUCH CHARITY SHOULD A PERSON GIVE?

The halacha seems clear that the exact amount of charity that a person must give is not fixed and established. At a minimum, one must give at least one-third of a shekel each year (less than $10), and one who gives less than that amount has not fulfilled his mitzvah.[61] In a close-to-ideal world—one in which there are many individuals who have enormous amounts of wealth and the inclination to give such wealth away—the halacha is clear that a person may give away large sums of money to meet the needs of the poor.[62] The *Shulchan Aruch* goes on to state the general formulation for how much a person should actually give in the real world:

> אם אין ידו משגת כל כך [כפי צורך העניים], יתן עד חומש נכסיו, מצוה מן המובחר; ואחד מעשרה, מדה בינונית; פחות מכאן, עין רעה.
>
> If one cannot afford to give to all the poor as much as they need, one can give up to 20 percent of one's possessions and that is the ideal mitzvah; 10 percent is the average way to fulfill this mitzvah; less than that is considered miserly.[63]

However, this construct is tempered by the comments of the Rama,[64] who writes:

> פרנסת עצמו קודמת לכל אדם, ואינו חייב לתת צדקה עד שיהיה לו פרנסתו ואח"כ יקדים פרנסת אביו ואמו, אם הם עניים, והם קודמים לפרנסת בניו. ואחר כך בניו, והם קודמים לאחיו, והם קודמים לשאר קרובים, והקרובים קודמים לשכיניו, ושכיניו לאנשי עירו, ואנשי עירו לעיר אחרת. והוא הדין אם היו שבוים וצריך לפדותן.
>
> Providing for one's own livelihood takes priority over all others, and one is not obligated to give charity until one's own livelihood is secured. After that, one should give priority to the livelihood of one's parents (if they are poor); they take priority over the livelihood of one's children. After that, one's children; they take priority over one's siblings, who take priority over other relatives. Relatives take priority over one's neighbors, who take priority over the residents of one's own city, who in turn take priority over residents of another city. The same priorities apply to the redemption of captives.

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

The *Aruch ha-Shulchan*[65] notes our problem and asserts:

> ולכן נלע"ד ברור דזה שכתב הגאון דפרנסתו קודמת היינו באיש שאינו מרויח רק לחם צר ומים לחץ ולכן מביא ראיה מהצרפית שבשם היה תלוי חיי נפש ממש שהיה רעב בעולם כמבואר במלכים שם ואם נותר

לו לחם ומים אביו ואמו קודמין ואח"כ בניו וכו' אבל האיש שמרויח פרנסתו כבעל בית חשוב שאוכל כראוי לחם ובשר ותבשילין ולובש ומכסה א"ע כראוי וודאי דחייב בצדקה מעשר או חומש מפרנסתו וחלק גדול מהצדקה יתן לקרוביו ועניי עירו ומעט מחוייב ליתן גם לרחוקים ועניי עיר אחרת דאל"כ עיר של עניים יגועו ברעב ח"ו אלא וודאי כמ"ש ותדע לך שכן הוא דאל"כ איזה גבול תתן לפרנסתו שהיא קודמת וכל אחד יאמר אני נצרך לפרנסתי כל מה שאני מרויח שהרי אין גבול להוצאה כידוע אלא וודאי כמ"ש דלא קאי רק על מי שיש לו רק לחם מצומצם להחיות נפשו ונפש אשתו ובניו ובנותיו הקטנים:

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

This is exactly the problem in the world of giving. As the *Aruch ha-Shulchan* notes, no one ever really feels that he or she has enough income to give away, and everyone senses that there are still more things that he or she really, really, really needs. Measuring when a person has "enough," so that he ought to give away more is extremely difficult. As Rabbi Blau notes—and this is from a man who has spent his life clarifying many narrow details of halacha in his numerous halachic volumes[66]—"The measure of suitable livelihood is unclear to me."[67]

Indeed, in my own experiences as a shul rabbi, I frequently encounter individuals who have annual incomes in excess of $500,000, yet they explain to me—sincerely and honestly—that they live paycheck to paycheck. I even understand. Consider a hypothetical professor at an institution where average salaries for tenured full professors are about $200,000 who is married to a government accountant, where average salaries are about $90,000. Their effective tax rate is about 35 percent on a gross income of $290,000. They have five children, and tuition for the children is nearly $60,000. Altogether, $160,000 is spent on taxes[68] and tuition.[69] The husband has chosen to volunteer his time as an unpaid rabbi in his local synagogue as well as to serve in the capacity of *dayan* in the local rabbinical court, from which he also receives no pay (and which might be a form of charity).[70] From the remaining $130,000, they have to support their family, providing food, clothes, and shelter. How much charity should they give?

Anyone can always purchase a larger house and a newer car—thereby increasing their debt load and decreasing their available cash—and claim that they "need" to spend that money. Yet all of us ought to struggle not to do that. I would advise the hypothetical couple to give away $38,000 in charity under the assumption that this is a good number—it is about 20 percent of their net income, after taxes. This approach—which is that normal middle-class people should strive to give away 20 percent of their income—is the view that the *Shulchan Aruch* endorses,[71] and it is only an average person who should give away 10 percent of his income.[72] In this regard, given our reality in America, we should strive not to be average. Yet when I share these figures with other members of the Modern Orthodox community, it is clear that the vast majority are simply not prepared to pay income

tax, day school tuition, and 20 percent of income as charity. In the case I presented, these three items comprise two-thirds of the family's income, leaving but $92,000 for all of life's other expenses.

This level of giving seems beyond that of most people. Some respond by citing Rama's view that supporting oneself is more important than charity. Some respond that day school tuition really is charity.[73] And some cheat on their taxes.[74] Others apply for day school tuition breaks because they cannot afford to pay full tuition and still live the comfortable (and charitable) lifestyles they wish. Others simply choose to have fewer children, as more children cannot be handled without resort to charity—this might even constitute permissible grounds for birth control.[75] Indeed, as a matter of normative practice, one is hard-pressed to determine what items actually count as income, what counts as charity, and what the minimum amount of charity should be. Most rabbis I speak to tell me that they give very little money to charity, as entering the rabbinate is the ultimate donation of their time.[76]

Indeed, if one takes as a given that a person should give no charity unless he is paying 100 percent of his children's tuition,[77] one is hard-pressed to see anyone who is married with a couple of children of day school age having any money to give away unless the combined household income exceeds $150,000 or perhaps even $200,000.[78]

The sad but complex reality of the obligation to give charity is made clear by examining a small number of real-world cases. Let us consider five cases:

1. Husband and wife both work as public school teachers or administrators. Their combined income is $180,000. They have four children between the ages of seven and sixteen, and the full tuition bill for these four children is $51,000. Their combined federal and state tax obligation is $40,000, leaving them with just $89,000 for the rest of their expenses. It is clear that such a family cannot afford to give any charity in fact, and is probably in need of a scholarship of some sort to pay for yeshiva tuition.
2. Husband is a second-year associate in a Wall Street law firm earning $185,000. Wife stays at home taking care of two children under age three. Besides taxes of $40,000, husband is repaying

college and law school debt at the rate of $12,000 per year, leaving an after-tax and -debt annual income of about $133,000. It seems to me that such a family ought to be giving away at least 10 percent of their income, and ideally 20 percent, to charity.

3. Husband and wife are both physicians, each earning $250,000. They have five children between the ages of six and nineteen, with a total tuition bill of $75,000. Their tax obligation is about $170,000, and after tuition and taxes their remaining net income is $255,000. Much as I tell such individuals that at a minimum they ought to be giving more than $35,000 a year to charity, I find that they rarely listen to such advice. It would be proper for them to be giving away close to $60,000 per year.
4. Husband and wife are divorced. Wife has sole custody of three children, ages nine to fourteen, and earns $200,000 as a pediatrician. Tuition for the children is $35,000 and federal and state taxes amount to about $50,000, leaving a net income of $115,000. In addition, she receives child-support payments of $14,000 annually. It would seem proper for her to donate at least $11,000 per year, and maybe $22,000 a year, to charity.
5. Husband and wife are sixty-five and still working. Their combined income is $275,000 and they have no children in day school. After paying taxes of $80,000, they should be donating between $20,000 and $40,000 per year to charity.

Other than the final case, one sees that the burdens of paying day school tuition frequently make the kind of substantive giving that we imagine as possible in the (upper) middle class actually quite impossible. The combination of larger families and high day school tuitions makes $200,000 the minimum income a person (family) needs to have before charitable giving is possible.

THE QUESTIONS POSED BY THE ORTHODOX FORUM EDITORS

The editors of the Orthodox Forum posed two questions with four permutations. They asked

> [Please provide] a halachic analysis of Jewish charity law, taking into account 1) that the Shulchan Aruch was framed on the assumption that Jewish communal institutions would be funded not through charity but through communal taxes (see Choshen Mishpat, Hilchot Shutafut) and 2) that American Jews pay taxes to the general government that cover social services to a degree and religious institutions not at all. The analysis could include
>
> a. How much luxury can be justified before people give at least the 20 percent mentioned in the Shulchan Aruch as the ideal?
> b. How should we balance local needs with those in Israel (or for Israel, such as political advocacy); the needs of families with the needs of Jewish institutions; the needs of Jews and non-Jews (especially non-Jews in life-threatening situations)? Does the increasing vibrancy of the Israeli economy change the equation? Should diaspora Jews use their philanthropy in Israel to influence cultural change (e.g. job training within the Charedi community)?
> c. Does globalization and instant communication affect the concentric circles that require us to fund first in our local community, then in Israel and then elsewhere? How should these concentric circles be applied practically?
> d. Hilchot tzedakah leaves room for much individual discretion. Are there causes to which every Jew must give?

The totality of these questions really forces the most basic question of the general application of Jewish charity law to modern times. I think six points can be made, each of which derives from the preceding sections of this paper.

First, the general structure of the entire Jewish community in America is unique. Identification and support of Jewish causes is vol-

untary. No Jewish community has the power to tax, and no community has a functioning *beit din* that can compel the giving of charity. Because of this, if we wish to have communal institutions, they must be funded by voluntary contributions. Hence, it is the normative practice within the Orthodox community to reject the view of Rambam that limits charity to poor people, and instead we accept the view of Maharik that all public needs are charities. Thus, we fund our Jewish institutions with charity funds.

Second, we can function this way, in fact, because the secular government of the United States is a just and honest government which seeks to help all of its citizens. It provides the social and economic necessities for the poor on a consistent basis. This allows the Orthodox community to allocate its funds less to the poor and more to institutions. This halachic posture would be untenable if the poor were starving to death in America.

Third, our society is a relatively opulent one, with a great deal of pressure placed on individuals to be materialistic. There is a great hesitancy within our Modern Orthodox community to live at a standard of living that is markedly lower than that of secular Jews, lest our children associate religious life with poverty and privation, as they did—with dire consequences—seventy-five years ago. To put this another way, a thousand years ago, society sensed that "God loves the poor,"[79] and Jewish and Christian communities ennobled poverty, allowing the poor to look down on the wealthy. Our American society—and certainly our American Jewish society—has not accepted this message, and it does not think that we can raise Modern Orthodox Jews to accept a standard of living significantly lower than that of our neighbors. People thus give charity and spend on themselves and their families consistent with the religiously proper goal of raising happy, content, religiously committed children.

Fourth, since halacha accepts that the needs of the community in a general sense are to be considered charity, and since we lack any firm communal hierarchy for determining and prioritizing communal need, there are no firm halachic guidelines establishing which communal institutions ought to be funded once the public charities that feed and clothe the utterly destitute are funded. We cannot say with any cer-

tainty whether investing in a cure for cancer is a higher or lower priority than funding a rabbinical court. None of us can say with certainty whether job training for the Charedi community or Torah education for the Reform community is more important. Each donor decides. Yet it is better that they donate to one cause or the other, rather than spend the same money on themselves.

Fifth, the concentric circles of charity found in *Shulchan Aruch*, Yoreh Deah 251:3 (self, family, city residents, residents of Israel, strangers) is of no basic importance in this conversation, as it is clear that the above listing and halacha are limited to funding the desperately poor and is of no relevance to the question of whether a person should give money to Yeshiva University, the Ponovezh Yeshiva, the ACLU, or the Republican Party, none of which feeds the poor.

Sixth, charity has become such a source of competition for resources exactly for the reasons noted in the above five paragraphs. Since there are no firm halachic guidelines, each person uses his own judgment; once the needs of the poor who are profoundly hungry or others whose lives are at stake are taken care of, there are few guidelines left in halacha that compel giving of a specific type. This discretion encourages donations and leads (one hopes) to a more creative and dynamic charitable community.

One final point is important to note. Halacha places many demands on our money. For example, one needs to spend money on *arba minim*, *talit*, *tefillin*, *oneg Shabbat*, and a multitude of other halachic necessities, each of which often includes a concept of *hiddur*, i.e., added merit in spending more to buy especially beautiful articles. Whether donating to a shul's building fund or *sefarim* fund is *tzedakah* or not, it is clearly a mitzvah—for example, at the very least such a donation is a public virtue by enabling or facilitating fulfillment of public prayer and Torah study. Similarly, donations to build hospitals and other community infrastructure fulfill the obligation to love one's neighbor and may represent a very powerful and effective form of *gemilut chasadim*. Individuals will always face choices about how best to allocate their finite financial resources among these various priorities, and it is entirely valid and necessary to ask which ones have greater priority relative to others. Should I buy a fancier *etrog*, or be content with a lower

level of *hiddur* and contribute the difference to charity? That is a valid question, even though the purchase of *arba minim* is obviously not a fulfillment of charity. Therefore, one could recast much of our discussion not as whether financial expenditures to meet communal needs technically constitute charity, but instead as a broader assessment of how the obligations of charity are to be weighed against the fulfillment of other important positive commandments.[80] In other words, even though Rambam rules that *tzedakah* is synonymous with supporting poor people, he nevertheless might agree conceptually that building a synagogue is an important positive obligation which might[81] take priority over charity.[82]

CONCLUSION

Charity is a totally different religious construct in America than it was three centuries ago in Europe. Our national and state governments have relieved the Jewish community of the basic burden of caring for the ill and the desperately poor, and have made the redemption of captives a rarity in America. This has allowed for a blossoming of giving to various communal needs designed to further the Jewish community by building social, religious, and Torah institutions that serve our community. I hope we can rise to the challenge of building wisely.

POSTSCRIPT

The Maharik, in the course of proving that one may collect charity money for the building of a synagogue, quotes the Jerusalem Talmud, which rebukes community members for spending charity money on building a fancy entrance to the synagogue when there were poor people in need. This lesson cannot be forgotten. Whether or not spending *tzedakah* funds for public needs is considered charity (and the consensus holds that it is), it is incumbent upon us as a community to make sure that charity spending is really used for the genuine public good and does not merely become a way that wealthy insular communities raise money to spend for the benefit of . . . wealthy insular communities.[83] The Orthodox community needs to lead the way to make sure that the license to raise charity funds for matters of communal need (as the Maharik shows is permitted by Jewish law) is genuinely used by

our community to responsibly build a community of substance that shows the truth of Rambam's observation that charity is a central measure of what it means to be a Jew.[84]

NOTES

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1. See Deut. 15:7–11, Lev. 25:35–38 (in addition to numerous exhortations to look after the poor, the widow, and the orphan, and many injunctions against oppressing the poor); *Shulchan Aruch*, Yoreh Deah 247:1.
2. Another example of this is the concept that found objects even after *yeush* should be held in escrow unused until Elijah arrives. On an ethical level, halacha is mandating that this object is not owned by the finder; but on a practical level, once it is clear that the original owner can never reclaim the object, the finder functions as if it is his. See Michael J. Broyde and Michael Hecht, "The Return of Lost Property According to Jewish and Common Law: A Comparison," *Journal of Law and Religion* 12 (1996): 225–254.
3. *Shulchan Aruch*, Yoreh Deah 250:1 and Rama ad loc.
4. Taz, Yoreh Deah 250:1 and Shach, Yoreh Deah 250:1; but see Bach, Yoreh Deah 250.
5. Yaakov Yishayahu Blau, *Sefer Tzedakah u-Mishpat* 3:5 (Jerusalem: Beit Meir Press, 5740 [1979/80]).
6. Hil. Matnot Aniyim 7:1; *Sefer ha-Mitzvot*, Aseh 195. In Matnot Aniyim 7:1 Rambam writes: "It is a positive commandment to give charity to the Jewish poor, as befits each poor person, if the giver can afford to do so." A reader questioned whether my narrow classification of the Rambam is correct given four different halachot included in Hil. Matnot Aniyim:
    - If one instructs [the gabbaim], "Give these 200 dinars to the synagogue," or "Give this Torah scroll to the synagogue," they should give it to the synagogue the person normally attends. (7:15)
    - If someone donates a candelabra or candle to the synagogue, one is not permitted to exchange it for something else. . . . We ought not to accept donations from non-Jews for the upkeep of the Temple . . . but we may accept such donations for a synagogue. . . (8:6, 8)
    - If residents of a city collected money for the purpose of building a synagogue and are then presented with a [different] mitzvah to fulfill, they may spend the money on that instead. (8:11)
    - Residents of a city are permitted to reallocate money between the general charity fund and the soup kitchen, or to divert such funds to any

other communal need of their choice, even if that was not stipulated when the funds were collected. (9:7)

In fact, this is not a serious question. Chapter 7 of Matnot Aniyim deals with the mitzvah of *tzedakah*. Chapter 8 fundamentally addresses laws of vows and their impact on donor intent, given that charitable donations are treated as having the status of a vow (*neder*), while chapter 9 explains the governance of charity funds and when they can be diverted from their stated purpose. (Even then, as noted by Radvaz 9:7, some maintain that charity funds may only be diverted for charitable needs.) However, just because charity funds may be diverted to noncharitable needs does not make those needs charity. (Chapter 10, it can be noted, lays out overarching ethical principles of charity, somewhat unusual for Maimonides' Code.)

Finally, it is worth observing that, broadly speaking, Rambam puts his laws of charity in Hil. Matnot Aniyim, while *Tur* and *Shulchan Aruch* place them after the laws of Talmud Torah.

7. This paper does not discuss the theoretical matter of how the community ought to act were it to have the power to coerce payments for communal matters. (See R. Moshe Feinstein, *Igrot Moshe*, Choshen Mishpat 1:41, who defends the early compromise of a half per-capita and half wealth-based tax. Cf. *Beit Yosef*, Orach Chaim 53, in the name of R. Hai Gaon, and Aaron Levine, *Free Enterprise and Jewish Law* (Ktav and Yeshiva University Press, 1980), p. 152; as well as Rama, Choshen Mishpat 163:3, and Chatam Sofer, Choshen Mishpat 159 (who presents a sophisticated and complex formula).
8. But see the end of n. 6 above.
9. Rabbi Joseph ben Samuel Kolon [Cologne] (ca. 1420–1480), Italian authority and author of numerous responsa.
10. Maharik 128.
11. *Beit Yosef*, Yoreh Deah 249:[16].
12. It is worth noting that our text of Y.Peah 8:8, as well as the parallel passage in Y. Shekalim 5:4, does not include the words "or sick people sustaining themselves from the refuse pile."
13. Yoreh Deah 249:6. It is commonly claimed that the formulation ישמי שאומר is a normative one. This is one example, among a considerable amount of evidence, to the contrary.
14. *Tzedakah u-Mishpat* 3:28.
15. Yoreh Deah 249:18–20.
16. Yoreh Deah 249:20.
17. See *Yikrei Lev*, Yoreh Deah 5, who appears to reject Maharik.
18. Tosafot, Bava Batra 9a, s.v. *she-ne'emar*.
19. *Aruch ha-Shulchan*, Yoreh Deah 249:18–19.
20. Y.Peah 8:8.
21. This topic is worthy of a dissertation, but a footnote must suffice for now. The touchstone document of halacha is without a doubt the Talmud; more particu-

larly, the Babylonian Talmud. Rif (Eruvin 27a), Rambam (in his introduction to the *Mishneh Torah*), and Rosh (Sanhedrin 4:5) note that the basic doctrine of Jewish law is the supremacy of the Babylonian Talmud. What, then, is the status of the Jerusalem Talmud? There are, I suspect, two distinctly different schools of thought. One view in the Rishonim and Acharonim posits that the Jerusalem Talmud is a central document of halacha, and one should seek to interpret the Bavli in light of the Yerushalmi. As Rabbi Joseph Karo writes (*Kessef Mishneh*, Gerushin 13:18), "Any way that we can interpret the Bavli to prevent it from arguing with the Yerushalmi is better, even if the explanation is a bit forced (קצת דחוק)." To recast this in a slightly stronger way, it is well-nigh impossible to determine the halacha, in this view, without a firm grasp on the Yerushalmi.

Anyone who regularly studies the Rashba or the Ritva, who has seen Rambam's Hilchot ha-Yerushalmi (ed. S. Lieberman), or who has learned Rabbeinu Chananel recognizes that these Rishonim were masters of the Yerushalmi as well as the Bavli. Such is not the case for Rashi and his disciples, who make almost no use of the Yerushalmi and did not seem to think themselves any the worse for it. (Contrary to this is Louis Ginzberg's astounding assertion that Rashi's "classic work would have gained much" had he employed the Yerushalmi more frequently [p. xlix of his Commentary to Y.Berachot]). Indeed, a common methodological insight of the mainstream Ashkenazic commentators is that they make wellnigh no use for the Yerushalmi (except, perhaps, Ra'aviyah). Mordechai, Mahara, Yereim, Semak, et al. nearly never cite the Yerushalmi. (For an example of the approach of Tosafot, see B.Berachot 11b, s.v. *she-kevar niftar*, where Tosafot states in response to a difficulty presented by a Yerushalmi: "And Ri answers that we do not accept this Yerushalmi, since our Talmud does not quote it." According to Ri, sources not cited in "our Talmud" [the Bavli] are not binding.)

The same divergence continues for centuries, with some halachic authorities seeking detailed, close study of the Yerushalmi, and others essentially ignoring it. For example, the *Aruch ha-Shulchan* regularly cites the Yerushalmi, and frequently his quotes reflect that he is himself a regular student of the Yerushalmi and his insights are both novel and fluent. This is not the case for the *Mishnah Berurah*, who never quotes the Yerushalmi except when it is quoted by others. (The same is true for *Igrot Moshe* and *Dibrot Moshe*. Rav Moshe Feinstein's fluency with the Bavli is amazing, and his insights beyond compare. But in my study of both *Dibrot Moshe* and *Igrot Moshe*, I am unaware of a single novel citation to the Yerushalmi by Rav Moshe.)

The same difference proves to be quite important, I suspect, in many halachic constructs, where a less than ideal explanation of the Bavli harmonizes it with the Yerushalmi and the ideal explanation of the Bavli is completely inconsistent with the Yerushalmi. What to do in that situation remains a vast dispute among *poskim*. (Consider, for example, four examples that I happen to be writing about currently—tefillin on Chol ha-Moed, *aliyot* in a city where all the men are Kohanim, whether the daughter of a gentile man and a Jewish woman may marry

a Kohen, and our issue of using charity funds to build shuls. In all four cases the Bavli is silent, while the Yerushalmi directly addresses the matter. On the topic of tefillin on Chol ha-Moed, Y.Moed Katan 3:4 is clear that tefillin should be worn; in Y.Gittin 5:9 it is clear that even in a city where all the men are Kohanim, women do not get called to the Torah; Y.Yevamot 4:15 is clear that a Kohen may not marry such a woman; and in Y.Peah 8:8 it is clear that a synagogue is a valid recipient of charity. Although it is obvious that each of these matters generates some controversy among decisors, the consensus [a clear majority of the *poskim*] follows the view that is endorsed by the Jerusalem Talmud. Much more could be written on this matter.)

Rambam, a good claim could be made, did not fall clearly into either of these camps, and his exact methodology for resolving Talmudic disputes remains cloaked in mystery. However, it is clear that he was quite familiar with the Yerushalmi and sometimes accepted its rulings even when they stood in opposition to apparent rulings of the Bavli. My own intuition is that Rambam used logical tools to resolve disputes and was not even fully wedded to the notion of the complete superiority of the Bavli over the Yerushalmi in all cases. (My eldest son, Joshua Broyde, recently suggested that Rambam had a tendency to accept Talmudic views that are supported by logic over views supported by scriptural verses. As an initial proof of this proposition, Joshua cites four examples from Tractate Sanhedrin: 8b, *R. Yose omer*; 10a, *Rava amar malkot bimkom mitah*; 30a–b, *R. Natan ve-R. Yehoshua ben Korchah*; and 16b, *R. Shimon hayah doresh ta'ama de-kra.*) That Rambam does not follow normal rules of decision is widely noted. See *Sedei Chemed*, Kelalei ha-Poskim, vol. 9, siman 5. See also numerous such references in the *Tosafot Yom Tov*; Rashba, Ketubot 48a, s.v. *amar Rav*; idem, Nedarim 46a, s.v. *mistavra*; Ritva, Moed Katan 8b, s.v. *ika beinaihu*; *Yam Shel Shlomo*, Yevamot 8:18; *Penei Yehoshua*, Gittin 84b, s.v. *ve-nir'eh le-Ri*; Chatam Sofer, Avodah Zarah 34a, s.v. *ve-ana kevedah* (perhaps).

The writings of Rabbi Soloveitchik, which contain truly dozens of insightful comments on the Bavli yet not a single real *chiddush* on the Yerushalmi, also reflect a certain insight into the Brisker approach to the Rambam. Indeed, the Rav seemed almost comfortably indifferent to the Yerushalmi's role in the *Mishneh Torah*. Consider the comments in *Shiurim le-Zecher Avi Mori* 1:118–120, addressing the wearing of tefillin on Chol ha-Moed, which contains an insightful observation on the nature of tefillin on Chol ha-Moed, yet completely ignores the relevant Yerushalmi that is clear and contrary to his thesis. Indeed, that the followers of the Brisker approach methodologically insist on harmonizing Rambam with the Bavli, even when there is considerable evidence that Rambam draws from a broader range of sources, is more than a bit disquieting. In light of Y.Moed Katan 3:4 and the ambiguity within the Rambam regarding the wearing of tefillin on Chol ha-Moed, this author is inclined to think that Rambam rules that one must wear tefillin on Chol ha-Moed, and that the entire approach in *Shiurim le-Zecher Avi Mori* 1:118–120 is thus difficult.

It is also worth noting that the issue of wearing tefillin on Chol ha-Moed is further complicated by the view of the Zohar (*Zohar Chadash*, Shir Hashirim 8a–b) that such is unequivocally forbidden (*vadai bar ketula ihu*). It is likely that the *Beit Yosef* (who quotes extensively from the Zohar here) is of the view that the Zohar, attributed to Rabbi Shimon bar Yochai, is to be considered a Tannaitic source and take precedence over the Talmud Yerushalmi.

22. Kelalim 2:44.
23. Chatam Sofer, Orach Chaim 203; Maharsham 4:147.
24. *Aruch ha-Shulchan*, Yoreh Deah 149:20.
25. For an example of this, see Rabbi Moshe Weinberger, *Jewish Outreach* (Ktav/New York Association of Jewish Outreach Professionals, 1990), chap. 9, "Is a Contribution to a Kiruv Organization Tzedaka?"
26. Hil. Talmud Torah 3:10–11.
27. Tashbetz 1:147.
28. Responsa of Rosh 15:10.
29. When I first started learning in the *yadin-yadin* kollel at Yeshiva University, one of the members told me that in the 1960s, when YU approached the Rav about starting an evening kollel, the Rav asked why one was needed. They told the Rav, "To learn more," and the Rav replied, "Oh, of course. Think how much more the Rambam could have accomplished if only he could have learned in kollel!"
30. Yoreh Deah 246:6.
31. Ibid. 246:38–42.
32. *Tzedakah u-Mishpat* 3:26. He adds that such is not true when the poor might actually perish.
33. *Shulchan Aruch*, Orach Chaim 90:18.
34. Rambam would respond by noting that the standard halacha posits that Torah study, like prayer, does not allow the appointment of an agent to fulfill one's obligation.
35. *Igrot Moshe*, Yoreh Deah 4:36–37, Orach Chaim 3:11, and many other places.
36. Ibid., Yoreh Deah 4:37(4).
37. Ibid., Yoreh Deah 4:36–37 are two extremely long, exhaustive *teshuvot* noting many different details of such arrangements. It is worth noting that the detailed halachic analysis of the Yissachar/Zevulun partnership outside of the mode of charity is a relatively unique halachic category, which is first found in *Tur*, Yoreh Deah 246, but was not generally discussed as a "real" halachic category until *Igrot Moshe* analyzed it as such with great vigor. It is also worth noting that *Igrot Moshe* insists that the name of the working partner is spelled יששכר and not ישכר, reflecting his view that there is a genuine partnership in such cases, where a wage-earner is to be considered as if he learns and a learner is to be considered as if he works.
38. *Shulchan Aruch*, Yoreh Deah 254:1.
39. Ibid. 254:2.
40. Rama ad loc.

41. The other rationale is even more complex:
יש הרבה פוסקים—ובפרט בעלי הלכה וקבלה—שסוברים שאסור לב"י לגמול חסד לא"י בחנם, ומכיוון שנתינת הצדקה מצוה היא לגוי, ועדיף שיבא הא"י לשמים בלי שום זכות, לכן אסור לקבל צדקה מא"י. כמעט כל הנושאי כלים על הש"ע אינם מקבלים שהוא הטעם; ראה ט"ז, ש"ך, ועדה"ש ס' רנד.
42. *Tzedakah u-Mishpat*, chap. 1, end of n. 68. Rabbi Blau adds:
מה שכתבו הפוסקים שדבר שבחובה אינו עולה לחשבון צדקה, א"כ כ"ש לגבי עכו"ם משלמי המסים שאינו עולה לזכות.
43. According to the New Jersey State Data Center Report, "Money Income (1989 and 1999) and Poverty (1999): New Jersey, Counties and Municipalities" (2003), out of 702 places in the state of New Jersey ranked by per-capita income, Lakewood Township is no. 663 and unincorporated, Lakewood (census-designated place) is no. 699. Similar data from New York list New Square at 1049 and Kiryas Joel at 1051 out of 1051 places ranked by per-capita income. According to National Insurance Institute of Israel data, Jerusalem and Bnei Brak regularly switch places as the poorest and second-poorest cities in Israel.
44. As welfare still comes with the social stigma of failure and poverty. This might be different for other governmental awards, such as GI educational benefits.
45. See, e.g., Fernanda Santos, "Reverberations of a Baby Boom," *New York Times* (August 27, 2006): A1; Joe Sexton, "When Work Is Not Enough: Religion and Welfare Shape Economics for the Hasidim," *New York Times* (April 21, 1997): B1; Konrad Yakabuski, "The Hasidim's Unorthodox Dilemma: Why a Proud, Self-Sufficient Community Suddenly Seeks Help From the Outside World," *Globe and Mail* (February 5, 1998): A2. Putting aside the terrible violations of *dina de-malchuta* described in some of these articles and the undeniable *chillul hashem* involved in the airing of the community's laundry in the North American press, the welfare statistics described in these articles are shocking only to outsiders of our community.
46. *Igrot Moshe*, Yoreh Deah 1:143.
47. *Tzitz Eliezer* 9:1:5.
48. See Taz, Yoreh Deah 249:1. For a defense of the *Tzitz Eliezer*'s position as proper normative halacha, see Yitzchak Yaakov Weiss, *Minchat Yitzchak* 5:34(9).
49. I am not aware of anyone who disagrees.
50. For example, see Moshe Goldberger, *Priorities in Tzedaka* (Judaica Press, 2007), pp. 66–74.
51. Yoreh Deah 252:1.
52. Lev. 19:16; funding to save lives fulfills several other commandments as well—see Hil. Matnot Aniyim 8:10; *Shulchan Aruch*, Yoreh Deah 252:2.
53. *Shulchan Aruch*, Yoreh Deah 252:1.
54. Commenting on *Tur*, Yoreh Deah 252.
55. Taz, Yoreh Deah 252:2; *Tzedakah u-Mishpat* 3:27, note 83; *Shevut Yaakov* 2:84.
56. Yoreh Deah 252:1.
57. Ibid.

58. Why such conduct is not obligatory under the rule of *lo taamod al dam reiecha* is beyond the scope of this paper.
59. Taz, Yoreh Deah 256:4; Shach, Yoreh Deah 252:2. But see Bach, Yoreh Deah 252.
60. Rama, Yoreh Deah 252:1.
61. Bava Batra 9a, citing Neh. 10:33 (cf. Y.Shekalim 2:3 [46a]); Hil. Matnot Aniyim 7:5; *Shulchan Aruch*, Yoreh Deah 249:2.
62. See the formulation in *Shulchan Aruch*, Yoreh Deah 249:1, which makes it clear that the 20 percent limitation does not apply in such a case. See also Rabbi Ezra Batzri, *Dinei Mamonot*, vol. 4, p. 218 (chap. 3:1 of tzedakah). Rabbi Blau notes (*Tzedakah u-Mishpat* chap. 1, n. 8) that there are some Acharonim who disagree with this formulation and think that the rabbis capped charity at 20 percent. This approach is fraught with some difficulty, as he indicates. See *Igrot Moshe*, Yoreh Deah 1:143 (final paragraph).
63. *Shulchan Aruch*, Yoreh Deah 249:1. On whether 10 percent is a Torah obligation, a rabbinic obligation, or merely a recorded proper practice, see Maharshag, Yoreh Deah 36; Maharit 1:127; Ahavat Chesed 19:4; and Minchat Yitzchak 5:34.
64. Yoreh Deah 251:3.
65. Ibid. 251:5.
66. On such complex topics as all of Choshen Mishpat, Ribit, Eruvin, etc.
67. *Tzedakah u-Mishpat*, chap. 1, n. 15. For one example of how to compute one's income and *tzedakah* obligations, see Rabbi Dovid Bendory, "Computing Maaser—How Much *Tzedakah* (Charity) Do I Owe?" (online at http://rabbi.bendory.com/docs/maaser.php). It is far from obvious to this writer that the detailed calculations found there can be explained with reference to normative halacha, even as the general principles presented seem to be correct.
68. See the discussion above, text accompanying nn. 46–48.
69. How much of the money one pays as day school, high school, and *yeshiva gedolah* tuition is to be considered charity remains a vast dispute among the *poskim*. Rav Moshe Feinstein maintains that no tuition—either for boys or girls—counts as charity, as one is obligated to teach one's children (*Igrot Moshe*, Yoreh Deah 2:113). Others maintain that girls' tuition is charity, as in their view women have no obligation to study. Rabbi Yitzchok Peterburger (Blazer) in *Pri Yitzchak* 2:27 permits all tuition expenses to be paid out of *tzedakah* funds. Rabbi Moshe Heineman maintains that tuition may be paid from charity funds above 10 percent of one's income (*ma'aser sheni*); see the article on *Ma'aser Kesafim* in Baltimore's Eruv List. Yet others distinguish between day school, high school, and *yeshivah gedolah*; see *Yechaveh Daat* 3:76.
70. The question of whether donating time is a form of charity is a complex one. See Maharil Diskin 1:24, who concludes that it is. To me, it is obvious that when a person donates his time to a charity, and without this time donation the charity would have had to hire a worker to engage in this task, that is certainly charity, as—in all of Torah—work is considered as cash, such that one could even use it as consideration to marry; see Rama, Even ha-Ezer 28:15.

71. Yoreh Deah 249:1.
72. Ibid.
73. See *Tzitz Eliezer* 9:1:5 and many others.
74. Which is, of course, a categorical violation of Jewish law.
75. See Even ha-Ezer 1:8. See also Yossi Prager, "The Tuition Squeeze," *Jewish Action* (Fall 2005): 15–18, reporting, "The old joke about day school tuition being the best form of birth control in the Modern Orthodox community is, sadly, true." Prager notes, however, that "there is anecdotal evidence that high day school tuitions encourage *aliyah*."
76. For more on the obligation of rabbis to give charity, see *Seridei Esh* 1:138 (new edition).
77. This is exactly what the Rama means when he says that one's own livelihood takes precedence—one should be covering one's own expenses before beginning charitable giving. Admittedly, the issue of parents paying more than one-fifth of their income for day school tuition is complex, as it seems that one ought not to spend more than 20 percent of income on any one mitzvah. Perhaps in the ideal world schools would cap tuition at 20 percent of family income after taxes, but until our community comes up with a workable solution to make up for the inevitable shortfalls in tuition, it is hard to imagine what else parents—and schools—can do.
78. Consider, for example, a question posed to me repeatedly in the last decade. A couple with a number of children who had already fulfilled the mitzvah of procreation asked if it was permissible to have another child, knowing that given their economic situation they would have to accept charity to make ends meet with the new baby. I told them that this was permissible, as procreation is a *mitzvah rabbah*. I regularly tell this as well to couples who inquire about having another child even if they will then need day school tuition assistance. (However, when the aforementioned father asked for charity to purchase a set of *arba minim*, I told him to borrow someone else's *luav* and *etrog*.)
79. See Bava Batra 10a. (See also James 2:5; and Luke 6:20–21, from which James's question actually derives.)
80. Constructing a framework for evaluating such claims of competing commandments is far from simple and obvious (and certainly strays beyond the ambit of this paper). By what criteria ought one decide whether to spend money on a nicer goblet for *kiddush* or give charity and make do with a simpler cup? Indeed, to my knowledge there have been few attempts at addressing a systematic construct for these issues.
81. These funding priorities may not be fixed, but depend instead on a highly complex calculus of the social realities and the consequences of forgoing the alternative option. I suspect that Rambam would maintain, for instance, that building a mikvah is a higher priority than charity, even though it is certainly not a fulfillment of the obligation to give charity.

82. The content of this paragraph was developed through email correspondence with Steven Weiner, who was the first to raise many of these observations, and I thank him for his input.
83. Consider, for example, Shabbat *kiddush* for a shul of one hundred middle-class families. Although I have no doubt that donations to the *kiddush* fund constitute charity as a matter of halacha, if each family sponsors one *kiddush* every other year, it resembles an eating and drinking club for the middle class, which is hardly a charity (and is a far cry from the pious origins of Shabbat *kiddush*, which was to provide food for those in the community who could not afford Shabbat lunch).
84. Hil. Matnot Aniyim 10:1.