Text Immersion: The Halakhah of Tzedakah in the *Mishneh Torah* and *Shulkhan Arukh*

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Text Immersion Overview

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Introduction

Three years ago, in a small village in El Salvador, I had a rude awakening. I had travelled there as part of a rabbinical student delegation for the American Jewish World Service. Each day, we would help dig irrigation ditches, meet with local grassroots activists, and study Jewish texts concerning social justice. One day, we were studying a text by Maimonides, which said that ideally, one would set aside 20 percent of one's income for the poor. Giving ten percent was the "average" way to fulfill the mitzvah. Less than this was stingy. I was surprised. Having grown up in the American Southwest, I associated "tithing" with evangelical Christians and Mormons. I asked the rabbi travelling with us whether Jews actually did this. She said that she did. Each month, ten percent of her pay was automatically deposited in a separate account, which was used for tzedakah. How was it, I wondered, that I had never heard about this? How was it that the Reform Movement, which was so focused on "repairing the world" did not call on its members to meet this expectation?

I returned to the United States wanting to better understand my own obligations – as an individual and a member of an organized Jewish community – to support the poor. As a member of the "one percent," I wondered, how much am I obligated to give to the poor, and how should I prioritize such giving against other obligations, like the education of my children? How do I weigh my obligations to my local community against distant communities where need might be greater? And perhaps most importantly: How might Jewish answers to these questions differ from more universalistic ethical imperatives to help the needy?

These questions led me to this text immersion, focused on the halakhah of tzedakah, as codified in Rambam's *Hilkhot Matnot Aniyyim* and Joseph Caro's *Shulkhan Arukh.* I entered into this effort looking for clear answers, and discovered instead a series of questions and complexities. In the three papers that follow, I will explore some of those questions.

In the first paper, I examine the question of how we should prioritize our charitable giving in a world of seemingly infinite need and limited funds. I look to the orders of priority set out by Rambam and Caro, and then explore how the lack of any clear "order of operations" for the various principles of priority has allowed modern commentators freedom to give primacy to their own values.

The second paper delves into the definition of tzedakah itself. In it, I consider how Rambam and Caro differ in their definitions of tzedakah. Rambam advocates for a definition limited to the support of the poor, while Caro opens up the possibility that tzedakah funds might be used to fund Torah study or Jewish communal institutions. As in the first paper, I will then explore how this issue has ramified in the context of contemporary America. I will also argue that in order to reap the full spiritual benefit from a practice of tzedakah, we should adopt Rambam's more limited definition.

Finally, in the third paper, I will offer a personal "tzedakah manifesto" – a set of ten principles grounded in traditional halakhah that Reform Jews might use to embrace the mitzvah of tzedakah as a spiritual practice.

If the Reform movement is to be a champion of "ethical mitzvot," I believe it is crucial that we do more than use Hebrew words to describe our universalistic understandings of "social justice." Instead, we must try to understand what it is that we

are called upon to do as Jews, and to articulate what role Judaism has to play in how we understand our obligation to others. These papers represent my own effort to move closer to that goal.

In Our Own Image:

The Difficulty of Applying a Coherent System of Priority for Giving Tzedakah

"There shall be no needy among you," Moses instructs the Israelites, "since the Eternal your God will bless you in the land that the Eternal your God is giving you as a hereditary portion."[1] Yet just three verses later, he continues:

> If, however, there is a needy person among you, one of your kinsman in any of your settlements in the land that the Eternal your God is giving you, do not harden your heart and shut your hand against your needy kinsman. Rather, you must open your hand and lend him sufficient for whatever he needs. Beware lest you harbor the base thought, "The seventh year, the year of remission, is approaching," so that you are mean to your needy kinsman and give him nothing. He will cry out to the Eternal against you, and you will incur guilt. Give to him readily and have no regrets when you do so, for in return the Eternal your God will bless you in all your efforts and in all your undertakings. For there will never cease to be needy ones in your land, which is why I command you: open your hand to your kinsmen, the poor and destitute in your land.[2]

In the juxtaposition of these statements – "There shall be no needy" and "There will never cease to be needy ones in your land" – even Moses, at Sinai, acknowledges the gap between moral imperative and reality.[3]

The halakhah of tzedakah seeks to bridge that gap, addressing how we are to carry out our obligations to the poor in a world of seemingly infinite need and limited resources. Two classic codifications of the halakhah of tzedakah can be found in the

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[1] Deut. 15:4 (Trans. adapted from NJPS).
[2] Deut. 15:7-11 (Trans. adapted from NJPS).
[3] The tension between these two verses has long been a subject of commentary. For example, the exigetical midrash *Sifre Devarim* (compiled ca. 3rd century BCE) cites these two verses and asks: "How can both these promises be fulfilled? So long as you perform God's will, there will be poor only among others, but when you do not perform God's will, the poor will also be among you." Reuven Hammer, trans., *Sifre on Deuteronomy* (New Haven: Yale Univ. Press 1986), 160, 163 (*piska'ot* 114 & 118).

Mishneh Torah of Rabbi Moshe ben Maimon (a.k.a. "Rambam" or "Maimonides")[4] and in Joseph Caro's *Shulkhan Arukh*.[5] Rambam's *Hilkhot Matnot Aniyyim* and the *Shulkhan Arukh Hilkhot Tzedakah*[6] do this in part by establishing a system of "triage,"[7] in the form of orders of priority to be followed by individuals and distributors of communal funds when determining whom we should support first.[8]

This paper will examine the systems of priority in these two works, and consider how they have been applied by modern commentators. In Section I, I will examine the orders of priority set out in *Hilkhot Matnot Aniyyim* and the *Shulkhan Arukh Hilkhot*

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[4] Rambam (1135-1204) was born in Cordoba, in Muslim-controlled Spain. He was a rabbi, communal leader, physician, philosopher and codifier of halakhah. *Encyclopedia Judaica* (2d ed. 2007)(hereinafter "*Encyc. Jud.*"), vol. 13, 381-84. "The influence of Maimonides on the future development of Judaism is incalculable. No spiritual leader of the Jewish people in the post-talmudic period has exercised such an influence both in his own and in subsequent generations." Ibid. 384. The *Mishneh Torah* is a systematic codification of halakhah written in clear, concise Hebrew, which was meant to offer a straightforward approach to the traditional halakhah for those Jews who were not scholars of rabbinic literature. Ibid., 384, 387. For an in-depth analysis of the goals, methods, and importance of the *Mishneh Torah*, see Menachem Elon, *Jewish Law*, trans. B. Auerbach and M. Sykes (Philadelphia: JPS 1994), vol. 3; ch. 34.

[5] Joseph Caro (1488-1575) was born in Christian Spain, but left with his family after the expulsion of the Jews from Spain in 1492. Elon, *Jewish Law*, vol. 3, 1310; *Encyc. Jud.*, vol. 4, 488. He lived in Turkey, and later in Safed, in the land of Israel, where he became a prominent scholar and halachic decisor. *Encyc. Jud*. vol. 4, 488. The *Shulkhan Arukh* (the "Set Table"), "a digest of his *magnum opus*, the *Beit Yosef* . . . has become the authoritative code of Jewish law for Orthodox Jewry throughout the world." Ibid. For a lengthy treatment of the importance and approach of the *Shulkhan Arukh*, see Elon, *Jewish Law*, vol. 3, ch. 36.

[6] *Shulkhan Arukh* (hereinafter "SA") *Yoreh Deah* (hereinafter "YD") 247-259.

[7] For an exploration of the medical concept of "triage" as it relates to tzedakah, see Noam Zion, *To Each According to One's Social Needs: The Dignity of the Needy from Talmudic Tzedakah to Human Rights* (Zion Holiday Publications, 2013), Kindle location 2109 to 2130; excerpt available at: http://www.bjpa.org/publications/downloadFile.cfm?FileID=15705, 2-6.

[8] This paper focuses primarily on the rules of priority applicable to individuals. While it is interesting to consider, for example, how the rules for communal distributors of tzedakah might apply to rabbinic discretionary funds or Jewish Federations, these considerations are beyond the scope of this project.

Tzedakah. I will argue that while both texts appear to prioritize "near over far," both in terms of familial connection and physical proximity, a few key additions or caveats in the *Shulkhan Arukh* disrupt this order, once again leaving the primacy of need, proximity, and relationship unresolved. In Section II, I will examine how Rambam's and Caro's orders of priority have been used by modern commentators in both the Haredi and progressive Jewish communities to advance their desired approach to the distribution of tzedakah. Ultimately, I will argue that the *Shulkhan Arukh*, by including competing orders of priority with no single "order of operations," has given modern commentators room to interpret the halakhah in accordance with their own values and beliefs. While this indeterminacy may be frustrating for those seeking a clear, prescriptive system of "law," it provides fertile ground for interpretations that are both modern and authentic.

I. Orders of Priority in the *Mishneh Torah* and *Shulkhan Arukh*

A. Rambam: Priority by proximity

Both Rambam and Caro hold that every Jew is obligated to give aid to the Jewish poor, ideally in an amount or manner that will meet each person's need.[9] If one is unable to meet that need, he should give as much as he can, up to a maximum of 20% of his income.[10] But Rambam and Caro also acknowledge that there may not be sufficient

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[9] *Mishneh Torah* (hereinafter "MT"), *Hilkhot Matnot Aniyyim* (hereinafter "HMA") 7:1, 3, 5; Joseph Caro, SA YD 249:1; 250:1; *see also, e.g.* B. *Ketubot* 67b.

[10] MT, HMA 7:5; SA YD 249:1. The use of male pronouns here is a conscious one. In the times and places that these texts (and their source material) were written, women typically could exercise far less discretion when it came to tzedakah. *See, e.g.* MT, HMA 7:12 (allowing charity collectors to accept only small amounts from women, servants, and children, under the assumption that any large amount would have been stolen); SA YD 248:4 (same). *See generally* Alyssa M. Gray, "Married Women and *Tsedaqah* in Medieval Jewish Law: Gender and the Discourse of Legal Obligation," in *Jewish Law*

resources to meet the needs of every poor person, and that therefore both individuals and *gabbai tzedakah* (collectors and distributors of communal funds) will need to decide to whom they should give and in what amount.

According to Rambam, the primary principle for prioritizing one's giving is proximity, either in relationship or geography. He writes, "a poor person who is close to [the giver] comes before everyone else."[11] Accordingly, "the poor of his house precede the poor of his city, and the poor of his city precede the poor of other cities."[12] He emphasizes the importance of familial relationships again later, when he states that money that one gives to one's grown children for study, or to one's parents, is considered tzedakah. In fact, it is "*tzedakah gedolah*" – a very righteous act of giving – because "*hakarov kodem*": "nearest comes first."[13]

Within this framework, there are a few sub-rules which muddy the waters somewhat. First, when it comes to feeding or clothing the poor, or redeeming captives, women are given priority over men.[14] Second, in the event that there are many poor or many captives, and there is not enough money in the communal fund to support, clothe, or redeem them (as the case may be), precedence goes to those with the highest traditional standing in the community: the *Kohanim* (families descended from the priestly

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Association Studies XVII: Studies in Medieval Halakhah in Honor of Stephen M. Passamanech, ed. E. Dorff (2007).

[11] MT, HMA 7:13.

[12] In support of this proposition, he employs Deuteronomy 15:11. In that verse, the word "kinsman" comes before "poor," which comes before "your land." Use of this verse as a basis for prioritizing the distribution of tzedakah dates back at least as far as *Sifre Devarim*. *See* Hammer, *Sifre on Deuteronomy*, 161 (*piska* 116).

[13] MT, HMA 10:16.

[14] MT, HMA 8:15-16.

class). After the *Kohanim* come the Levites, then all other Jews of known parentage. The list goes on, listing people of questionable parentage, freed slaves, converts, and others.[15] Immediately, however, Rambam clarifies that these rankings only apply if everyone is equal in religious knowledge.[16] But if there were a *Kohen* who was uneducated, and a *mamzer* (a person born as a result of adultery) who was a *talmid chacham* (a scholar), then the scholar comes first. Indeed, he writes, everyone greater in religious knowledge comes before his fellow. Finally, if one of the many requiring assistance is one's teacher or father, his father or his teacher who is a Torah scholar precedes those who surpass them in wisdom.[17]

Rambam states that while one should inquire into the *bona fides* of someone who asks for clothing, one should not do so for someone who claims to be hungry.[18] While this may hint at a principle of priority based on urgency, he never explicitly states that disparity in need would disrupt the order of precedence set out above. Presumably, under this system, one would ensure that one's marginally poor family were cared for in a manner appropriate to their station before moving on to others in one's city who might be more desperately in need.[19]

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[15] MT, HMA 8:17.
[16] MT, HMA 8:18.
[17] Ibid.
[18] MT, HMA 7:6.
[19] We can see a practical application of this principal in a *responsum* of the 19th century Chassidic leader Rabbi Mordechai Dov Twersky (1924-98), who was asked the following question: "I have been consulted by a God-fearing man whose sister used to live in comfort in her father's house. Now her circumstances have deteriorated and she has only enough for bare necessities. Should her brother use his *ma'aser* money [i.e. his tithe set aside for the poor] to support her so that she can live in comfort or should he rather use it for poor people who do not have enough for their basic needs?" Rabbi Twersky ruled that the brother should support his sister. *She'elot u'Teshuvot Emek She'elah, Yoreh*

As for those outside the Jewish community, Rambam does state that the non-Jewish poor should be supported along with the Jewish poor "*mipnei darchei shalom"* – for the sake of peace. But given that there is a hierarchy that places Jews of the most prestigious lineage above others, one presumes that Jews would normally be given priority over non-Jews, absent extenuating circumstances or political necessity.

B. The Shulkhan Arukh's Competing Orders of Priority

It should come as no surprise that the *Shulkhan Arukh* incorporates Rambam's orders of precedence in its *Hilkhot Tzedakah*.[20] Once again, one's relatives come first, in order of closeness.[21] Indeed, Caro is even more forceful in his insistence on the obligation of families to provide the primary safety net for one another. He states, for example, that if a poor person has rich relatives who could support him, he should not receive alms from the public fund, even if his relatives have contributed to that fund.[22] Likewise, Caro includes the preference of women over men, and the hierarchy of

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Deah 69, excerpted and translated in Cyril Domb, *Maaser Kesafim*, (New York: Feldheim Publishers, 1980), 104.

[20] Although Caro modeled the structure of the *Shulkhan Arukh* on the *Arba'ah Turim* of Jacob ben Asher (Spain, 1269-1343), rather than on Rambam's *Mishneh Torah*, he relies a great deal on Rambam's work, and "it has been estimated that no less than a third of the text [of the *Shulhan Aruch*] is copied verbatim" from the *Mishneh Torah*. *Encyc. Jud.*, vol. 4, 489.

[21] SA YD 251:3. Caro is quite specific in his order of precedence. For example, he codifies the idea, first found in *Sifre Devarim*, that one's paternal uncle precedes one's maternal uncle. Ibid.; *see* Hammer, *Sifre on Deuteronomy*, 161 (*piska* 116).

[22] SA YD 257:8; *see also* B. Nedarim 65b. We see similar emphasis on the primacy of familial support in Moses Isserles' gloss on the *Shulkhan Arukh*'s requirement that men redeem their sons from captivity. (SA 252:12). He says that one's close relatives come before everyone else, so that one may not spend all of his money on himself, while his family takes from the public dole.

Kohanim, Levites, etc., with the caveat that great scholars should be preferred even over those of higher social rank.[23]

In addition to Rambam's list of priorities, however, Caro also includes several other rules of precedence, which complicate the picture considerably:

(1) "There are those who say that "mitzvat beit ha-k'nesset" (the mitzvah of the synagogue) is preferable to the mitzvah of tzedakah, and that the mitzvah of tzedakah to support young men in the study of Torah, or for treating the infirm poor is preferable to "mitzvat beit k'nesset."[24]

(2) "There is no obligation to sustain someone who has knowingly violated even a single commandment of the Torah, and who has not repented."[25]

(3) "Residents of the Land of Israel have precedence over those outside the Land."[26]

(4) "[Rabbi Yehuda HaNasi] regretted giving his bread to an ignorant man because there were years of drought, and that which he gave to the ignorant man was to the detriment of a *talmid chacham* [great scholar]. Were it not the case [that there was a *talmid chacham*], then he would be obligated to "give life" [i.e. charitable support] to him. But if [the ignorant man] comes before you dying of hunger, you are obligated to sustain him, even though you may worry that there will not be enough later to feed a *talmid chacham*."

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[23] SA YD 252:9. He does make one significant change to this ranking, noting that in the cases of redeeming captives, while one's father or teacher who is a Torah scholar should rank ahead of others, one's mother comes before all.
[24] SA YD 249:16.
[25] SA YD 251:1.
[26] SA YD 251:3. This halakhah dates back to *Sifre Devarim*. *See Sifre Devarim* 116.

(5) "Do not give all of your tzedakah to just one poor person."

It is unclear how to reconcile these rules with the relatively straightforward order of precedence offered by Rambam. The following questions arise:

(1) Are the poor of the land of Israel to be favored over even the poor of one's own city (assuming one is living in the Diaspora)? Or do they come after the poor of one's own city, but before those in neighboring towns?

(2) It would seem from number 4, above, that the needs of the desperately hungry come before even the needs of Torah scholars. Are we to derive from this example a greater principle that the person with greater need should always take precedence, irrespective of proximity or familial relationship?

(3) Assuming that one's family still comes first, should the needs of the infirm poor, young Torah scholars, and "mitzvat *beit ha-k'nesset*" all come before the needs of the poor of one's own city? If so, how much can one reasonably expect to have left to give to other poor?

(4) If we are not obligated to support even those who have broken even one Torah commandment without repentance, does this include people in our families?

(5) How much should we give to each person before moving down the order of priority?

Because these additional orders of priority are not placed within the larger framework of "near before far" it is unclear what the "order of operations" should be in determining priority. Do we look at need first, and use the other determinants (family status, distance, Torah scholarship) merely as "tie-breakers"? Or is proximity still the first criterion, with a revised order of priority nested within each locus of obligation? Do poor Torah

scholars in the land of Israel come before the Jews of our own town? Or do we take care of our local communities first? Additionally, one asks, are the needs of women still given priority? Or do they fall between Torah scholars and other, uneducated men? And how much should we give to an individual before moving down the list?

In sum, the *Shulhan Aruch*'s additional *halachot* introduce principles of relative priority that reintroduce many of the questions that had been addressed by Rambam's system of priority by proximity. As the Rabbinical Council of America states in its guide to Modern Orthodox rabbis on how to prioritize giving tzedakah from their discretionary funds: "While every area of Jewish law involves variables that affect the application, *tzedakah* would appear to be complicated to the point of defying any regulation. To calculate the urgency of need, priority, proportionality, honesty of supplicants and countless other factors, and emerge with clear direction, is beyond daunting."[27]

II. Modern Approaches to Priority

When one looks to contemporary sources for guidance on how to prioritize one's tzedakah, one finds an array of approaches, all of which purport to center on the (somewhat contradictory) systems of prioritization set out in the *Shulkhan Arukh*. Some sources seek to create a definitive hierarchy of priorities, although the precise hierarchy varies among sources. Others (both Orthodox and progressive) appear to consider the entire enterprise obsolete in a country with an operating welfare system. Still others seek

[27] Rabbinical Council of America, "Priorities in Tzedakah: The Rabbinic Discretioary Fund, available at: http://rabbis.org/documents/tzedpribu.pdf, 1.

to balance all of the factors in a holistic way, albeit one that leaves considerable room for individual discretion. We will consider each of these approaches in turn.

A. Competing Master Lists

The lack of a clear "order of operations" for prioritizing distribution of tzedakah can result in starkly different approaches, each of which can claim legitimacy based on the *Shulkhan Arukh.* Take, for example, the difference between two priority lists offered by the ArtScroll Halacha Series, on one hand, and by DinOnline, a website operated by "Bais Hora'ah," a Haredi *kollel* in Israel that specializes in ruling on monetary matters:

ArtScroll[28]	**DinOnline**[29]
1. The donor himself. 2. Wife and small children. 3. Rebbe who taught without taking payment. 4. Parents 5. Grandparents 6. Young Adult Children 7. Rebbe who taught and was paid 8. Grandchildren 9. Brothers and Sisters 10. Uncles and aunts – father's side 11. Uncles and aunts – mother's side 12. Cousins – father's side 13. Cousins – mother's side 14. Remaining relatives 15. Divorced spouse 16. Close friends 17. Neighbors 18. People from the same city. 19. People living in Yerushalayim. 20. People living in the rest of *Eretz Yisrael*.	1. Saving a life takes precedence over all other needs and requirements, including even the support of Torah study. The following are examples of saving lives: Redeeming a captive from his captivity; aiding somebody whose poverty is so extreme that he is liable to die of hunger; purchasing medicine for somebody in danger of dying of his illness. 2. Supporting the study of Torah, for example the support of a kolel, a yeshiva, or a Torah elementary school, takes priority over the building of a shul and charity to the poor—so long as their poverty does not endanger their lives. [Authorities dispute whether a *kolel* or *chaider* comes first].

[28] Shimon Taub, *The Laws of Tzedakah and Maaser* (Brooklyn, NY: Mesorah Pubs., 2001), 51-60.
[29] Yosef Fleischman, "Laws of Tzedakah Part II: To Whom to Give First," available at http://dinonline.org/2010/08/12/laws-of-tzedakah-part-ii-who-to-give-first/ .

21. People living in other cities outside of *Eretz Yisrael.*

Subcategories:

"Within each Priority List there are subcategories. These help one to determine who should receive tzedakah if there are poor people with varying needs. For example, if two indigents from the same city are in need, how do we prioritize them?"

1. If there is a question of *pikuach nefesh*, saving an endangered life, one must give to that indigent, no matter how far down on the *kedimah* list he may be.

2. When determining to whom to give first between two similar indigents one should follow the *kedimah* list, as long as both are in equal need. . . . However, if one has a more pressing need, he should be given first, even though he is further down on the Priority List. Therefore, if an indigent from your city is in need of money for clothing and an indigent from a different city is in need of food one should give to the indigent who needs food first since his needs are more pressing. [But this only applies if both are non-relatives.] If a relative is in need he takes precedence even for non-compelling items [except in the case of *pikuach nefesh*].

3. If a man and a woman from the same category are in need one should help the woman first. (However if the man has a more pressing need he would take precedence).

3. Authorities dispute whether the building of a shul and its maintenance takes precedence over charity to the poor (whose poverty does not endanger their lives), or whether charity takes precedence over the shul. . . .

4. Many authorities rule that poor family members take precedence over poor Torah scholars who are not relatives; others maintain that Torah scholars take precedence over family members, with the exception of one's father. If there are others who are ready sustain the Torah scholars but not the relatives, it would appear that all concede that relatives take precedence, because the obligation to sustain them falls first and foremost on family members.

5. Many authorities rule that the principle of "local poor come first" applies only when the financial condition of local poor and poor elsewhere is equivalent. However, if distant poor are worse off than local poor, for instance if local poor have enough money for food, whereas others cannot even pay for basic provisions, then distant poor take precedence over local poor. The same distinction applies to the precedence of Israel's poor over the poor of other countries.

6. Many authorities maintain that local poor take precedence over the poor of a different town even when the most distant poor are Torah scholars; some opine that

4. [An indigent who is a *talmid chacham* has priority over one who is not] 5. If everything is equal then one should give to a *Kohen* before a *Levi* and a *Levi* before a *Yisrael*. <u>Other Factors:</u> It is important to note that there are additional factors which may overrule or interface with the entire Priority List. They are listed here as written in the *Shulkhan Arukh*: The order is as follows: 1. Any situation of *pikuach nefesh*. 2. To support the study of Torah. 3. To pay for the medical needs of the poor. 4. The building or maintenance of a community *shul*. . . . 5. All other needs of the poor. Facilitating the marriage of orphan girls takes precedence here.	even distant Torah scholars take precedence. 7. Local poor take precedence over poor from other towns and localities, including the poor of the Land of Israel. Therefore, where a charity fund exists for local poor, and there are insufficient funds, one may not contribute to the charity funds of a different fund—unless the poor of the other town are is a considerably worse condition. 8. Poor neighbors take precedence over the other poor of the town. . . 9. The poor of the Land of Israel take precedence over the poor of other countries.

Both sources agree that saving a life comes first, irrespective of relationship or proximity. They also agree that greater need trumps location, so that if the poor in the next town over are worse off, one should help them first. (Thus, they have prioritized need above proximity in the order of operations).

Still, the differences between the two lists are striking. The first 17 entries on ArtScroll's list are family members, close friends, and neighbors. Relationship is paramount, even in cases where a non-relative is in more dire need of assistance. Next come distance, then gender, then Torah knowledge, and then the traditional categories of

Kohen, Levi, and *Yisrael.* The support of Torah scholarship is relegated to a list of factors that "may overrule or interface with" the principal Priority List, about which one should ask one's rabbi. Thus, the order of operations proposed by ArtScroll seems to be:

> Saving a Life → Family Relationship → Need → Location (Own City, then land of Israel, then Other Cities) → Torah Scholarship → Gender → Kohen/Levi/Yisrael.

DinOnline, on the other hand, bases its approach on the Shulkhan Arukh's statement that "There are those who say that mitzvat *beit ha-k'nesset* is preferable to the mitzvah of tzedakah, and that the mitzvah of tzedakah to support young men in the study of Torah, or for treating the infirm poor are preferable to mitzvat *beit ha-k'nesset."* It uses this halakhah to privilege the support of Torah scholars above nearly all others, including, in some cases, one's family. It appears to advocate for the following order of operations:

> Saving a Life → Family Relationship (unless no one else is available to support a Torah Scholar, in which case the scholar comes first) → Torah Education → [Maintenance of a Synagogue] → Need → Location (although some hold that Torah Education takes precedence).

While this order looks similar to ArtScroll's in many respects, giving priority to Torah Education over the support of the poor (other than in life-threatening situations) carries the potential to shift considerable resources away from the poor and toward the maintenance of Torah scholars (like the ones who publish DinOnline). Moreover, the inclusion of minority opinions supporting, for example, the support of distant Torah

scholars over the poor of one's own city, offers encouragement to those whose inclination is to support Torah scholarship over all else. When we compare this list to that provided by ArtScroll, we see that the ambiguity in the Shulkhan Arukh's system of priorities provides an opening for those with different values to justify an allocation of funds that best reflects those values.

B. Has the American Welfare State Rendered Traditional Tzedakah Obsolete?

Some contemporary Jewish legal sources effectively jettison the Shulkhan Arukh's systems of priority in favor of a more general mandate to support communal institutions. Take, for example, a 1986 CCAR Responsum on "Priorities in Charitable Distribution" (the only responsum listed under the heading of charity or tzedakah on the CCAR website).[30] The question posed is: "Does tradition set priorities in the distribution of charitable funds which have been collected? In this community there are day schools, afternoon schools, Jewish community center programs, senior adult housing, nursing homes, and many other groups which claim priority from charitable funds. What kind of priorities does *halakha* set?" Even taking into account the question's concern with

[30] Central Conference of American Rabbis ("CCAR"), "Priorities in Charitable Distribution," available at http://ccarnet.org/responsa/carr-39-42/. The CCAR is the governing body of the Reform rabbinate. Responsa are traditionally understood as decisions on particular halachic questions, issued by a rabbi or scholar considered authoritative by the person or institution posing the question. The CCAR describes its responsa as follows: "The Reform responsa provide answers to questions about Reform Judaism and Jewish living. Unlike resolutions, which are adopted by vote at a CCAR convention, responsa provide guidance, not governance. As a body of literature, the responsa published by the Reform Movement reveals a broad consensus as to mainstream Reform Jewish thinking on important issues facing contemporary Judaism. Individual rabbis and communities retain responsibility, however, to make their own determinations as to the stance they will take on individual issues." These responsa are thus designed to provide persuasive, but not binding, authority over religious decision-making within the Reform Movement. *See generally* Mark Washovsky, *Jewish Living: A Guide to Contemporary Reform Practice* (New York: URJ Press, 2010), xxiv-xxix.

communal, rather than personal, giving, and its focus on the local community (which might obviate a discussion about proximity as a principle of distribution), the responsum departs dramatically from the halakha we see in the *Shulkhan Arukh*. Speaking of works such as Rambam's *Hilkhot Matnot Aniyyim* and the *Shuchan Aruch*, the responsum states:

> Each of these works listed various gradations of giving and distribution independently without much reference to any other effort. The loftiest goal was the procurement of employment for the poor or the provision of a dowry for an orphan girl; both would remove the recipients from the rolls of the poor and would eliminate a drain on the community. No distinction was made between Jew and non-Jew nor of rank within the Jewish community.

Regarding educational institutions, the responsum states: "Considerable sums were expended on direct support for educational institutions, but this was not considered charity. It was an obligation supported by taxes and tuition. Scholarships for poor students were provided in the form of food, lodging, or books as a charitable contribution." It concludes as follows:

> None of these sources dealt with institutions which are now the major recipients of charitable funds, such as vocational institutions, special education units, social service agencies, hospitals, etc. In other words, the earlier Jewish communities faced so many basic needs that other matters could not be considered. We may conclude from this that tradition provides little guidance for our age, especially as we have been fortunate enough to overcome the basic problems of previous ages. All sources agree that communities need primary education, sick care, and centers of higher learning. They do not deal with their funding in detail.

Because this responsum concerns the distribution of communal funds, rather than individual giving, it understandably does not discuss the priority of family over the poor. However, it also sidesteps the key questions of priority discussed above. For example, as we see above, there is a basis in traditional halakhah for prioritizing either financial need or the support of Torah study. The responsum advocates neither. It also claims that

there is no distinction made between support of Jews and the non-Jewish poor, which is a strained reading of the halakhah to say the least. There are good arguments to be made for ignoring this distinction within Reform halakhah,[31] but it is misleading to claim that our traditional sources do not focus almost exclusively on support of the Jewish community

Most surprising is the responsum's conclusion that we have "overcome the basic problems of previous ages." Even if we limit ourselves to American communities, one does not need to look far to find people living on the streets, lacking proper clothing, or lined up at soup kitchens. In 2014, fourteen percent of American households were "food insecure" for at least some part of the year, with food insecurity "meaning they lacked access to enough food for an active, healthy life for all household members."[32] Over five percent of families were so "food insecure" that "normal eating patterns of one or more household members were disrupted and food intake was reduced at times during the year because they had insufficient money or other resources for food."[33] Rather than urging the community posing the question to focus its resources on supporting the poor, the responsum accepts the questioner's implicit assumption that the purpose of tzedakah is to

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[31] *See* Washofsky, *Jewish Living*, xxviii. ("Reform Judaism affirms the moral equality of all humankind. . . . . We are moved . . . by those passages in our traditional texts that call upon us to regard all human beings as children of God, entitled to justice, righteousness, and compassion from us. Distinctions between Jews and non-Jews are appropriate in the area of ritual behavior, for it is by means of rituals that we express our exclusively Jewish identity. We reject them as inappropriate, however, in the arena of moral conduct. Thus, Reform responsa hold that the standards of ethical behavior that our tradition demands of us apply to our dealings with gentiles as well as Jews.").

[32] Alisha Coleman-Jensen et al., *Household Food Insecurity in the United States in 2014*, available at: http://www.ers.usda.gov/publications/err-economic-research-report/err194.aspx .

[33] Ibid. See http://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics.aspx#.UiYOnD_8KSp.

support communal institutions, with the assurance that more basic needs are met through the secular safety net.

This type of logic is not limited to the Reform movement. Michael Broyde, writing for The Orthodox Forum's volume *Toward a Renewed Ethic of Jewish Philanthropy*, which considers various aspects of the philanthropic behavior of Orthodox Jews in America, similarly concludes that it is appropriate for the Orthodox community to fund all of its institutions with tzedakah funds because "the secular government of the United States is a just and honest government which seeks to help all of its citizens."[34] He continues: "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."[35] In addition to the existence of a secular safety net, he justifies this position on the ambiguity of the halakhah itself. He writes: "[S]ince we lack any firm communal hierarchy for determining and prioritizing communal need, there are no firm halachic guidelines establishing which community institutions[36] ought to be

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[34] Michael J. Broyde, "The Giving of Charity in Jewish Law: For What Purpose and Toward What Goal?," in *Toward a Renewed Ethic of Jewish Philanthropy* (Yossi Prager, ed.) (Newark: Ktav Publishing House 2010), 241, 263.

[35] Ibid. See also Ibid. at 255: "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."

[36] Broyde's view that the halakhah supports the use of tzedakah funds for public institutions, which is based on the source-texts for the *Shulkhan Arukh*'s rule prioritizing the needs of the synagogue and Torah scholars over the needs of the poor, will be discussed more fully in my paper "Does it Count, and Does it Matter?," which follows.

funded once the public charities that feed and clothe the utterly destitute are funded."[37] Without such guidance, "each donor decides" which causes are the most worthy.[38]

Both Broyde and the CCAR deal with the complexity inherent in applying the *Shulkhan Arukh*'s competing hierarchies of priority by effectively throw up their hands at the question of how modern American Jews should prioritize their giving. After all, Broyde notes "it is better that they donate to one cause or the other, rather than spend the same money on themselves."[39]

C. Jill Jacobs' Proportional Balancing of Competing Priorities

In *There Shall Be No Needy,* Conservative rabbi and human rights activist Jill Jacobs acknowledges the competing priorities set forth in the traditional halakhah, as well as the challenge posed to those traditions by the realities of the contemporary world.[40] She responds by proposing a graduated scheme of giving that balances hierarchies of need and proximity.

First, Jacobs acknowledges the apparently straightforward "near before far" hierarchy set out in B. Bava Metzia 71a, which holds, with respect to loans: "In the case of a Jew and a non-Jew, the Jew takes precedence; a poor person and a wealthy person, the poor person takes precedence. A poor person of your city and a poor person of another city, the poor of your city takes precedence."[41] She objects to this scheme on

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[37] Ibid., 263.
[38] Ibid.
[39] Ibid., 264.
[40] Jill Jacobs, *There Shall Be No Needy: Pursuing Social Justice Through Jewish Law and Tradition* (Woodstock, VT: Jewish Lights, 2010).
[41] Ibid., 87.

both practical and halachic grounds. First, she notes: "This hierarchy is simple, but problematic. We *could* give all of our *tzedakah* to poor Jews in our own cities, but such behavior would fail to recognize any obligations beyond those physically and ethnically closest to us."[42] She then turns to other sources in the halakhah to challenge the primacy of proximity in the allocation of tzedakah.

First, she argues that Rambam's statement that we should support the non-Jewish poor along with the Jewish poor "*mipnei darkhei shalom*" ("for the sake of peace") is not "simply a nod to the political reality that a refusal to contribute to the care of the general population may provoke the wrath of non-Jews." For support, she cites Rambam, who, in *Hilkhot M'lachim* offers the following gloss on "*mipnei darkhei shalom"*: "For this reason, it is said, 'God is good to all, and merciful to all of God's creations' (Psalms 145:9), and it is said '[the Torah's] ways of ways of pleasantness, and all its paths are peace. (Proverbs 3:17)."[43] "Caring for non-Jews may thus be understood as a means of imitating the divine quality of mercy to all," Jacobs concludes, "and/or as a fulfillment of the Torah's ideals of pleasantness and peace." She also notes Caro's statement in the *Beit Yosef* (*Yoreh Deah* 257:9-10) that one should not give all of one's tzedkah to a single person, or give more to one's relatives than to anyone else, and suggests that this can be

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[42] Ibid. Explaining her discomfort with such a system, she writes: "Giving in your own town makes sense in a world in which the next town is a several-hour, or even multi-day horse ride away; but in a globalized world in which we can access the news from Liberia as quickly as we can hear the news from New York, and in which many of us move from city to city multiple times over the course of our lives, the definition of 'your city' becomes somewhat less clear." Ibid. Curiously, in a subsequent book, she argues strenuously against prioritizing the needy in exotic locales over those in our own cities, and advocates focusing our time and money on a few places that we call 'home.'" Jill Jacobs, *Where Justice Dwells: A Hands-On Guide to Doing Social Justice in Your Jewish Community* (Woodstock, Vt: Jewish Lights, 2011),16-18.

[43] Ibid., 88, citing MT*, Hilkhot M'lakhim* 10:12.

read not only as an instruction to diversify one's giving, but also as a spur to think beyond one's immediate community (i.e. the Jewish community) when allotting at least part of one's tzedakah.[44]

Next, she makes the case for prioritizing need over location or social status, citing the Chatam Sofer[45] (who ruled that if the poor of another city were worse off, they should come before the poor of one's own city) and the modern *posek* Moshe Feinstein[46] (who ruled that "all discussions of precedence apply only when all of the poor people have the same needs"). Based on all of these sources, she argues:

> [W]e might then construct a different hierarchy of *tzedakah*, in which we give first to the neediest and only then worry about questions of geography, identity, or closeness. But this new hierarchy would be as oversimplified as the one that prioritizes the local Jewish community above all else. Attention to relative need above all else might lead us to give *tzedakah* only to the poorest residents of the developing world, and to ignore members of our own communities entirely. Such an approach might result in a decrease of economic opportunity in our own communities, and may send us into a seesaw approach to poverty, in which we focus on one community until another falls into desperate [straits], and then switch our attention fully to this other community.

Instead of adopting an absolute hierarchy based on either proximity or need, she instead argues we should attempt to balance our giving to reflect the competing priorities of

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[44] Jacobs's use of the latter source is not wholly convincing. However, my goal here is not to evaluate the merits of her argument, but to demonstrate how she is employing the text to support her approach to prioritizing charitable giving.

[45] Moshe Sofer (known as the "Chatam Sofer") (1762-39) was born in Frankfurt, and served as the Rabbi and Rosh Yeshiva in Pressburg, Hungary. He was a vociferous opponent of modernity and reform within the Jewish community. His voluminous writings include seven volumes of responsa. *Encyc. Jud.*, vol. 18, 742-43.

[46] Moshe Feinstein (1895-1986) was "one of the leading figures in Orthodox Jewry in America." *Encyc. Jud.*, vol. 6, 741-42. The authority of his responsa, collected in the multi-volume set "*Igg'rot Moshe,*" is widely accepted in both the Modern and Haredi Orthodox communities.

"need, geography, and Jewishness" reflected in the halakhah: "Rather than elevate one of these categories over the others, we might look for a means of balancing these sometimes competing categories." On a practical level, she explains:

> In allocating *tzedakah* over the year, for instance I designate certain percentages to New York (my city), the rest of the United States (my city according to an expanded sense of geography), Israel (considered like a Jew's own city by a number of commentators), and the rest of the world. For each geographic area, I then assign target percentages to Jewish and non-Jewish organizations. Within each category, I focus on areas of greatest need: the poorest individuals or the causes most likely to be struggling for support. The percentages assigned to each category change each year, and are not scientific. Rather, in thinking through my relative commitments to people in various geographic areas, to Jews and non-Jews, and to different types of needs, I strive for a balance among competing responsibilities.

Thus, while Jacobs considers the various principles of priority contained in the classical halakhah, she ultimately declines to endorse any particular order of operation. The result is a thoughtful, but ultimately idiosyncratic, approach to giving.

Conclusion

The system of priority propounded by Rambam ("near before far") is, as Jacobs would have it, "simple, but problematic," although not necessarily for the reasons Jacobs suggests. There are a great many Jews who would have no problem with the idea that we are to prioritize Jews, or those in our local communities. But the Rambam's hierarchy does leave open key questions, like what role "need" ought to play. The *Shulkhan Arukh*'s inclusion of additional principles of priority addresses these questions, but ultimately creates less clarity, rather than more. Imagine that the collection of hierarchies contained in the *Shulkhan Arukh* is a set of Russian nesting dolls. The problem is that the text does not tell us which fits inside the other. The result is that we end up with the

same problem with which we began: We do not know how to prioritize our competing obligations in a world of infinite need and limited resources. Because the text does not offer a meta-hierarchy to help us create an order of operations, contemporary Jews have wide latitude to decide which values have primacy, and to prioritize our giving according to those values. Thus, we find ourselves in a world in which the Haredi yeshiva insists that support of Torah scholars is paramount, while the Conservative rabbi can argue that non-Jews in Liberia might have equal or greater standing.

Of the approaches outlined above, it is Jill Jacobs' which comes closest to both conveying the indeterminacy of the halakhah *and* mining its conflicting priorities for principles that can guide contemporary Jews in their practice of tzedakah. She does not attempt to create an authoritative list that ignores the complexity of the halakhah; nor does she shrug and claim that Jewish legal tradition has nothing to say about how we practice tzedakah in contemporary America. Instead, she models a commitment to consult the literature of the halakhah and to give it persuasive authority over our religious decisionmaking. If we are to take the mitzvah of tzedakah seriously, it is a model we would do well to emulate.[47] For those of us who like clear-cut rules, the ambiguity of the halakhah can be frustrating.[48] But even if Jacobs is right that the best we can do is to conscientiously consider the competing priorities and do our best to cover all of the bases, a commitment to doing so would bring us much closer to a principled,

[47] For an example of what such an effort might yield, see the final paper in this series, which proposes a "tzedakah manifesto" for Reform Jews.
[48] As Mark Washofsky notes, "there are few answers to questions of Jewish law that are so clearly and obviously 'right' as to preclude objection and criticism." Washofsky, *Jewish Living*, xxii.

authentically Jewish practice of charitable giving.[49] For reasons that will be explored in the papers that follow, that is a goal worth striving for.

[49] Mark Washofsky argues that this is what it means to engage in halakhah: "to take one's part in the discourse of the generations, to add one's own voice to the chorus of conversation and argument that has for nearly two millennia been the form and substance of Jewish law." Ibid.

Does It Count, and Does It Matter?:

The Use of *Tzedakah* Funds to Benefit Causes other than Support of the Poor

Under section 501(c)(3) of the United States Tax Code, an organization is considered "charitable" (and thereby eligible for tax-exempt status) if its purpose is "relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency."[1] Thus, Americans tend to think of any philanthropic gifts to 501(c)(3) organizations as "charitable" giving. Worthwhile though they may be, however, not all such "charitable" donations are necessarily considered tzedakah.

What precisely *does* count as tzedakah is a matter of some dispute. Some argue forcefully that tzedakah refers only to "money or other material goods given to alleviate poverty;"[2] others insist that money earmarked for tzedakah can be used to support Jewish community institutions and other "charities" that have only tangential relationship to the poor. In this paper, I will first examine three classical halachic texts, the *Mishneh Torah*'s *Hilchot Matnot Aniyyim* (Halakhah[3] of Gifts to the Poor), the *Shulchan Aruch*'s

[1] See https://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Purposes-Internal-Revenue-Code-Section-501(c)(3).
[2] Jill Jacobs, *Where Justice Dwells: A Hands-On Guide to Doing Social Justice in Your Jewish Community* (Woodstock, VT: Jewish Lights, 2011), 186.
[3] The word "halakhah" is often translated as "law." However, as Dr. Alyssa Gray has persuasively taught, "law" is an imperfect and often misleading metaphor for the body of literature that we call halakhah. Alyssa M. Gray, Classroom Lecture, Spring 2015. Therefore, in this paper, I will leave the term untranslated.

Hilkhot Tzedakah, and Moshe Isserles's *Mappah*, to evaluate how those texts define *tzedakah*. Next, I will briefly review how tzedakah has been defined in connection with the practice of *ma'aser kesafim* (tithing). I will then consider contemporary approaches to determining what "counts" as tzedakah within the context of modern-day America. Finally, I will consider why this question should matter to the majority of Reform Jews who do not set aside a particular percentage of their income for tzedakah. I will argue that there is a unique spiritual dimension to giving to the poor, and that by acknowledging the difference between acts of tzedakah and the rest of our charitable giving, we may heighten our experience of tzedakah as a spiritual practice.

I. The *Mishneh Torah*

The approach of Rabbi Moshe ben Maimon (a.k.a. "Maimonides" or "Rambam") to the question of what "counts" as tzedakah is perhaps most clearly illustrated by the title of his codification of the halakhah of tzedakah: *Hilkhot Matnot Aniyyim* (Halakhah of Gifts to the Poor). As the title suggests, Rambam keeps a tight focus on the poor, centering his attention on how best to collect and distribute money and goods to the needy, and frequently citing biblical prooftexts that highlight God's commands to provide for the poor in our midst. As one modern scholar notes, "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."[4]

[4] Michael J. Broyde, "The Giving of Charity in Jewish Law: For What Purpose and Toward What Goal?," in *Toward a Renewed Ethic of Jewish Philanthropy*, ed. Yossi Prager (Newark: Ktav Publishing House 2010), 241, 244.

Rambam does consider one marginal case, however: the redemption of captives. He writes: "The redemption of captives takes precedence over providing sustenance for the poor, or clothing them. There is no greater mitzvah than the redemption of captives."[5] To justify the precedence of captives over the poor, Rambam states that "the captive is [in the category of] the hungry, the thirsty, the naked, and those in mortal danger."[6] He then offers a series of prooftexts, some of which he has used earlier to substantiate the obligation to give to the poor.[7] Although he likens the plight of the captive to that of the poor, Rambam does not state that the redemption of captives falls within the category of tzedakah; rather, it is a separate mitzvah with higher priority.[8] Likewise, while Rambam does consider gifts to the synagogue in chapter eight of *Hilchot Matnot Aniyyim*, he does not use the term "tzedakah" to describe such gifts.[9] He also considers when donations to the synagogue can be repurposed for other mitzvot; but stops short of finding that either: (a) gifts to the synagogue fulfill one's obligation to give tzedakah; or (b) tzedakah funds can be repurposed for other uses.[10] Thus, it appears that for Rambam, "tzedakah" is synonymous with "gifts to the poor."

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[5] *Mishneh Torah* (hereinafter "MT") *Hilkhot Matnot Aniyyim* (hereinafter "HMA"), 8:10.
[6] Ibid.
[7] Ibid., citing *inter alia* Deut. 15:7 and 15:8. Compare MT HMA 7:2 and 7:3, which cite these same verses in connection with the mitzvah of sustaining the poor.
[8] See also B. Bava Batra 8a-b (discussing the redemption of captives in the context of a lengthy sequence on tzedakah).
[9] MT HMA 8:6-8; Rambam's discussion of such gifts together with tzedakah reflects the organization of the texts on which he relies. *See* T. Megillah 2; B. Arakhin 6a-b, and B. Rosh Hashanah 4-6.
[10] He does say that one if one vows a particular coin to charity, one can exchange it for a different coin. But once the coin reaches the hand of the tzedakah administrator, it cannot be exchanged. Nor does he say that money collected for one purpose can be put to another. MT HMA 8:4.

This is so even though some earlier sources had advocated a less stringent definition, which would allow "tzedakah" funds to be used to support rabbis, synagogues, and other religious institutions. As Gregg Gardner notes "the Amoraim would use the rhetoric, terminology and conceptual architecture of *tsedaqah* to raise money for themselves."[11] Rambam therefore appears to be purposefully advocating a conservative approach to defining "tzedakah," rather than merely restating an uncontested definition.

II. The *Shulchan Aruch*

It is a testament to the power of the *Mishneh Torah* that many of its pronouncements are included verbatim, some 400 years later, in Joseph Caro's *Shulchan Aruch*. But the *Shulchan Aruch* is not merely a recapitulation of Rambam's canonical text. Rather, Caro organizes his Code along the lines of Rabbi Jacob ben Asher's 14th century Code the *Arba'ah Turim*[12] and relies on the halachic decisions of a number of different scholars in addition to Rambam. Contained within these layers of halakhah are significant disagreements about whether the mitzvah of tzedakah could be fulfilled only by giving to the poor, or whether it also encompassed other forms of charitable giving.

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[11] Gregg E. Gardner, *The Origins of Organized Charity in Rabbinic Judaism* (Cambridge Univ. Press, 2015), 30-31. We will see a similar effort on the part of modern Haredi rabbis in Section V, below.

[12] Jacob ben Asher (1270?-1340) (a.k.a. "Ba'al Ha-Turim" or the "Tur") was born in Germany, but followed his father (Asher ben Jehiel, known as the "Rosh") to Toledo, in Spain, where he compiled his great compilation of halakhah, *Arba'ah HaTurim.* This work "served to apprise Spanish Jewry with the opinions of the French and German rabbinate," thus creating a cross-polination of halakhah. *Encyclopedia Judaica* (2d ed., 2007) (hereinafter "*Encyc. Jud.*"), vol. 11, 30. For an analysis of the Tur's codificatory methodology, structure, and influence, see Menachem Elon, *Jewish Law* (Philadelphia, JPS, 1994) (trans. B. Auerbach & M. Sykes), vol. 3, 1277-1302.

We see evidence of these controversies in Caro's code, which subtly but powerfully blurs the boundary that Rambam had set.

With respect to the redemption of captives, Caro initially takes the same approach as Rambam, quoting Rambam's holding that "the redemption of captives takes precedence over supporting the poor."[13] He then goes further, writing that "if money is collected for the purpose of any other mitzvah, you may change it [and allocate it instead] to the redemption of captives."[14] Here, Caro does not include the redemption of captives within the definition of tzedakah. Nor does he state that tzedakah funds should be used for the building of a synagogue. He does imply, however (albeit indirectly), that one could allocate funds given for purposes of tzedakah and use them for the redemption of captives. As we will see below, the question whether funds allocated to tzedakah can be repurposed, or whether they become the property of the poor – and therefore non-transferable – is a matter of some dispute. Here, Caro at least opens the door to the possibility that tzedakah funds are fungible and may be used for other communal priorities.

Caro offers a more substantial challenge to Rambam's limited definition of tzedakah in his discussion of the propriety of using tzedakah funds to support the religious education of one's grown children. He writes: "One who gives to his sons or daughters (whom he is not obligated to support) in order that the sons learn Torah, and the girls learn to follow a straight [moral or religious] path, and one who gives gifts to his father, if [the recipients] need them, this is within the category of tzedakah. This is

[13] SA YD 252: 1
[14] Ibid.

nothing other than [the rule] of giving him precedence over others. And even if it is not one's child or one's father, but [another person] close to him, one must give him precedence over all others."[15] Here, Caro does not say that supporting one's adult children's religious education has precedence over the mitzvah of tzedakah (as he did regarding the redemption of captives); he suggests that such giving *is* tzedakah. Moreover, while Caro states that these family members have precedence over others, he does not say that one may only use tzedakah funds for the religious education of one's own family.

Indeed, elsewhere he writes: "There are those who say that "mitzvat beit ha-k'nesset" (the mitzvah of the synagogue) is preferable to the mitzvah of tzedakah, and that the mitzvah of tzedakah to support young men in the study of Torah, or for treating the infirm poor is preferable to "mitzvat beit k'nesset."[16] Here, we can see that while he separates "mitzvat beit k'nesset" from the "mitzvah of tzedakah," he suggests that tzedakah might be given to "support young men in the study of Torah." He thus opines explicitly that support of Torah education is a proper use of tzedakah funds, whether or not the recipient is a relative. This opens up the possibility that "tzedakah" may be understood to encompass not only the physical needs, but also the spiritual or religious needs of the poor.

Finally, in his final chapter of *Hilchot Tzedakah*, Caro suggests that the definition of "tzedakah" includes donations to religious institutions. He writes: "Tzedakah donations given for the needs of the synagogue or for the needs of the cemetery can be

[15] SA YD 251:3
[16] SA YD 249:16.

repurposed by the residents of the city for the needs of the house of study or for Torah study, even if the donors object. But [funds donated for] the study of Torah cannot [be repurposed] to support the synagogue."[17] Here, donations given for the purpose of the synagogue are referred to explicitly as "tzedakah donations." As noted above, earlier on in *Hilchot Tzedakah*, Caro noted that "there are those who say that "mitzvat bet ha-knesset" (the mitzvah of the synagogue) is preferable to the mitzvah of tzedakah,"[18] portraying support of the synagogue as a separate, if superior, obligation. But here, he collapses the two categories, suggesting that support of the synagogue is an appropriate use for "tzedakah" money.[19]

While the bulk of *Hilchot Tzedkah* remains focused on the obligation to support the poor, these examples illustrate that the *Shulchan Aruch*, unlike the *Mishneh Torah*, allows for an interpretation of tzedakah that would encompass not only support of the poor, but also support of individual and communal religious and educational needs..

III. The *Mappah*

Rabbi Moses Isserles,[20] Caro's younger contemporary, wrote an influential commentary on the *Shulchan Aruch* (the "*Mappa*") which, in addition to offering sources

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[17] SA YD 259: 2.
[18] SA YD 249:1
[19] As we will see below, this view will become prevalent within the American Orthodox Jewish community, resulting in a great deal of "tzedakah" money being used to support communal institutions rather than the needs of the poor.
[20] Moses Isserles (the "Rema") (Cracow, 1530-1572) assumed the role of Rabbi in Cracow just as Caro's *Beit Yosef* and *Shulkhan Arukh* appeared. Menachem Elon, *Jewish Law*, trans. B. Auerbach and M. Sykes (Philadelphia: JPS 1994), vol. 3, 1349. In his *Darchei Moshe* and his later glosses on the *Shulkhan Arukh*, the *Mappah*, Isserles sought to supplement Caro's text with the opinions of Ashkenazic authorities whose work had been omitted by Caro, based on the principle that "the law is in accordance with the

for Caro's halakhah, incorporated the work of halachic scholars from Ashkenaz who were largely (but not entirely) absent from Caro's work. His glosses, which are interspersed with the text of the *Shulchan Aruch* itself in the printed edition, arguably "kashered" Caro's work for the Jews of Ashkenaz, allowing it to gain credence and become the final authoritative halachic "Code."[21]

In his commentary on Caro's *Hilchot Tzedakah*, Isserles pushes back against the broadening of the definition of tzedakah, insisting that the focus remain on providing for the needs of the poor. First, he takes on Caro's statement that "if money is collected for the purpose of any other mitzvah, you may change it [and allocate it instead] to the redemption of captives."[22] Isserles appears to disagree, or at least to limit the reach of Caro's statement, writing, "if one vows [to donate] a coin for the purposes of tzedakah, the redemption of captives is not included in that category, and you cannot use that coin to redeem [captives] except with the consent of the townspeople."[23] Thus, at least on the individual level, Isserles argues against collapsing the redemption of captives into the category of tzedakah.

Second, Isserles makes clear that whatever percentage of one's income one decides to set aside as tzedakah may not be used for the purpose of other mitzvot.[24] The *Shulchan Aruch* (drawing on earlier sources, including Rambam), begins its chapter on

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views of the later authorities." Ibid. 1353-55. In the printed edition, Isserles' glosses are interspersed with the text of the *Shulkhan Arukh* itself.

[21] *See generally* Elon, *Jewish Law*, vol. 3, 1349, 1359-65; *Encyc. Jud.*, vol. 10, 770.

[22] SA, YD 252:1.

[23] For this proposition, Isserles cites Rabbi Joseph Colon (the "Maharik") (Italy, 1420-80).

[24] For a detailed overview of how the dispute on this issue developed over time, see Cyril Domb, *Ma'aser Kesafim* (New York: Feldheim Publishers, 1980), 88-97.

the extent of one's tzedakah obligation by stating that one should give according to one's ability and according to the needs of the poor. "If one cannot afford [to satisfy the full need of the poor], giving one fifth of his funds is the [best way to fulfill the mitzvah]; one tenth is average. Less than thisis ungenerous (literally, "bad eye").[25] In response to these guidelines for giving, Isserles clarifies: "He should not use his *ma'aser* [tithe money] on mitzvah items like candles for the synagogue or other mitzvah items. [It is] only for the poor."[26] This statement is clearly in tension with the *Shulchan Aruch's* use of the word "tzedakah" to include donations to the synagogue.

Finally, in response to Caro's discussion of the priority that should be given to paying a rabbi rather than a prayer leader, Isserles writes: "Do not pay the Rabbi of a city out of the tzedakah fund, for it is degrading to him and also to the townspeople, but rather sustain him from a separate fund. But each individual may send him money from his tzedakah funds, in order to honor him."[27] Here, we see Isserles once again advocating for a distinction between tzedakah funds and funds used to fulfill other communal obligations, although even he makes an exception for individual contributions to the

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[25] SA YD 249:1

[26] *Id*. For this, he cites Rabbi Yaakov ben Moshe ha Levi Moellin (the "Maharil") (Mainz, 1365-1427), the influential head of the yeshiva in Mainz. Writing about the laws of Rosh Hashanah, the Maharil wrote that "those who use their tithe money for candles to be lit at times of prayer are violating the law, because the tithe belongs to the poor." *Sefer Maharil, Hilkhot Rosh HaShanah*, excerpted in Domb, *Maaser Kesafim*, 89. The Maharil further rules that tithe money cannot be used to fulfill the mitzvah of giving gifts to the poor on Purim, arguing that for binding obligations, one can only use funds that belong to him. *Ma'aser* funds, he argues, already belong to the poor. *Responsa of Maharil*, ch. 56, excerpted in Domb, *Maaser Kesafim*, 89-90.

[27] SA YD 251:13.

Rabbi. Aside from this last exception, however, Isserles (like Rambam) appears to advocate for applying the term "tzedakah" solely or primarily to the support of the poor.[28]

IV. *The Definition of Tzedakah for Purposes of* Ma'aser Kesafim

While both Rambam and Caro recommend that one give between 10 and 20 percent of one's income as tzedakah, the lowest threshold for technically fulfilling the mitzvah is *de minimis*.[29] As a practical matter, therefore, the question whether a particular expenditure "counts" as tzedakah does not usually arise in the context of determining whether the mitzvah has been fulfilled. Instead, the question whether causes other than support of the poor "count" as tzedakah tends to appear in contemporary sources in connection with the practice of *ma'aser kesafim* – setting aside a set amount (usually ten percent) of one's income for purposes of tzedakah.[30] Only when one has a fund set aside solely for the purpose of tzedakah does one need to ask whether a particular charitable contribution falls within that category.

Cyril Domb, in his *Ma'aser Kesafim*, offers a helpful chronology of the debate over what types of contributions can be made from funds set aside as *ma'aser*. He

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[28] Whether this is reflective of a general tendency among scholars in Ashkenaz to define tzedakah as strictly for the benefit of the poor is a question that is beyond the scope of this paper. It would certainly be an interesting area for further research.

[29] MT, HMA 7:5; SA YD 249:1. According to these sources, one fails to fulfill the mitzvah only if he gives less than a third of a shekel. According to Michael Broyde, this amounts to less than $10 per year. Broyde, "The Giving of Charity in Jewish Law," 241, 256.

[30] The practice of *ma'aser kesafim* derives from the agricultural tithes mandated by the Torah. *See* Shimon Taub, *The Laws of Tzedakah and Ma'aser* (Brooklyn, NY: Mesorah Publ. 2001), 117. While there is a dispute among authorities regarding whether the Torah mandates a monetary tithe, "[m]ost authorities are of the opinion that *maaser kesafim* is only a *minhag* (custom), which was accepted by some people, and, therefore, it is up to each individual to determine for himself if he wants to give *maaser*." Ibid. 118-19. For an overview of *ma'aser* in general, see Ibid., 117-28.

writes: "The earliest responsa on the use of *ma'aser* are those of Rabbi Meir of Rothenberg [("Maharam")].[31] He takes the view that even though *ma'aser kesafim* is only a *minhag* (custom), nevertheless the money belongs to the poor and cannot be used for any other purpose."[32] As noted above,[33] the same view was taken later by Rabbi Yaakov HaLevi Moellin ("Maharil")[34], who found that tzedakah funds could not be used for the purchase of candles for the synagogue, or even for Purim gifts to the poor.[35] This view, of course, becomes the basis for Isserles's gloss forbidding the use of tzedakah funds for other mitzvot.[36]

Other scholars disagreed, holding that tzedakah funds can be used to fund other mitzvot that donors would otherwise be unable to fulfill, such as "paying for a brit milah or for the expenses of a bride, and similar things; also buying books for studying (Torah) and lending to others for their studies, provided that the means to do so are otherwise lacking."[37] "In his commentary *Be'er Hagolah* on the *Shulchan Aruch*, Rabbi Moshe

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[31] Cyril Domb, *Maaser Kesafim* (New York: Feldheim Publishers, 1980), 88. Maharam (Ashkenaz, 12??-93) was a renowned scholar, Tosafist, halachic authority, and *Rosh Yeshiva*, whose many responsa "greatly influenced the work of codifiers of the subsequent centuries." Specifically, he had great influence over the work of his student, Asher ben Jehiel (the "Rosh") and on the Rosh's son, Jacob ben Asher (the Ba'al Ha'Turim), whose codification of Jewish law became the basis for the *Shulkhan Arukh*. Encyc. Jud. vol. 13, 781-83. *See also* Elon, *Jewish Law*, vol. 3, 1121.

[32] Domb, *Maaser Kesafim*, 88.

[33] See note 26.

[34] Maharil (Ashkenaz, 1360?-1427) founded the yeshiva at Mainz. *Sefer ha-Maharil*, compiled by his students, contains a collection of his halakhic statements and decisions, many of which were incorporated by Moshe Isserles in the *Mappah*. *Encyc. Jud.* vol. 14, 414 (2d ed. 2007).

[35] Domb, *Maaser Kesafim*, 89.

[36] See Section III, above.

[37] Rabbi Isaiah Horowitz, *Shnei Luchot Habrit, Inyan Tzedakah uMa'aser*, excerpted in Domb, *Maaser Kesafim*, 93. See generally Domb, *Maaser Kesafim*, 91-93.

Rivkes[38] "attempts a less severe interpretation of [Isserles's] ruling [that tzedakah funds cannot be used for other mitzvot]. He suggests that the prohibition of the use of *ma'aser* applies only to obligatory mitzvot; it may be used for voluntary mitzvot."[39] Rabbi Moshe Sofer (the "Chatham Sofer"),[40] however, relying on the earlier responsum of the Maharil, strenuously disagrees. "How can one purchase candles for the synagogue with money that belongs to the poor even if the purpose is not obligatory? How can one steal from the poor and use money for which one is entitled only to [discretion over distribution]?"[41] Ultimately, the Chatham Sofer proposes a compromise: "When a person first starts to separate *ma'aser kesafim*, he should make a specific condition that he should be allowed to use the fund for other mitzvot than giving to the poor."[42] This compromise suggests that *ma'aser* and tzedakah are not coterminous; the Chatham Sofer maintains the distinction between tzedakah and other mitzvot even as it authorizes one to include those other mitzvot in one's planned charitable expenditures. The implication of all of this on a practical level, Domb argues, is that:

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[38] In *Be'er HaGolah*, Rivkes (Lithuania & Amsterdam, d. 1672) cites the sources for the halachot contained in the *Shulkhan Arukh*, and offers occasional commentary. Elon, *Jewish Law*, vol. 3, 1426.

[39] Domb, *Maaser Kesafim*, 94. We can think of the distinction between using tzedakah funds "obligatory" and "voluntary" mitzvot as a way of avoiding the "double-counting" of mitzvot. If one is already obligated to support one's minor children, then one cannot get "credit" for the mitzvah of tzedakah by providing the funds one is already obliged to give.

[40] Moshe Sofer (known as the "Chatam Sofer") (1762-39) was born in Frankfurt, and served as the Rabbi and Rosh Yeshiva in Pressburg, Hungary. He was a vociferous opponent of modernity and reform within the Jewish community. His voluminous writings include seven volumes of responsa. *Encyc. Jud*., vol. 18, 742-43. *See also* Elon, *Jewish Law*, vol. 3, 1495.

[41] *Responsa of Chatham Sofer*, Part 4, Responsum 231, excerpted in Domb, *Maaser Kesafim*, p. 95.

[42] Domb, *Maaser Kesafim*, 97.

> a difference should be made between charity in the narrower sense of poor people and their needs [which he calls "primary charity"] and charity in a wider sense [("secondary charity")]. Even though most authorities allow the use of *ma'aser* for secondary charities it should be remembered that the major aim of *ma'aser* is for primary charities. Therefore the use for secondary charities should be occasional rather than regular and a person should not devote a whole year's *ma'aser* money to secondary charities.[43]

V. *Contemporary Orthodox Definitions of Tzedakah*

As noted above, the *Shulchan Aruch* allows for an interpretation that would construe "tzedakah" to include not only support of the poor, but also the support of Torah study and Jewish communal institutions. Some contemporary Orthodox scholars have embraced this interpretation, and have used it to argue that support of Torah scholarship and communal institutions should in fact be the *primary* focus of our charitable giving. For example, Rabbi Yosef Fleischman, on the Haredi website DinOnline, cites the *Shulchan Aruch* for the proposition that "[s]upporting the study of Torah, for example the support of a kolel, a yeshiva, or a Torah elementary school, takes priority over the building of a shul and charity to the poor—so long as their poverty does not endanger their lives."[44] Likewise, in the Orthodox Forum's *Toward a Renewed Ethic of Jewish Philanthropy*, Michael Broyde writes: "[I]t is the normative practice within the Orthodox

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[43] Ibid., 97. See also Taub, 152 ("Ideally, one should give his *ma'aser* money to help the poor and especially to help support those who may be in need and are learning Torah. This includes any institution dedicated to the support of Torah.") For a discussion of the prioritization of Torah learning over the needs of the poor, see previous paper in this series, "In Our Own Image."

[44] Yosef Fleischman, "Laws of Tzedakah Part II: To Whom to Give First," available at http://dinonline.org/2010/08/12/laws-of-tzedakah-part-ii-who-to-give-first/ . He cites SA YD 249:16, discussed above, which notes: "There are those who say that "mitzvat beit ha-k'nesset" (the mitzvah of the synagogue) is preferable to the mitzvah of tzedakah, and that the mitzvah of tzedakah to support young men in the study of Torah, or for treating the infirm poor is preferable to "mitzvat beit k'nesset." Ibid.

community to reject the view of Rambam that limits charity to poor people, and instead we accept the view . . . that all public needs are charities."[45] Thus, what may have appeared as a small semantic departure by Caro from Rambam's strict definition of tzedakah has allowed modern commentators to credibly argue that the principle aim of tzedakah in modern Jewish society should be to support Torah study, synagogues, and other communal institutions.

VI. Jill Jacobs: What are the "Needs of the Poor"?

Rabbi Jill Jacobs raises a slightly different question, considering the propriety of supporting organizations that do not offer direct support to the poor, but may affect them indirectly. As a starting point, it is clear that she defines tzedakah strictly, as support for the poor. She writes: "In contrast with philanthropy, *tzedakah* specifically refers to the financial support of the poor. Other kinds of giving – to communal institutions such as synagogues, museums, schools and cultural organizations – are important responsibilities, but not necessarily *tzedakah*."[46] Still, she notes, it is not always clear which organizations serve the needs of the poor:

> Does a gift to a hospital that provides charity care count as tzedakah? What about a donation to a university or private school that offers financial aid? What if one earmarks such a donation for financial aid? What about a museum that offers free admission one night a week, or that offers programs for schoolchildren from low-income neighborhoods?
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> …

[45] Broyde, "The Giving of Charity in Jewish Law," 263.
[46] Jill Jacobs, *There Shall be No Needy: Pursuing Social Justice Through Jewish Law and Tradition* (Woodstock, VT: Jewish Lights, 2010), 80.

> These questions defy an easy answer. In distributing tzedakah, however, we might take into account the degree to which a given institution prioritizes poverty relief. [47]

Citing Rambam's preference for tzedakah that "strengthens the hand of the fellow Jew," she also argues in favor of giving to organizations that "pursue a combination of direct relief and advocacy for systemic change."[48] This approach, she suggests, "allow people to improve their lives immediately, through starting a business, securing a home, or developing the political capital that comes with citizen action. At the same time, recipients help to transform their communities for the long term by accumulating wealth, providing long-term employment, and changing the political systems that engender inequality."[49]

Why Does this Matter?

So what? Aside from the academic interest we might have in the halachic disputes over what *tzedakah* means, why should contemporary Reform Jews care whether their charitable giving can technically be characterized as *tzedakah*? After all, most probably give at least the *de minimis* amount required to fulfill the mitzvah. And very few set aside 10 percent (or any set percent) of their income for "tzedakah." So why should it matter to them whether their contribution to their synagogue, or local art museum, is "tzedakah" rather than "philanthropy"?

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[47] Ibid., 80-81.
[48] Ibid., 92.
[49] Ibid., 93.

It matters because giving tzedakah to the poor has the potential to be a powerful spiritual practice.[50] The spiritual stakes of tzedakah are first emphasized in Deuteronomy:

> If, however, there is a needy person among you, one of your kinsmen in any of your settlements in the land that the The Eternal your God is giving you, do not harden your heart and shut your hand against your needy kinsman. Rather, you must open your hand and lend him sufficient for whatever he needs. Beware lest you harbor the base thought, "The seventh year, the year of remission, is approaching," so that you are mean to your needy kinsman and give him nothing. He will cry out to The Eternal against you, and you will incur guilt.[51]

These foundational verses acknowledge the very human instinctual response to "harden our hearts" and "shut our hands" when confronted by the needy in our communities. It directs us, however, to open both our hearts and our hands, in order to provide the person in front of us with exactly what she needs.

The prophets expand upon this by warning against the systemic oppression of the poor. The prophet Isaiah preaches: "Ha! Those who write out evil writs And compose iniquitous documents, To subvert the cause of the poor, To rob of their rights the needy of My people; That widows may be their spoil, And fatherless children their booty!"[52] In Isaiah's view, giving money to the poor is not something we do out of the kindness of our hearts; instead, the poor have rights, which we must uphold. He also alerts us to the ramifications for a society that fails to uphold these rights. Poverty does not disappear

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[50] Much of the analysis that follows was first set out in a model responsum prepared by the author in collaboration with Adam Lutz, to satisfy the requirements of a class on Halachic Decisionmaking for the Reform Rabbi (RAB 521-A), taught by Dr. Alyssa Gray in the Spring of 2015. It is included here with the permission of Mr. Lutz. Any errors are solely those of the author.

[51] Deut. 15:7-9 (trans. adapted from NJPS).

[52] Isaiah 10:1-2 (NJPS).

when we close our eyes to it, he notes. Instead, we invite only more social ills when we disregard the needs of the poor.

Moreover, our tradition teaches that giving tzedakah is not only an act of social responsibility connecting us to those in our community; it is also a religious act that affects our relationship with God. In the book of Proverbs we read: "He who gives to the poor will not be in want, But he who shuts his eyes will be roundly cursed."[53] At first glance, this text can be troubling for those who do not believe in a God who metes out retribution. However, if we read it more broadly, it teaches us that ignoring the needs of others can be corrosive to our souls, and tarnish our relationship with God.

The religious significance of caring for the poor is highlighted in the haftarah that we read on our holiest day of the year: Yom Kippur. In Isaiah 58, the prophet rejects the empty piety of those who fast, but do nothing to address the injustice of the world around them. We read:

> No, this is the fast I desire: To unlock fetters of wickedness, And untie the cords of the yoke To let the oppressed go free; To break off every yoke. It is to share your bread with the hungry, And to take the wretched poor into your home; When you see the naked, to clothe him, And not to ignore your own kin. Then shall your light burst through like the dawn And your healing spring up quickly; Your Vindicator shall march before you, The Presence of the Eternal shall be your rear guard. Then, when you call, the Eternal will answer; When you cry, He will say: Here I am. If you banish the yoke from your midst, The menacing hand, and evil speech, 1And you offer your compassion to the hungry And satisfy the famished creature -- Then shall your light shine in darkness, And your gloom shall be like noonday.[54]

[53] Proverbs 28:27 (NJPS). See also Proverbs 19:17, "He who is generous to the poor makes a loan to the LORD; He will repay him his due."
[54] Isaiah 58:6-10 (trans. adapted from NJPS).

The Rabbis of the Talmud emphasized the communal and personal religious significance of *tzedakah*, understanding it to be a way that Jews could relate to God in a post-Second Temple world. As we read in the Babylonian Talmud:[55] "Rabbi Elazar said, 'Performance of *tzedakah* is greater than all of the sacrifices.' As it is written in Proverbs 21:3, 'Doing *tzedakah* and justice is more desired by the The Eternal than sacrifice.'" In the Bible, sacrifice was the primary method of connecting with God. Here, as in the text of Isaiah, *tzedakah* is both connected to and elevated above such ancient acts of piety.[56] As we have seen above, this concern for the poor has continued through the Middle Ages and into the modern day, as scholars have debated how best to carry out this weighty obligation.

The religious significance of tzedakah is explicitly recognized by the Reform movement in its most recent platform:

> We bring Torah into the world when we strive to fulfill the highest ethical mandates in our relationships with others and with all of God's creation. Partners with God in (*tikkun olam*), repairing the world, we are called to help bring nearer the messianic age. . . . We are obligated to pursue (*tzedek*), justice and righteousness, and to narrow the gap between the affluent and the poor, to act against discrimination and opression, . . . In so doing, we

[55] B.*Sukkah* 49b.

[56] Indeed, as Gary Anderson argues, Deuteronomy itself connects the "tithe" to the poor with the tithes that one would offer at the Temple during festivals, suggesting that when we give money to the poor, we are engaging in a ritual act of sacrifice. Gary A. Anderson, *Charity: The Place of the Poor in the Biblical Tradition* (New Haven: Yale Univ. Press 2013), 25-27. Madeline Kochen examines how this idea of tzedakah as sacrifice is adopted and developed in Rabbinic literature, arguing persuasively that the Rabbis conceived of tsedakah as having "the type of sacredness attached to all property given to God." Madeline Kochen, *Organ Donation and the Divine Lien in Talmudic Law* (Cambridge Univ. Press 2014), 130. She writes: "In the absence of the Temple, gifts to the poor were essentially all that remained of the broader theoretical framework enabling gifts and offerings to God." Ibid., 133. An exploration of the link between tzedakah and the concepts of *neder* and *hekdesh*, both of which are tied to the institution of Temple sacrifice, is beyond the scope of this project. Kochen offers a compelling analysis of these issues in Chapter 4.1 of her book.

> reaffirm social action and social justice as a central prophetic focus of traditional Reform Jewish belief and practice.
>
> We affirm the (*mitzvah*) of (*tzedakah*), setting aside portions of our earnings and our time to provide for those in need. These acts bring us closer to fulfilling the prophetic call to translate the words of Torah into the works of our hands.

Here, the leaders of our movement not only call generally for action that will address social ills; they specifically state that we should do so by "setting aside portions of our earnings and our time to provide for those in need." Like the Rabbis of late antiquity and the Middle Ages, they see this as not only a social act, but a religious one, as it can "bring us closer to fulfilling the prophetic call to translate the words of Torah into the works of our hands."

Rabbi Jill Jacobs describes the spiritual aspect of tzedakah as follows: "Giving even a small amount of *tzedakah* forces us to recognize the extent of poverty in the world, awakens our compassion toward others, and helps us see our wealth as God's loan to us, rather than as a tribute to our own worth." Moreover, Jacobs writes, the "mystical tradition imagines that our own compassion for the poor awakens divine compassion."[57] She quotes the eighteenth century Hassidic Rabbi Levi Yitzhak of Berditchev:

> Just as a Jew gives *tzedakah* to the poor and robes himself in the attribute of lovingkindness toward a poor person, similarly this causes God to robe Himself in the attribute of lovingkindness and to make divine lovingkindness flow . . . to all of the worlds and the worlds below, as the Rabbis said, "Anyone who shows mercy to humankind brings mercy on oneself from the heavens. (B. *Shabbat* 151b).[58]

Those with a different theology might say instead that we feel God's presence most in shared moments of love and compassion. Engaging in acts of tzedakah,

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[57]Jacobs, 83-84.
[58] Ibid., 84, citing *Kedushah Sh'niah, Dibbur haMatchil v'Hineh*.

in which we recognize the divine spark in our fellow human beings, and allow ourselves to become agents of divine love, helps us to become more aware of God's presence in our own lives.

If we take on tzedakah as a *religious* practice, meaning one that has the potential to connect us more deeply to God, then giving to the poor is meaningfully different from other kinds of philanthropy. In order to tap into the spiritual dimension of tzedakah, we need to focus on when, exactly, we are doing it, and why. Thus, in order to gain the full spiritual benefit from out giving, I would argue for a definition of tzedakah as giving that directly benefits the poor, even if this means setting aside a smaller percentage of our income for tzedakah (strictly defined) to allow for other charitable giving. This will allow to experience our support of the poor as a spiritual practice that has the potential to make God's love, compassion and *tzedek* – justice – manifest in this world, resulting in both inner and outer transformation. This, and not the size of our tax exemption, should be our measure of success.

A Tzedakah Manifesto:

Embracing the Mitzvah of Righteous Giving as a Reform Jew

The Reform Movement has long seen itself as the champion of the "ethical mitzvot."[1] Indeed, our Movement has affirmed "social action and social justice as a central prophetic focus of traditional Reform Jewish belief and practice."[2] Support of the poor has always held a particularly prominent place in our conception of how Reform Jews should live out their values. Even in the 1885 Pittsburgh Platform, which rejected outright most "ritual" mitzvot, our Movement stated: "In full accordance with the spirit of the Mosaic legislation, which strives to regulate the relations between rich and poor, we deem it our duty to participate in the great task of modern times, to solve, on the basis of justice and righteousness, the problems presented by the contrasts and evils of the present

[1] *See, e.g.* Central Conference of American Rabbis ("CCAR"), "Declaration of Principles" ("Pittsburgh I," 1885), available at https://ccarnet.org/rabbis-speak/platforms/declaration-principles/ ("we accept as binding only its moral laws, and maintain only such ceremonies as elevate and sanctify our lives, but reject all such as are not adapted to the views and habits of modern civilization."); CCAR, "Reform Judaism, A Centenary Perspective," ("San Francisco Platform," 1976) available at https://ccarnet.org/rabbis-speak/platforms/reform-judaism-centenary-perspective/ ("Judaism emphasizes action rather than creed as the primary expression of a religious life, the means by which we strive to achieve universal justice and peace. Reform Judaism shares this emphasis on duty and obligation. Our founders stressed that the Jew's ethical responsibilities, personal and social, are enjoined by God."). CCAR, "A Statement of Principles for Reform Judaism," ("Pittsburgh II," 1999) available at https://ccarnet.org/rabbis-speak/platforms/statement-principles-reform-judaism/ ("We are obligated to pursue *tzedek*, justice and righteousness, and to narrow the gap between the affluent and the poor, to act against discrimination and oppression, to pursue peace, to welcome the stranger, to protect the earth's biodiversity and natural resources, and to redeem those in physical, economic and spiritual bondage."); *See also* CCAR, "The Guiding Principles of Reform Judaism" ("Columbus Platform," 1937), available at https://ccarnet.org/rabbis-speak/platforms/guiding-principles-reform-judaism/ ("In Judaism religion and morality blend into an indissoluble unity. Seeking God means to strive after holiness, righteousness and goodness. The love of God is incomplete without the love of one's fellowmen.").

[2] CCAR, "Pittsburgh II."

organization of society."[3] Likewise, the most recent platform states: "We affirm the *mitzvah* of *tzedakah*, setting aside portions of our earnings and our time to provide for those in need. These acts bring us closer to fulfilling the prophetic call to translate the words of Torah into the works of our hands." While our commitment to our religious values may lead us to pursue universal goals, we strive to do so *as Jews*, informed by our sacred tradition. As our Movement explains: "Through Torah study we are called to mitzvot, the means by which we make our lives holy. We are committed to the ongoing study of the whole array of mitzvot and to the fulfillment of those that address us as individuals and as a community."[4] Ideally, then, Reform Jews would embrace tzedakah as a core religious practice, and ground their approach to charitable giving in Jewish tradition.[5]

What would this look like? In the "Tzedakah Manifesto" below, I set out 10 principles, drawn from classical and modern *halachic* sources, that individuals can use to

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[3] CCAR, "Pittsburgh I."
[4] CCAR, "Pittsburgh II."
[5] There is reason to believe that this is not currently the case. While there are no statistics on charitable giving among Reform Jews in particular, a 2004 report found that American Jews with incomes between $50,000 and $150,000 "give away, on average, no more than 1.2% of their annual earnings. A 2008 report found that donors to Jewish community federations who earn $500,000 or more a year give away a total of about 1.4% of their pre-tax income to all charitable causes." Jill Jacobs, "Coming up Short on the Tzedakah Yardstick," *Forward*, Dec. 9, 2009, available at http://forward.com/opinion/120593/coming-up-short-on-the-tzedakah-yardstick/ . Moreover, Jacobs argues, of the money that we do give away to "charitable" organizations, most does not qualify as "tzedakah," classically defined as material support for the poor. *Id*. For further discussion of the definition of tzedakah, please see the previous paper in this series, "Does it Count, and Does it Matter," and the commentary under the heading "Sustain the Poor," below.

inform their approach to tzedakah.[6] Inspired in form by Reboot's Sabbath Manifesto,[7] this statement of principles aims to provide a blueprint for embracing tzedakah that is both authentically Jewish and easily adaptable to the lives of contemporary progressive Jews.

I have approached this project as a committed Reform Jew who is passionate about this practice, and its potential to not only create meaningful change in the world, but also to strengthen our relationship with God. This orientation has affected my choice of principles in several ways. First, I approach our traditional legal texts through the lens of Reform Judaism. Because Reform tradition is committed to gender equality,[8] I have not chosen to highlight the portions of traditional halakhah that differentiate between men and women, either as donors or recipients of tzedakah. Likewise, I do not include the

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[6] This paper is the outgrowth of a "text immersion" in the halakhah of tzedakah as codified in the *Mishneh Torah* and the *Shulkhan Arukh*. The discussion of halakhah will therefore center on those two Jewish legal codes, although other older and newer texts will be cited as necessary. A full review of the *halakhah* of tzedakah is beyond the scope of this project. Rather, the goal is to distill from these two halachic compilations a foundational set of principles and priorities that we might use to guide our tzedakah practice.

[7] See http://www.sabbathmanifesto.org/. Reboot is a progressive Jewish "think-tank" that aims to find creative ways for Jews to live fuller Jewish lives. In the "Shabbat Manifesto," Reboot aims to adapt "our ancestors' rituals by carving out one day per week to unwind, unplug, relax, reflect, get outdoors, and get with loved ones." It offers 10 principles for creating a Shabbat practice, which it invites participants to interpret as they see fit. (The principles are: Avoid technology; Connect with loved ones; Nurture your health; Get outside; Avoid commerce; Light candles; Drink wine; Eat bread; Find silence; and Give back). My project here is different in substance from that of Reboot, in that it seeks to ground the "principles" in halakhah. I am inspired, however, by the challenge of boiling down a religious practice to a set of simple principles that contemporary Jews can apply in their daily lives. I have therefore adopted the form of Reboot's manifesto here.

[8] Mark Washofsky, *Jewish Living: A Contemporary Guide to Reform Practice* (New York: URJ Press 2010), xxviii (noting gender equality as one of the principles that differentiates Reform halakhah from traditional halakhah).

preference of *Kohanim* over other Jews, as the distinction between *Kohen*, *Levi*, and *Israel* is irrelevant in mainstream Reform practice.

More controversial is my choice not to include "Give to Jews" as one of the 10 principles that should guide our giving. As Mark Washofsky notes, "the traditional obligation to give *tzedakah* was an entirely Jewish obligation: we owed no such responsibility toward those outside the community of Israel."[9] However, as he also argues:

> "Reform Judaism affirms the moral equality of all humankind. . . . . We are moved . . . by those passages in our traditional texts that call upon us to regard all human beings as children of God, entitled to justice, righteousness, and compassion from us. Distinctions between Jews and non-Jews are appropriate in the area of ritual behavior, for it is by means of rituals that we express our exclusively Jewish identity. We reject them as inappropriate, however, in the arena of moral conduct. Thus, Reform responsa hold that the standards of ethical behavior that our tradition demands of us apply to our dealings with gentiles as well as Jews."[10]

Tzedakah, as I will argue below, is both an "ethical" and a "ritual" or "religious" act. On balance, however, I have decided not to highlight the halakhah's priority for giving to Jews before all others. In part, this is because in my own personal weighing of priorities, familial relationship, need, and geography all trump the preference for giving to other Jews.[11] In part, this choice is also meant to be provocative, and to counter the conventional wisdom that giving to any Jewish cause "counts" as tzedakah. Finally, if we construe the principle "Know Your Community" to apply not only to our cities, but

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[9] *Id.* 294.
[10] *Id.* xxviii.
[11] For an extended discussion of the indeterminacy of the various priorities for charitable giving, please see my earlier paper, "In Our Own Image."

also to our Jewish communities, then there will be ample opportunities to support fellow Jews.

My ultimate goal has been to discern a set of authentically Jewish principles that can both meet Reform Jews where they are and lovingly agitate them to become more observant of this mitzvah that is so central to both traditional and Reform Jewish practice.

Tzedakah Manifesto

1. *Set a goal.*
2. *Keep track.*
3. *Support your family.*
4. *Sustain the poor.*
5. *Know your community.*
6. *Find trustworthy organizations.*
7. *Show compassion.*
8. *Withhold Judgment.*
9. *Build a Habit.*
10. *Invoke God.*

1. Set a Goal

According to traditional halakhah, Jews are obligated to give enough to satisfy the needs of the poor, to the extent that they are able.[12] Because even the destitute are required to give tzedakah out of the alms they receive,[13] the absolute minimum one can give and still fulfill this *mitzvah* is quite low: a "third of a shekel," or around $10.[14] But our halakhah has traditionally demanded far more of us. "If one cannot afford [to satisfy the full need of the poor]," say the *Mishneh Torah* and *Shulkhan Arukh*, "giving one fifth of his funds is the [best way to fulfill the mitzvah]; one tenth is average. Less than this is stingy."[15]

For Reform Jews who grew up thinking of tithing as something that Christians do, the idea that Jewish tradition exhorts us to set aside *at least* 10 percent of our income for the poor may come as a bit of a shock. Giving that amount may seem out of reach. If we set aside the numbers for the moment, however, we can see that at the most basic level, our traditional sources are urging us to give some thought to the relationship between what we earn and what we give, and to set a measurable goal for our giving.

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[12] *Mishneh Torah* (hereinafter "MT"), *Hilkhot Matnot Aniyyim* (hereinafter "HMA") 7:1; *Shulkhan Arukh* (hereinafter "SA"), *Yoreh De'ah* (hereinafter "YD") 249:1.
[13] MT, HMA 7:5.
[14] SA YD 249:1. Michael J. Broyde, "The Giving of Charity in Jewish Law: For What Purpose and Toward What Goal?," *Toward a Renewed Ethic of Jewish Philanthropy*, ed. Yossi Prager (Newark: Ktav Publishing House 2010), 241, 256. The fact that even the poor are required to give tzedakah highlights the religious nature of this obligation.
[15] SA YD 249:1. See also MT HMA 7:5. The halakhah prohibits giving more than 20 percent a year during an individual's lifetime, to avoid the danger that he, himself, would become dependent on tzedakah. See SA YD 249:1. Some modern commentators have argued, however, that in the case of the extremely wealthy, for whom greater giving poses no danger, this ceiling may be disregarded. See, e.g. Jill Jacobs, "Tzedakah, Take Two," *Zeek*, Dec. 30, 2009, available at http://zeek.forward.com/articles/116165/ (citing SA YD 249:1 and B. Ketubot 67b).

Moreover, the fact that the recommended percentages are so high suggests that our goal should represent a substantial amount of our earnings.

A first step would be to assess our current level of giving, and to reflect on the relationship between what we earn and what we give. In doing so, one might ask, should we base our calculations on pre-tax, or post-tax income? As Rabbi Jill Jacobs writes: "In theory, our entire gross salary might be considered income, and we might be able to count as tzedakah whatever percentage of our income tax goes to support social service programs." Determining what percentage of our tax bill goes to support the poor, however, is not a simple task.[16] Jacobs and others therefore advocate calculating one's tzedaka obligation based on post-tax income.[17]

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[16] Jacobs writes: "In the United States, approximately eleven percent of our tax money goes into safety net programs, and about six percent goes to Medicaid and CHIP (Children's Health Insurance Program), both of which provide health insurance to those who would not otherwise be able to afford it. We may therefore safely count at least seventeen percent of our tax money as tzedakah. One may also make an argument for counting the two percent that goes toward education, since public schools have the potential to minimize poverty and inequality. But from here things become more confusing. Thirteen percent of our tax dollars go to Medicare, and twenty-one percent goes to social security, with the majority of social security payments benefiting those over sixty-five. Depending what measure one uses, anywhere from nine to twenty-five percent of people over sixty-five may be considered poor. Furthermore, since social security payments are based on lifetime earnings, those with a history of higher earnings receive more social security money. Jacobs, "Tzedakah Take Two." Moreover, given that tax policy may change frequently, calculating one's obligation based on the U.S. Tax Code is simply not practical.

[17] Jacobs grounds her decision on a responsum (halachic decision) by Rabbi Moshe Feinstein (a prominent American Orthodox scholar and decisor of halakhah, 1895-1986), in which he "distinguishes between sales tax and income tax deducted directly from one's paycheck. The latter, he says, is not really income, as we never actually receive the money." *Id.*, citing *Igg'rot Moshe*, *Yoreh De'ah* I:143. The ArtScroll handbook on tzedakah (representing a *Haredi* perspective) comes to the same decision, based on the same responsum of Rabbi Feinstein. *See* Shimon Taub, *The Laws of Tzedakah and Maaser* (Brooklyn, NY: Mesorah Publ. 2001), 148.

How should our living expenses figure into our calculations? As Rabbi Moses Isserles (Poland, 1530-72) writes in his commentary to the *Shulkhan Arukh*, "supporting oneself takes precedence over [providing for] anyone else, and one is not obligated to give tzedakah until he can support himself."[18] If one has difficulty supporting oneself, therefore, he may take care of his basic needs before setting aside money for tzedakah.[19] Of course, what needs are considered "basic" is debatable,[20] but given that this money would otherwise go to meet the needs of the poor, there is good reason to interpret this to include only "essential minimum needs of food, shelter, and clothing." For those of us who are fortunate enough to be able meet these basic needs even if we were to set aside a percentage of our income, we should ignore our living expenses in calculating the percentage of our income that we set aside as tzedakah.

Once we have calculated how our tzedakah compares to our income, we should set a realistic goal for the coming year. Perhaps we could aim to increase the percentage of our income that we set aside for tzedakah by one percent. Most of us could adapt to a one percent decrease in our yearly income without significant hardship. If one were able to do this, over the course of ten years, one would be able to meet our tradition's target of giving at least ten percent of our income as tzedakah.

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[18] R. Moshe Isserles, *Mappah* to SA YD 251:3.
[19] Taub, *The Laws of Tzedakah and Maaser*, 52-53, citing R. Yechiel Michel Epstein (Lithuania, 1829-1908), *Aruch HaShulchan* 251: 19; Jacobs, "Tzedakah, Take Two," citing Eliezer Waldenberg (Israel, 1915-2006), *Tzitz Eliezer* 9:1.
[20] Taub, *The Laws of Tzedakah and Maaser*, 52-53.

2. Keep Track

Classical halakhah imagines a Jewish community in which trusted tzedakah administrators (*gabbaim tzedakah*) determine how much each person in the community is obligated to contribute to the communal fund for support of the poor.[21] Those who refuse can be compelled by force, and have their property seized in order to meet their obligation.[22] We no longer live in such a world, of course. While tzedakah, like other mitzvot, is understood as an obligation, the Jewish community has no power to compel our compliance. It is upon each of us to police ourselves.

There is a longstanding *minhag* (custom) in some Jewish communities of *ma'aser kesafim* (tithing ten percent of one's income).[23] While this practice is commonly understood as a custom, rather than a commandment,[24] it offers a useful model for self-enforcement of our personal commitments to give tzedakah. The easiest way to practice *ma'aser kesafim* is to immediately deduct it from one's earnings, and place it in a separate account.[25] Once one designates the money as *ma'aser*, Rabbi Shimon Taub writes, "one no longer considers it as his own, therefore making it easier to give it away."[26] Rabbi Jill Jacobs explains: "Banking on-line makes this process much simpler.

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[21] *See, e.g.* MT, HMA, 9:1; SA YD 248:1
[22] *See, e.g.* MT, HMA, 7:10; SA YD 248:1.
[23] *See, e.g.* Taub, *The Laws of Tzedakah and Maaser*, 117-19. This practice is an adaptation of the agricultural tithe to the poor ("*ma'aser ani*") set forth in the Tanach. *See*, Deut. 14:28 & 26:12. The history of *ma'aser kesafim*, as well as the particulars of the halakhah related to this practice, are beyond the scope of this paper. For a general overview of these matters, see Taub and Cyril Domb, *Maaser Kesafim*, (New York: Feldheim Publishers, 1980).
[24] Taub, *The Laws of Tzedakah and Maaser*, 118;
[25] Taub, *The Laws of Tzedakah and Maaser*, 123; Jacobs, "Tzedakah, Take Two."
[26] *Cf.* Domb, *Maaser Kesafim*, 88-89 & 95, citing opinions of Rabbi Meir of Rothenberg ("Maharam") (Ashkenaz, 1215-93); Rabbi Yaakov HaLevi Molin ("Maharil")

My bank allows multiple checking accounts, and I have set up an automatic transfer into my tzedakah account for the day after my direct deposit arrives. Since I do most of my giving on-line, I have found it useful to designate one credit card for tzedakah, and to pay the bills for this card from my tzedakah account."[27]

Of course, as noted above, we may be unable or unwilling to immediately set aside a full ten percent of our income as tzedakah. Whatever our personal target, however, the tradition of *ma'aser kesafim* suggests that we would do well to keep a meticulous accounting of our giving, to separate out our tzedakah funds immediately, and to maintain a separate account for money we intend to give away.

3. Support your family.

Traditionally, halakhah has seen the family as the primary safety net for the poor, and has compelled families to support their impoverished relatives before those relatives can take from the communal dole.[28] In setting out orders of priority for the distribution of tzedakah, therefore, our traditional sources are clear that the support of one's family takes precedence.[29] Indeed, there is textual authority for supporting our families in

(Ashkenaz, 1360?-1427); and Rabbi Moshe Sofer (the "Chatham Sofer") (Germany and Hungary, 1762-39) , which hold that once money has been set aside as *ma'aser*, it belongs to the poor, and cannot be used for any other purpose.

[27] Jacobs, "Tzedakah, Take Two."

[28] SA YD 257:8; *cf. Mappah* to SA 252:12 (commenting on the *Shulkhan Arukh*'s requirement that men redeem their sons from captivity, and stating that one's close relatives come before everyone else, so that one may not spend all of his money on himself, while his family takes from the public dole).

[29] *See, e.g.* MT *Hilkhot Matnot Aniyyim*, 7:13; SA YD 251:3

attaining more than their basic necessities of food and shelter before we turn to aiding the more desperately poor.[30]

Note, however, that tzedakah may not traditionally be used to assist those whom one is *obligated* to support. Therefore, the support and education of one's minor children, for example, should not come out of tzedakah funds.[31] Likewise, while one may use tzedakah funds to care for one's parents if absolutely necessary,[32] some scholars advise that one should try to avoid it, as it is considered humiliating for them.[33] These exceptions aside, however, when allotting our tzedakah money, we should be mindful that our family members come first.

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[30] See my earlier paper, "In Our Own Image," above. *See, also, e.g.*, Responsum of Rabbi Mordehai Dov Twersky (1924-98), *Emek She'elah, Yoreh Deah* 69, excepted in Domb, *Maaser Kesafim*, 104. Rabbi Twersky writes: "I have been consulted by a God-fearing man whose sister used to live in comfort in her father's house. Now her circumstances have deteriorated and she has only enough for bare necessities. Should her brother use his *ma'aser* money [i.e. his tithe set aside for the poor] to support her so that she can live in comfort or should he rather use it for poor people who do not have enough for their basic needs?" He ruled that the brother should support his sister. *See* Domb, *Maaser Kesafim*, 104. Contemporary Reform Jews might choose to extend the preference of those who are "close" to us over others to include not only our blood relations, but also our close friends or "families of choice" who fall on hard times.

[31] Domb, *Maaser Kesafim*, 115-16 ("It is generally agreed that a person should not use his *ma'aser* money for the Torah education of his own children since he has an obligation to teach them himself or to provide a teacher."), *citing* R. Israel Meir HaKohen Kagan (the "Chafetz Chayim")(Lithuania, 1839-1933), *Ahavat Chesed*, ch. 19.

[32] *See, e.g.* MT, HMA, 10:16; *Mappah* to SA YD 251:3.

[33] Domb, *Maaser Kesafim*, 100, *citing Mappah* to SA YD 240:5.

4. Sustain the Poor

Ultimately, the mitzvah of tzedakah can be traced to the Torah's commandment to open our hearts and hands to the poor in our midst.[34] In the book of Deuteronomy, we read:

> If, however, there is a needy person among you, one of your kinsmen in any of your settlements in the land that the The Eternal your God is giving you, do not harden your heart and shut your hand against your needy kinsman. Rather, you must open your hand and lend him sufficient for whatever he needs. Beware lest you harbor the base thought, "The seventh year, the year of remission, is approaching," so that you are mean to your needy kinsman and give him nothing. He will cry out to The Eternal against you, and you will incur guilt.[35]

Likewise, every Yom Kippur we read the chastising words of Isaiah, telling us that our fast is meaningless unless we take action to aid the poor:

> No, this is the fast I desire: To unlock fetters of wickedness, And untie the cords of the yoke To let the oppressed go free; To break off every yoke. It is to share your bread with the hungry, And to take the wretched poor into your home; When you see the naked, to clothe him, And not to ignore your own kin. Then shall your light burst through like the dawn And your healing spring up quickly; Your Vindicator shall march before you, The Presence of the Eternal shall be your rear guard. Then, when you call, the Eternal will answer; When you cry, He will say: Here I am. If you banish the yoke from your midst, The menacing hand, and evil speech, And you offer your compassion to the hungry And satisfy the famished creature -- Then shall your light shine in darkness, And your gloom shall be like noonday.[36]

These texts suggest that not only are we obligated to support the poor, but that our failure to do so will distance us from God. While there is support in some traditional halachic sources for supporting Torah study or communal Jewish institutions with tzedakah

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[34] *See, e.g.* Deut. 15:7-11; Isaiah 58:6-10.
[35] Deut. 15:7-9 (trans. adapted from NJPS).
[36] Isaiah 58:6-10 (trans. adapted from NJPS).

funds,[37] the better view is that the primary purpose – if not the sole purpose – of tzedakah is the support of the poor. [38] Moreover, as I have argued elsewhere,[39] giving to the poor can be a powerful spiritual practice, in a way that supporting other worthy causes is not. Therefore, as we decide how to allot our tzedakah funds, our tradition suggests that we should take care to prioritize those organizations that support the poor.

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[37] *See, e.g.* SA YD 259:2 (referring to donations to the synagogue or house of study as "tzedakah"); *see also* Broyde, "The Giving of Charity in Jewish Law," 241, 263 (setting out the historic disagreement over the definition of tzedakah, and noting: "[I]t is the normative practice within the Orthodox community to reject the view . . . that limits charity to poor people, and instead we accept the view . . . that all public needs are charities.")

[38] Domb, *Maaser Kesafim*, 97 ("[A] difference should be made between charity in the narrower sense of poor people and their needs [which he calls "primary charity"] and charity in a wider sense [("secondary charity")]. Even though most authorities allow the use of *ma'aser* for secondary charities it should be remembered that the major aim of ma'aser is for primary charities. Therefore the use for secondary charities should be occasional rather than regular and a person should not devote a whole year's *ma'aser* money to secondary charities"); Jill Jacobs, *There Shall be No Needy: Pursuing Social Justice Through Jewish Law and Tradition* (Woodstock, VT: Jewish Lights 2010), p 80 ("In contrast with philanthropy, *tzedakah* specifically refers to the financial support of the poor. Other kinds of giving – to communal institutions such as synagogues, museums, schools and cultural organizations – are important responsibilities, but not necessarily *tzedakah*.")

[39] See my previous paper in this series "Does it Count, and Does it Matter?" The spiritual benefit of cultivating compassion for others will also be discussed below, under the heading "Show Compassion."

5. Know Your Community

Among other orders of priority,[40] traditional halakhah instructs us to prioritize the poor of our own cities over the poor of other communities.[41] There is halachic support for giving preference to those in other communities if they are in greater need than the poor of one's own city,[42] and one could decide, consistent with traditional halakhah, to prioritize need above all else.[43] As Rabbi Jill Jacobs argues, however:

> Attention to relative need above all else might lead us to give *tzedakah* only to the poorest residents of the developing world, and to ignore members of our own communities entirely. Such an approach might result in a decrease of economic opportunity in our own communities, and may send us into a seesaw approach to poverty, in which we focus on one community until another falls into desperate [straits], and then switch our attention fully to this other community.[44]

Even aside from these practical concerns with basing our giving solely on need, however, I would suggest that our tradition's focus on taking care of one's local community has something important to teach us. As Jacobs argues in another of her books, "place

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[40] Traditional halakhah sets forth several competing orders of priority, which hinge on factors such as familial connection, geographic proximity, need, and social and educational status. How these various priorities should interface with one another, however, is a complicated question, which is ultimately left undetermined. *See* my previous paper in this series, "In Our Own Image."

[41] MT, HMA, 7:13; SA YD 251:3.

[42] Jacobs, *There Shall be No Needy*, 90, citing the Chatham Sofer (who ruled that if the poor of another city were worse off, they should come before the poor of one's own city) and the modern *posek* Moshe Feinstein (who ruled that "all discussions of precedence apply only when all of the poor people have the same needs").

[43] Jacobs, *There Shall be No Needy*, 90-91.

[44] *Id.* at 91.

matters," and there is good reason to commit our time and resources to the needs of our local communities.[45] As a counterexample, Jacobs tells the following story:

> A few months after Hurricane Katrina hit the Gulf Coast, I sat on top of a roof in Biloxi, Mississippi, with a group of college students from the University of Michigan. As we pounded nails into fresh shingles, I asked one young man, "Would you have come on this trip if it had been going to Detroit?" His confused look served as response enough. "No, why?," he asked.[46]

As this story illustrates, we are prone to looking to exotic locales when trying to determine whom to help, and often discount the need in our own cities, where we could perhaps have a greater and more lasting impact.

Jewish tradition's focus on the local community, then, is somewhat countercultural. It is also one of the things that distinguishes the Jewish approach to charitable giving from compelling secular approaches which call on us to donate our money to causes that will save the most lives, worldwide.[47] As Jacobs argues, however, there is some wisdom to learning about and investing in our communities. It can open our eyes to injustice in our neighborhoods and allow us to act for systemic change. Even if we ultimately split our tzedakah between our home communities and those in greater need, this halachic principle of "near before far" should spur us, at the very least, to investigate the problems facing the poor "in our midst."

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[45] Jill Jacobs, *Where Justice Dwells: A Hands-On Guide to Doing Social Justice in Your Jewish Community* (Woodstock, VT: Jewish Lights 2011), 18.
[46] *Id.*
[47] *See, e.g.* Peter Singer, *The Life You Can Save: Acting Now to End Global Poverty* (New York: Random House, 2009). Singer, a prominent contemporary philosopher and professor of ethics, advances a powerful moral argument for using our money to save the lives of the desperately poor.

6. Find Trustworthy Organizations

Traditionally, each Jewish community was responsible for appointing trusted administrators to collect and distribute tzedakah.[48] These administrators were subject to a number of rules to prevent theft, self-dealing, and even the appearance of impropriety.[49] Concerns about the proper administration of charity funds are hardly unique to the Jewish community. Our tradition's insistence on this point, however, is a good reminder to make an effort to vet the organizations to which we are considering making a donation.[50]

7. Show Compassion

Our tradition teaches that tzedakah is not only about fulfilling the material needs of the poor; it also offers us the opportunity to embody God's love and compassion.[51] As Rabbi Moshe ben Maimon (a.k.a. "Maimonides" or "Rambam") writes:

> If a poor person asks you for money and you don't have anything to give him, you can give him kind words. It is forbidden to berate him or to yell at him because his heart is already broken and is already depressed. Behold he says, "a broken and depressed heart, O' God you will not humiliate" . . . Woe to him who shames the needy. Do not shun him, rather be for him a father in compassion and speech, as it is written "I am a father to the poor" (Job 29:15).[52]

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[48] B. Bava Batra 8b; MT, HMA 9:1; SA YD 255:1.
[49] B. Bava Batra 8b; MT, HMA 9:5, 8-11; SA YD 255:1-2.
[50] Guidestar.com is a good source of information about charitable organizations, including information about how much of the money they collect goes to administration.
[51] Portions of this section and the one that follows were first set out in a model responsum prepared by the author in collaboration with Adam Lutz, to satisfy the requirements of a class on Halachic Decisionmaking for the Reform Rabbi (RAB 521-A), taught by Dr. Alyssa Gray in the Spring of 2015. It is included here with the permission of Mr. Lutz. Any errors are solely those of the author.
[52] MT, HMA 10:5. See also B. Bava Batra 9b (R. Isaac: "He who gives a small coin to a poor man obtains six blessings, and he who addresses to him words of comfort obtains eleven blessings" (Trans. Soncino.)

Rabbi Isaac of Corbeil ("the SMaK," 13th c. France) goes even further, stating that "the one who commiserates with a poor person with words is much greater than one who gives tzedakah." This point is perhaps most poignantly made in a story in the Babylonian Talmud about a man named Nahum of Gamzu:

> It is related of Nahum of Gamzu that he was blind in both his eyes, his two hands and legs were amputated — and his whole body was covered with boils and he was lying in a dilapidated house on a bed the feet of which were standing in bowls of water in order to prevent the ants from crawling on to him. . . .
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> Thereupon his disciples said to him, Master, since you are wholly righteous, why has all this befallen you? and he replied, I have brought it all upon myself. Once I was journeying on the road and was making for the house of my father-in-law and I had with me three asses, one laden with food, one with drink and one with all kinds of dainties, when a poor man met me and stopped me on the road and said to me, Master, give me something to eat. I replied to him, Wait until I have unloaded something from the ass; I had hardly managed to unload something from the ass when the man died [from hunger]. I then went and laid myself on him and exclaimed, May my eyes which had no pity upon your eyes become blind, may my hands which had no pity upon your hands be cut off, may my legs which had no pity upon your legs be amputated, and my mind was not at rest until I added, may my whole body be covered with boils.
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> Thereupon his pupils exclaimed, 'Alas! that we see you in such a sore plight'. To this he replied, 'Woe would it be to me did you not see me in such a sore plight'.[53]

Nahum is described as being a wholly righteous man; presumably then, he is conscientious about fulfilling his general obligations to communal *tzedakah* funds. And yet when he hesitates to address the needs of the man in front of him, and speaks to him dismissively, he is afflicted.

From these texts, it is clear that engaging in tzedakah involves more than simply handing out money. Instead, refusing to "turn our eyes" away from the poor, and

[53] B. Ta'anit 21a (Trans. Soncino).

purposefully engaging with them, is an essential component of fulfilling this religious obligation. Our halakhic texts are not satisfied with even generous giving to general charitable funds. Rather, they insist that we examine the person before us carefully enough to ascertain their particular needs, and to engage them with kindness.

In order to fulfill this obligation, we should set aside some of our tzedakah funds for in-person giving. As Rambam writes:

> As for the needy who goes door to door [i.e. asking publicly], you do not have to give him a large amount of money, instead give him a small amount. It is forbidden to turn away one who asks empty handed, even if you only give him a "small fig." As it is written (Psa 74:21), "Let not the downtrodden turn away disappointed."[54]

In-person giving can be inconvenient, and uncomfortable. But it also has the ability to reflect a tiny bit of God's love and compassion, and to help someone who is "brokenhearted" and "downcast" feel seen. One reason that tzedakah remains a *religious* obligation in our time, and not just an ethical one, is that it forces us to recognize the humanity of those who live on the margins. After all, as our movement states: "when we strive to fulfill the highest ethical mandates in our relationships with others and with all of God's creation," we "bring Torah into the world."

8. Withhold Judgment

A frequent concern about in-person giving in particular is that those who approach us seeking help might be frauds, or might use the funds for illicit purposes. Our tradition recognizes the worry that it can be difficult to ascertain that a person asking for money is actually in need or that they will use the money for their stated purpose. For

[54] MT, HMA 7:7.

example, in the Babylonian Talmud, we read a story of Rabbi Chanina, who was in the habit of sending a small amount of money to a particular poor person every week on Shabbat. Once, he sent his wife to deliver the money, and she came back and said, "He doesn't need the money!" Rabbi Chanina asked, "What did you see [that led you to that conclusion]." She replied that she heard people asking him, "Upon what do you prefer to dine, silver or gold tablecloths?" Rabbi Chanina replied: "If so, then this illustrates what Rabbi Eleazar said: 'Come and let us show gratitude for the swindlers, for if it were not for them, we would be sinning daily [when we ignore the poor]." As support for this statement, the Talmud cites Deuteronomy 15:9: "Beware lest you harbor the base thought . . . so that you are mean to your needy kinsman and give him nothing. He will cry out to The Eternal against you, and you will incur guilt." [55]

This story acknowledges the possibility and the concern that someone might misrepresent their need. It also acknowledges that there will be times when we fail to give to those who ask for it. Its conclusion appears to be that we should give anyway, and err on the side of giving to swindlers, rather than on the side of sinning by failing to give. The Talmud then goes one step further, suggesting that God will punish those who feign poverty in order to collect *tzedakah*. It says: "Our rabbis taught: One who blinds his eye, bloats his stomach, or shrivels his leg [in order to solicit charity] will not depart from the world until he experiences such [afflictions]. If one accepts charity but does not need it, he will not depart from the world before he experiences such [need]."[56] Jewish tradition often conceives of God as exercising both judgment (*din*) and compassion

[55] B. Ketubot 68a.
[56] *Id.* See also MT HMA 10:19.

(*rachamim*). These texts suggest that we embody compassion through giving, and leave the judgment to God.

9. Develop a Habit

By giving frequently, we also develop a habit of generosity, which can change how we relate to the world. The *Orchot Tzaddikim*[57] teaches us that giving is a habit that needs to be developed:

> Our sages of blessed memory have stated further that the trait of generosity resides in habit, for one is not called generous until one becomes accustomed to giving, in every time and season, according to one's ability. For one who gives to a deserving person 1,000 gold pieces at once is not as generous as one who gives 1,000 gold pieces one by one, each gold piece to an appropriate recipient. For one who gives 1,000 gold pieces at once is seized with a fit of generosity that afterwards departs . . .

Like the principle of showing compassion to the needy, this principle supports a practice of frequent, in-person giving.

10. Invoke God

This last item is not drawn from the halakhah, but from my personal experience. Over the past couple of years, when I give to people on the street or in the subway, I have made it a point to say "God bless you." I do this for three reasons. First, encourages me to slow down, to look the person in the eye, and to recognize his or her humanity. Second, in our times, religion is often disparaged or seen only as a source of violence and conflict. By publicly connecting the word "God" to the act of helping someone in need, I seek to sanctify God's name, and remind others of the potential of religion to do

[57] The *Orchot Tzaddikim* an anonymously-authored book of *mussar* (ethics) written in Germany in the 15th century.

good in the world. Finally, this act of blessing helps me to feel God's presence in these encounters. Most often, the panhandler will return the blessing. I always leave feeling that I am indeed blessed.

Conclusion

In general, we in the Reform Movement do not treat halakhah as binding. We are, however, committed to the serious study of mitzvot "and to the fulfillment of those that address us as individuals and as a community." Our movement has specifically affirmed "the *mitzvah* of *tzedakah*, setting aside portions of our earnings and our time to provide for those in need," and states that "these acts bring us closer to fulfilling the prophetic call to translate the words of Torah into the works of our hands." Indeed, there is arguably no mitzvah that more directly embodies our movement's commitment to fight for justice and to end inequality. If we are to consider ourselves the champions of the "ethical mitzvot," we should acknowledge that we are commanded to engage in righteous giving to sustain the poor, and then do so to the best of our ability, in accordance with our inherited traditions. The Manifesto above represents my own attempt to discern principles in halakhah that can guide my actions. Others may glean different principles from the tradition, or come to different conclusions. But whatever the outcome, if we take seriously our obligation to support the poor, I am confident we can make more of God's love, compassion and justice manifest in this world.