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HEBREW UNION COLLEGE - JEWISH INSTITUTE OF RELIGION  
New York School

Report on the Rabbinic Dissertation Submitted

by

Serge Lippe

in Partial Fulfillment of the Requirements for Ordination

SOURCES, STRUCTURE, AND  
METHODOLOGY OF MAIMONIDES'  
HILCHOT MATTENOT ANIYIM  
CHAPTERS SEVEN TO TEN

This thesis involves a close study of a section of Maimonides' great Code of Law, the Mishnah Torah dealing with the succoring of the poor. Mr. Lippe seeks to understand the process of the composition of the Code and the evolution of Maimonides' thinking on the subject of aiding the poor. Maimonides had dealt with the subject in three different ways: as a commentator on the Mishnah, as a compiler of commandments in his Sefer Ha-Mitzvot, the Book of Commandments, and as a codifier in his Mishneh Torah. Relevant passages of these three texts are carefully studied by Mr. Lippe. To help the reader appreciate Maimonides' work as a commentator, compiler, and codifier, Mr. Lippe presents and analyzes Mishnah Peah and Tosephta Peah, the Tannaitic sources of the laws dealing with aiding the poor. Though the Mishnah Peah lacks a Gemarra in the Babylonia Talmud, laws dealing with the poor were dealt with in other passages in the Gemarra of the Babylonian Talmud; Mr. Lippe shows how these passages inform Maimonides' Commentary on the Mishnah and his Book of Commandments. He shows as well how the Sefer Ha-Mitzvot was a kind of blueprint for the Mishneh Torah even as that text was a re-casting of the Mishnah.

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Ms. Lippe has done more than to present a superb example of intellectual archeology; by carefully presenting the evolving understanding of the needs of the poor as the Rabbis of the Mishnah and the Talmud understood those needs, and as Maimonides as commentator, codifier, and legal philosopher developed those understandings, Mr. Lippe has presented the modern Liberal Jew with a challenge to apply the insights of the past to the problem of the poor in our time.

Mr. Lippe has read carefully, has analyzed brilliantly, and has written most lucidly. It is with great pride in his achievement that I recommend the acceptance of his thesis to the Faculty of the College-Institute.

Respectfully Submitted,

Dr. Leonard S. Kravitz  
Professor of Midrash and  
Homiletics

April 4, 1991

"The Laws of Almsgiving"  
The Sources, Structures, and Methodology  
of Maimonides' Codification of  
Hilchot Mattenot Aniyyim, Chapters VII-X

Serge Andrew Lippe

Thesis submitted in Partial Fulfillment of  
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רביסן תשנא

Advisor: Dr. Leonard S. Kravitz



Dedicated in Memory of

Frayda Ingber z"l

*May her strength and dignity inspire us to deeds of blessing*

### Acknowledgements

I would like to thank those people who have played a special role in bringing about this study and in bringing me to this day. First, this study would have never been achieved without the understanding and guidance of Dr. Leonard S. Kravitz. His patience and instruction have been a guide for me along the paths of Torah. He has been and continues to be both teacher and role model, *mensch* and *rebbe*. I thank him for extending to me both his knowledge and concern throughout my studies at the College-Institute.

I offer my profound thanks and love to my mother, who continues to teach me through her deeds that charity does not begin and end with the mere act of giving of money. A lifetime of service and self-sacrifice has been her instruction to me. She has been my patient teacher and critic.

I have been blessed with special friends and classmates who have enriched my life and my studies with their own special contributions. They have been my support and my anchors. They are a unique group of people and their like will not be easily gathered again at any one time in this institution. They have provided me with insight and learning, critique and praise. Certainly their love and blessings have helped me to reach this moment.

To the volunteers and guests at the HUC-JIR Soup Kitchen I offer my praises and blessings. Each week you remind me of that to be a religious Jew means to make a connection between our traditions and our deeds. May your hands be filled with blessing and achievement, your hearts with happiness and security.

There have been many teachers at the College-Institute and elsewhere, some official, others informal. I offer my thanks for their patience and their efforts. Like each coin given as alms, their offering has been a vital component of my learning and growth.

I pray that my father's soul may be bound up in the bond of life eternal, and that this study be fitting praise to his memory. Although long departed from this world, he is ever in my thoughts. May the Merciful One continue to grant him peace and may this moment be yet another bridge between the worlds of the living and the dead.

Finally, I offer up my simple thanks to God, who has nurtured me, and sustained me, and brought me to this moment. May Your Presence continue to suffuse my life and the worthy efforts of my hands.

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## Introduction

This study began as a result of a my personal involvement in the H.U.C. - J.I.R. Soup Kitchen. Now in the middle of its third year it continues to fulfil the obligation of feeding the hungry Jew and Gentile. Much of good Jewish learning intersects with the experiential, and Jewish living should intersect with our textual tradition. During the first year of the Soup Kitchen, I organized a monthly study break during the regular lull in our set-up procedures. The goal was to have different faculty members present different aspects and texts concerning charity and the like from their own areas of expertise. During that year we met only four times, but twice, members of the faculty brought with them sections of Hilchot Mattenot Aniyyim as our study texts.

Although the study sessions did not continue into the next year, my interest in the halachot of charity, specifically in its most basic form of food and alms, did continue to grow. The following year I prepared a curriculum for the Miller High School Program -- run at the College-Institute -- which dealt with the basics of almsgiving from the Bible, through the Mishna, to Maimonides, and up until our own day.

The immediate event that prompted this study was my reading and research into how almsgiving is dealt with, at least officially, in the Reform Movement in America. For a Movement that preached the 'gospel' of "Social Justice" so fervently at its inception, and which still claims to be guided by those high ideals, I was shocked and amazed at the level and type of attention given to almsgiving as a Reform Jewish obligation.

The single most blatantly disturbing statement on the subject is found among Rabbi Walter Jacob's responsa collection - Contemporary American Reform Responsa. Although his answer is in fact accurate given the nature of the question, his failure to correct a basic mis-impression on the

part of the questioner, seems to represent the general recalcitrance on the part of liberal American Jewry to differentiate between tzedakah and other obligations of the Jewish community, especially synagogue and educational program expenses.

Here is the question and summation as presented there.

#### 24. Priorities in Charitable Distribution

**Question:** 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 the charitable funds. What kind of priorities does the *halakhah* set?

**Answer:** . . .

[after broadly reviewing the parameters of communal charitable institutions]  
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.

The notion that "we have ... overcome the basic problems of previous ages" strikes me as both ethnocentric and untrue. Unfortunately we Jews seem to live in communities where we see (or choose to see) little of the poverty that still afflicts twenty percent of the population. Among Jews the figure is not much better, but less discussed. The largest poverty group among our people is the elderly, but being homebound, or in institutions, or at senior centers, we rarely have a chance to see their impoverishment.

Equally distressing is the image of tzedakah portrayed in the appendix article of Gates of Mitzvah<sup>1</sup>. There the editor comments on the statement "it is a *mitzvah* to make a gift of *tzedakah* in honor of the birth of one's child" - "[this indicates] that it is a *mitzvah* to contribute to worthy

<sup>1</sup> Gates of Mitzvah, p. 121

institutions in honor or in memory of loved ones." Having reviewed the traditional application of tzedakah, the writer continues, "*Tzedakah* is of course, not restricted to direct help to the poor, though that is certainly its most crucial application. *Tzedakah* may also take the form of gifts to institutions,... [even] cultural institutions ... All of these are *tzedakah* if they are done in the spirit of justice..."

It is almost impossible to find a discussion of almsgiving to the poor in our own literature. It is as if the poor had disappeared, or it is assumed we already know how and what to give to them. When teaching the topic to my adult education classes I have been forced to rely on Rabbi H. L. Donin's To Be A Jew, which presents a modern Orthodox approach. Unlike Gates of Mitzvah, Charity is covered in the first section dealing with Jewish daily practices, second only to a discussion of "deeds of kindness." There Donin's major emphasis is on the basic rules regarding caring for the impoverished.

The purpose of this study is not to offer a Reform version of the mitzvot of almsgiving to the poor. Its goal is much more basic. My hope is to come to a comprehensive understanding of the laws of almsgiving as embodied in the last four chapters of Maimonides Hilchot Mattenot Aniyvim - The Laws of Poor Provisions. I do not intend to review every halacha, but only those -- the majority -- which address the issue of basic poor relief. Topics such as synagogue gifts, and ransoming captives which are found there, are not covered in this study.

In order to understand what Rambam did in codifying these laws, it is preeminently important to understand the nuances of his formulations and provide a translation that mirrors these nuances. To do this required a thorough examination and presentation of his source texts.

A previous and ground-breaking study of this section was made by Dr.

Abraham Cronbach who referred to these four chapters as Maimonides' "Code of Benevolence." Unlike Dr. Cronbach's study, the method here is not to rely on the "Arms Bearers" to locate Rambam's sources, but rather to attempt to duplicate Rambam's own method as described in his introduction to Sefer HaMitzvot.

Following Rambam's own directions I have consulted (our present versions of) the Mishna, Tosephta, and Bavli as well as the Midrashei Halacha and the Yerushalmi. The next step was to review Rambam's previous scholarship on almsgiving in his Commentary on the Mishna and in his Sefer HaMitzvot.

My own methodology in researching this information has been diverse. First I made word searches in the primary sources for the Hebrew words - tzedakah, gabaei tzedakah, matanot, tamhui, kuppah, and aniyyim. Secondly, based on Rambam's identification of the Pentateuchal sources of this mitzvah, I followed their halachic usage and elucidation in the literature. Also based on Sefer HaMitzvot, I made a detailed review of the tractates Ketubot and Baba Bathra which Rambam identifies as the major locus for specifications of the mitzvah. I also made a detailed reviewed of the final chapter of tractate Peah in the Mishnah, Tosephta and Yerushalmi, which structurally and content-wise provided the basis for these four chapters.

In all cases, my intent has been to review halachic or descriptive material, and I have tried to ignore material of a purely aggadic or homiletic nature. This has also meant not reviewing the entirety of some halachot.

I have presented an overview of the structure of these four chapters within Maimonides Code, as well as their relationship to each other and their internal structures.



The translations offered here are my own, but I was aided in language, style, and understanding by a variety of modern scholarly and critical translations. For Sefer HaMitzvot I turned to the editions of Kafach and Chavel. For Mishna, Tosephta and Yerushalmi Peah I worked with the edition by Steinsaltz, as well as the various studies edited by Roger Brooks.

Rambam's commentary on Chapter 8 of Mishna Peah is from Kafach's Hebrew/Judeo-Arabic edition. For general citations from the Mishna I relied on the editions by Blackman and Albeck. For the Tosephta, I relied on the editions of both Lieberman and Zuckerman, and also consulted the multi-volume collections by Neusner. Of the Halachic Midrashim, I have relied on Lauterbach's edition of the Mechilta to Exodus; for Sifrei Devarim to Deuteronomy, Finkelstein's edition and Hammer's translation and notes. Citations from the Bavli are my own, but Steinsaltz and Soncino were my constant companions.

Citations from Hilchot Mattenot Aniyyim are based upon the Rambam LaAm edition of Mossad Rav Kook, and Isaac Klein's translation and notes in the Yale Judaica series. I have often been forced to diverge from the various translations and interpretations to offer what I consider to be a more accurate or understandable edition. The responsibility for all errors, of course, is my own.



## Chapter 1 - Mishna and Tosephta Peah<sup>1</sup>

### Tractate Peah

The study of Hilchot Mattenot Aniyyim of the Code must begin with a study of Tractate Peah of the Mishna. This tractate represents the first and most basic attempt to bring together rules regarding the caring for the poor. Like the Mishneh Torah, the nature of the Mishna itself is debated. Is it code or encyclopedia? What we can say is that both documents brought together previous halachic and non-halachic material and attempted to systematize it all. When studied together with its Tosephta, most of the laws and concerns regarding almsgiving have been gathered here in Tractate Peah.

Unlike other tractates of the Mishna, Scripture serves as the sole basis for establishing the laws of poor relief in Tractate Peah.<sup>2</sup> The framers of this tractate follow the precedent of Scripture with only minor variation. The two major statements on poor support are found in the Holiness Code in the Book of Leviticus (Lev. 19:9-10; 23:22) and in the Deuteronomic Code (Deut. 24:19-22; 26:12).

The claim of the Holiness Code, as to be expected, is that in supporting the poor, the farmer acts in a holy manner as he works God's land. The

<sup>1</sup>The most recent critical and comprehensive research into tractate Peah, at all levels: Mishna, Tosephta, and Jerusalem Talmud; has been done by Roger Brooks. I have relied on his research in summarizing the tractate as a whole, and in my methodology for examining the sections of interest. Nevertheless his translations, and therefore his analysis, are flawed. I have corrected what strike me as mistaken translations and analysis.

<sup>2</sup>See Neusner, *Judaism*, pp. 221-222; and his Scripture and Appointed Times, pp. 110-111, 115, for the varieties of ways in which Scripture is utilized by the Mishna.

Deuteronomic Code makes an ancillary point; Israelites were once an unprotected caste of slaves in Egypt brought out by God in order to enter into a covenant with Him. As a reminder of that experience, and as a guarantee of that covenant, the Israelites must protect the rights of the underprivileged within their own midst. The Mishna's special contribution to the laws of poor relief, emerges only when we examine its method of arranging the agricultural poor provisions in comparison with Scripture's arrangement. Where the Bible is organized topically, around a discussion of each species of produce, the Mishna's framers organize the material chronologically, according to the harvesting process. Although the Mishna does not increase the provisions due to the poor, its improved systemization meant that agricultural provisions mentioned in the Bible were not decreased or dismissed. This is important when we consider that any number of other "Jewish" groups did just that with these laws in the same time period. Increased systemization meant institutionalization of such practices in the rabbinic community. The poor relief described in the Mishna could in no way be considered to follow eschatological or gnostic philosophies of competing contemporary Jewish groups. Unlike those approaches, the Mishna argues that the Israelite householder, through his actions and intentions, maintains equilibrium and constancy in the world. At this level the major emphasis of the tractate is on the individual and not the community in providing poor relief. As we shall see, our section, which constitutes an addendum to Tractate Peah, does not always agree with this general tendency.

The fundamental claim of this tractate is that the poor should receive some bit of the Land's produce for their exclusive use. The concern of the

framers of this tractate is how to account for that exclusive right of the poor to this produce. A somewhat analogous case is that of the priests. Not surprisingly, the majority of the tractates in this sefer are devoted to the various priestly produce rations (mattenot kehunah) to which the priests and their families have an exclusive right.<sup>3</sup>

The poor like the priests, are counted as a distinctive caste of Israelite society. The common bond between priest and poor person is their reliance on God for support since neither possesses a portion of the Land with which to produce their food (cf. Num. 18:20, 24). There seems to be an underlying assumption that it is God's choice to deprive both priest and poor man of a share of land. But the right to sustenance, even economic prosperity -- which would be derived from such a portion in the Land -- is nevertheless guaranteed to both priest and poor person alike who live with in the land of Israel (see Lev. 27:30, Num. 18:8-19, 21-23 and Deut. 8:7-10). The regular Israelite, as a tenant farmer of God's property has an obligation to produce crops for God as payment on the lease. The payment of produce is divided between those who are totally dependent on God, His employees - the priests, and those without any support - the poor.

Although the poor offerings and the priestly rations are analogous they are also different in a certain respect. Where as the farmer plays an active role as God's agent in identifying and designating (and even conveying the priestly produce), he plays an almost entirely passive role when it comes to the produce provisions for the poor.<sup>4</sup> The theory that accounts for this

<sup>3</sup> These tractates are: Demai, Terumot, Maaserot, Maaser Shenl, Hallah, Orlah, and Bikkurim.

<sup>4</sup> With the single exception that in the case of peah, the householder must perform the designating action before the poor can receive, nevertheless the farmer has no control over what quality or quantity of crop God has caused to grow up there.

difference, writes Roger Brooks, is that the farmer's relationship with the priest and the poor man are not analogous. The priests are the employees of the landlord (God), and they perform services on behalf of the farmer. The poor, on the other hand, perform no service whatsoever for the farmer<sup>5</sup>.

The section of Tractate Peah on which we shall focus in this study, actually constitutes an addendum to the main content of the chapter, namely, the produce provisions for the poor available during harvest time. This addendum concerns the ancillary issues of; a) support for the poor during the non-harvest periods, and b) the definition of who qualifies for poor provisions.

The placement of this material at the end of the tractate only serves to reinforce the major philosophical notion underlying the tractate in its entirety: "There exists a perfect correspondence between the farmer's reaping his field and God's setting aside produce for the poor. Each time the farmer claims some of the produce for his own use, God too demands a portion for the poor, who are under his special care."<sup>6</sup> We might draw a parallel that just as the farmer supports his dependents with the produce of the land, so too the poor constitute God's immediate dependents.

The Tosephta, by its geographic, temporal<sup>7</sup> and conceptual closeness to the Mishna, provides an important explanation of, and commentary on the mishnaic tractate.

The section of interest to us, the addendum, must actually be preceded by a look at the issue of the poor-tithe<sup>8</sup>, upon which some of the rules for

<sup>5</sup> Brooks, Support for the Poor, p. 19

<sup>6</sup> Ibid, p. 20

<sup>7</sup> The date for its redaction is now taken to be about 350 C.E.

institutionalized charity are built. The poor-tithe is distinct in that a fixed amount must be equitably distributed to all poor individuals. Likewise, poor-tithe is distinct from the other provisions for the poor (gleanings, forgotten sheaf, peah, etc.) in that it is not available at the field but rather at the threshing floor. As we shall see, this change of locale lead the sages to ask how this would effect distribution, and if other changes in location (i.e. to the home) were permissible. By moving us stage by stage away from the field, toward the home, we likewise move beyond the stages of the harvest to the non-harvest season. This provides an excellent literary segue into charitable institutions and definitions of eligibility for provisions.

It is important to realize that in the minds of the framers, the poor person would sell the majority, if not all, of what he collected (as would the farmer) and convert it into currency. Since this poor provisions are exempt from tithes it is a better purchase value. The purchaser is able to make use of all of the produce. This, in turn, had the advantage of bringing the produce immediately back into the system while supplying the poor with hard currency.<sup>9</sup>

Another important proviso is that the Mishna does not prescribe institutions of communal poor relief, but rather describes pre-existent ones.

### Overview

We can divide the entirety of Mishna Peah into the following distinct sections:

---

<sup>8</sup> Given in the 3rd and 6th years of the Sabbatical cycle

<sup>9</sup> The same is true of Maaser Sheni which was intended to keep Jerusalem economically viable. Note that Maaser Sheni could be brought as its original form - i.e. produce - or brought in its monetary equivalent. Either way it had to be sold, or spent in Jerusalem.

A- Grain Produce

- I - Peah [1:1 - 4:9]
- II - Gleanings [4:10 - 5:6]
- III - Forgotten Sheaf [5:7 - 7:2]

B- Vine Produce

- IV - Separated Grapes [7:3]
- V - Defective Grape-Clusters [7:4 - 8:1]

C - Mixed

- VI - Poor-Tithe [8:2-6]

D - Addendum

- i - Non-Harvest Charity (linked to VI) [8:7]
- ii - Definition of who is Poor [8:8-9]

The units of our study [C and D] can be further divided into the following sections of interest to us:

C. VI - Poor-Tithe

- A - Reliability of poor man's claim when selling that produce is in the status of poor-provisions - i.e. no tithes need be taken [8:2-4]
- B - Proper measures of produce to give each poor person as poor-tithe
  - 1. Measures of various produce [8:5]
    - \*Abba Shaul - Enough of any type to sell (and purchase two meals)
  - 2. Equitable distribution of poor-tithe [8:6]
    - a - Poor-tithe measures (above) incumbent on Israelite, Levite, and Priest alike.
    - b - If farmer lacks sufficient produce to give the above measures to each poor person, the farmer allows the poor to divide it, not himself, lest he favor one over another.

D. - Addendum

- i - Non-Harvest Charity [8:7]
  - A - For Transients
    - 1 - For a poor man passing through town - one meal
      - a - Definition of what constitutes a minimal meal
    - 2 - For a poor man staying overnight
      - a - A week night - 2 meals
      - b - Shabbat - 3 meals
  - B - Communal Charity -
    - 1 - Institutions: Eligibility
      - a - Soup Kitchen - Anyone without enough for two meals
      - b - Public Assistance Fund - without enough for a week - 14 meals

ii - Definition of who is Poor.

- A - Anyone with less than 200 zuz in liquid assets, [8:8]  
 - or less than 50 zuz in capital [8:9]

The first implicit discussion of money comes in M. Peah 8:5 with Abba Shaul's ruling that measures of produce must be equivalent in sale value for the poor person to purchase two meals. The first fairly explicit mention of money, as opposed to produce, is in M. Peah 8:7 with the mention of the disbursement of the public assistance funds.<sup>10</sup> The next explicit mention of money comes only in M. Peah 8:8 with the discussion of how little money (zuzim) makes one eligible for poor-provisions.

### The Poor-Tithe

Poor-tithe was not distributed from the field, but at the threshing floor. Its relocation to the home, and diminished measure seem to parallel the rise of new communal institutions of relief. The Tosephta serves as an illuminating commentary on Mishna Peah 8:2-6, which discusses the poor-tithe:

- M. 8:5 - A. [When dispensing poor-tithe] they may give to [each of] the poor at the threshing floor no less than ...  
 T. 2:18- A. [As regards] poor people who are making the rounds of threshing floors --  
 B. [if a householder wishes to distribute the poor-tithe from his home, he need not give the poor-tithe at the threshing floor. Rather he may] designate tithes [from some of the common produce] and give them [this grain as a gift].  
 C. [And] decent people bring out in their hand food [worth a small amount of] money,<sup>11</sup>

<sup>10</sup> Interestingly Mishna Peah never actually speaks of giving money (coins) to the poor.

<sup>11</sup> cf. Tosephta Peah 4:3 : Said Rabban Simeon b. Gamliel, "[Rich] priests used to be



D. and give [a poor person] this trifle, so that he will [have something to] eat before he reaches the city.

The Tosephta passage above comments on the benefit to the householder of distributing his poor-tithe at home, because of the farmer's permission to snack on untithed food. When he finally does tithe at home, he will have less produce from which to separate the tithes. While the Tosephta permits this, the householder is also warned not to send those poor, who do come to the threshing floor, away empty handed. Rather he needs to take out tithes from a small amount of his regular produce and give it as a gift to the poor. It is also good form to give the poor a snack for their trip back to the city.<sup>12</sup> This principle seems to follow over later as regards beggars going to door.

M. 8:5 - A. [When dispensing poor-tithe] they may give to [each of] the poor at the threshing floor no less than ...

B. (1) one-half qab of wheat,

(2) one qab of barley, [but] R. Meir says "One-half qab [of barley]"

...  
C. And [as regards] all other types of produce--

D. said Abba Shaul, "[They must give to each poor person] enough [produce] so that he may sell it [and use the revenue] to buy food for two meals."

T. 4:2 - A. During the proper year for dispensing poor-tithe, they may give to the poor no less than (1) one-half qab of wheat, or 2) a qab of barley (M. 8:5, above, with some variation)

B. Under what circumstances does this [measure] apply?

C. [It applies if the householder distributes poor-tithe] at the threshing floor.

D. But if he distributes produce from his own house, he may give the poor any amount and need not scruple [that he has given them less than the required amount.]

---

generous, and in order not to send out their [poor] brothers empty-handed, they used to take a handful [of food they had collected as heave offering] and give it to them.

<sup>12</sup> This is Brooks' understanding, built upon Lieberman's comment in Tosephta Kefshuta, p. 154



T. Peah 4:2 makes the point that the minimum measures of poor-tithe described in the Mishna apply only to public distribution at the threshing floor, but not to private-domain distribution from the home.<sup>13</sup>

The Tosephta, like the Jerusalem Talmud on this section, reflects a lack of concern for enforcing the prescribed measures of the poor-tithe. The differences of opinion in regard to the exact measure seems to argue for an apparent rabbinic view that the measures are purely arbitrary and not of any standing. Abba Shaul's view is that the measurements should reflect whatever amount of produce -- at sale value-- will bring the poor person a full day's nourishment - i.e. two meals. Secondly, his comment is generally assumed by commentators and scholars to imply that the two measures mentioned at the beginning (half a qab of wheat and one qab of barley) are also equivalent in value to two meals.

By permitting poor-tithe to be distributed at the home, and then abrogating any minimum amount of poor-tithe when distributed at the home, the Tosephta has actually done away with the system, for which the Mishna was attempting to develop specifications. This should not surprise us as we see ahead how the Tosephta, while reducing one form of poor-relief, expanded -- at least descriptively-- the particulars of another form, namely communal institutions of charity.

#### Addendum: Non-Harvest Charity

Having examined some of the rules of poor-tithe that may follow over into non-harvest charity, we now examine the content and institutions of

<sup>13</sup> The same rule is applied to the priests and their provisions (next unit [E] in T. Peah 4:2) even so far as their distribution at the threshing floor. The farmer may give any amount and need not scruple that it is insufficient. Also see M. Ter. 4:3

distribution.

- M. 8:7 - A. They give to a poor person traveling from place to place no less than a loaf of bread: worth a dupondion. (made from wheat which costs at least| one sela for four seahs.  
 B. [If such a poor person| stays overnight,  
 C. they must give him rations<sup>14</sup> for a night's stay  
 D. [If the poor person| spends the Sabbath,  
 E. They must give him food for three meals (see M. Shab. 16:2-3)
- T. 4:8 - C. they must give him rations for a night's stay  
 D. [namely, they give him| oil and beans.  
 E. [If the poor person| spends the Sabbath,  
 F. They must give him food for three meals  
 G. Namely they give him oil, beans, fish, and a vegetable

The Tosephta details what it views as the intended food provisions for each circumstance. This is important for two reasons. First, the term parnesat layna is not clear and the Bavli takes it to be a reference to a mattress and a pillow. Secondly, if we are dealing with food, (two meals when staying overnight, and three when staying the Sabbath), then the loaf of bread prescribed for the transient poor constitutes one meal and not two as latter texts will imply. The loaf of bread is absolute minimum for each meal. Therefore the Tosephta does not repeat it, but by implication, the additional foodstuffs mentioned for spending the night or Sabbath are added on to a loaf of bread with each meal.

<sup>14</sup> Parnesat Layna - Rambam and the Bavli understand this to be the equivalent of a sleeping bag and foam pad, but I agree with Brooks. His position is supported by the parallel Tosephta passage -- which defines these as 'oil and beans', also Yom Tov Lippmann Heller understands this to refer to food provisions. If we argue for a structural understanding of this passage, we likewise end up with a passage concerned with the quantity of food allocated the transient poor 1) passing through town, 2) staying overnight, 3) staying over a Sabbath. Finally, Jastrow supports the amphibolous nature of the word by offering 'provisions' or 'support'

Note that the Rabbinic usage of "they" does not imply that any of this is done by charity overseers. Rather, the Rabbinic idiom implies that this is an obligation that falls on each individual in the community.

The Tosephta now continues by questioning the limited type of relief (i.e., food) set by M. Peah 8:7.

T. 4:8 - H. Under what circumstances does this apply?

[i.e., only providing the poor with food]

I. [It applies] so long as [the town's people] do not recognize the poor person.

J. But if they recognize him, they even provide clothing for him.

The Tosephta is uncomfortable with the extremely minimal limits set, and the Mishna's total absence of addressing other needs -- such as clothing.<sup>15</sup> This is consistent with a biblical tradition that generally equates feeding the hungry and clothing the naked. Again, the discussion is descriptive of what must have been actual practice rather than an attempt to prescribe.

### Communal Institutions

The next sequence in the Tosephta makes a new point, related to the soup kitchen and the public assistance fund, but which hearkens back to the discussion of distributing poor-tithe at the home instead of the threshing floor.

<sup>15</sup> Although I believe phrase H precludes his theory, Lieberman argues that this is a prohibition on supplying strangers with clothing. he takes the verb *mkyr* to have the force of 'knowing that the person is actually poor', if they are 'known to be poor' they get full support, but if they are not 'known to be poor' they might be deceivers, and this rule is a means of preserving the charity funds.

T. 4:8 - K. [If a poor person] went from door to door, [begging for food from each family],

L. they are not obligated to give him in any way, [because he should receive his needs from the appropriate charity institution and not from bothering individuals.]

Sifre Devarim, Piska 116. (Deut. 15:7)

*[If there be among you a needy man, one of your brethren, within any of the gates in your land, which the Lord your God is giving you ...]*

When Scripture states: within any of your gates, it means that if he resides in the one place, you are commanded to support him, but if he goes around begging from place to place, you are under no obligation to support him -- which the Lord your God gives you -- wherever that might be.

The Tosephta describes what was clearly a common event. The decision is noteworthy in that it takes a middle ground which we will see later allowed for some flexibility. The Tosephta could have either prescribed or forbidden giving to beggars in this manner. Forbidden because it harms the communal institution, prescribed because we are commanded to help our needy brethren. The Tosephta chooses a practical answer. It cannot enforce either such decision. therefore it settles on the morally amphibolous statement - you are not under any obligation. Whether you read 'however' after such a statement depends on the person. In many ways this is similar to what Rambam will do with his decisions in Chapter X of Hilchot Mattenot Aniyyim, none of which are enforceable by the court since they address the individual in a 'private' setting.

The Mishna continues now, below, with a section addressing how and when communal institutions distribute food and money to the local poor. The fact that the Tosephta passages ignored the Mishna's distinction between the transient and local poor should not be made too much off, since

in all likelihood, the soup kitchen provided the transient poor with his loaf of bread, or his two or three meals for an overnight stay.<sup>16</sup>

The Tosephta must now address the Mishna's segue from the minimum provisions for the transient poor (8:7 A-E above), and its discussion of eligibility requirements for the provisions that the communal institutions provide for the local poor. Here we see the first mention of money being distributed.

M. 8:7 - F. Whoever has sufficient food<sup>17</sup> for two meals<sup>18</sup>,  
may not take from the soup-kitchen.

G. [Whoever has sufficient] food for fourteen meals<sup>19</sup>,  
may not take [aid] from the [public assistance] fund.

H. [Money for] the public assistance fund is collected by two [people],  
and distributed by three [people].

T. 4:9 - A. 1- The soup kitchen provides enough food for a full day.

<sup>16</sup> We should nevertheless make the point that the Mishna seems to be making the following statement; Transient poor are entitled to a **single** meal when passing through town. If they choose to stay overnight they are provided with what is probably two meals, or a meal and a ration -- this may reflect the usage of the term parnesat layna-- but which are separated by a sunset and sunrise. At the point that a poor transient stays for more than a twenty-four hour period, he is no longer a transient. Therefore he becomes eligible for two meals each day (sunrise to sunset). The framers of the Tosephta clearly avoided having this definition of eligibility to extend beyond the soup-kitchen to the public assistance fund.

<sup>17</sup> The text uses mazon, translated by Brooks as 'food', but I have a sense that Blackman's use of the word 'means' is probably more accurate since it includes both food and money for food.

<sup>18</sup> The same as mentioned by Abba Saul, meaning a full day's sustenance, the equivalent to our usage of 'three square meals'.

<sup>19</sup> See my previous note (#18) on mazon, which here must be argued even more strongly may well mean food-money and not merely food. Fourteen meals is of course a one week supply, but make note ahead of my discussion of Rambam's commentary on this number.

- 2- but the [public assistance] fund gives [sufficient aid to last] from one week to the next.
- B. 1- The soup kitchen [provides] for anyone,  
 2- but the public assistance fund [provides only] for that town's poor
- C. If one dwelt there for thirty days,  
 he is deemed a town resident  
 and is eligible for the public assistance fund
- D. Six months to receive clothing,
- E. Twelve months to become one of the town's poor.<sup>20</sup>

T. Peah 4:9 B, spells out its understanding of the Mishna by how it distinguishes who is eligible to receive from the two different institutions. As I commented above, it is probable that the soup kitchen did indeed provide the food needs for the transient poor. On the other hand, based on its structure, the Mishna might be better described as relegating transients to the good graces of individuals, and restricting even the soup kitchen to the local poor. The Tosephta clearly disagrees, and prefers the notion of having at least one communal institution take responsibility for the transient poor.

T. Peah 4:9 C. therefore takes up the question of required residency to be eligible for the other communal institution: the public assistance fund.<sup>21</sup> Phrase D. introduces a new element-- eligibility for clothing-- which reflects its connection to, and continuity with phrase J of the immediately preceding Tosephta passage [T. Peah 4:8].

<sup>20</sup> Some editions read Pesal - taxes, but that doesn't fit the flow of the text. In all likelihood this "12 months" is a variant opinion, as is the case in determining a householder's residency. See B. Baba Batra 7b for the debate over 30 days versus 12 months to establish residency.

<sup>21</sup> The notion that sections C., D., and E. address community taxes on residents for charitable services, and that our list addresses the staggered implementation of those taxes, is based upon the general problem with the last statement of the phrase which does not appear to fit the sequence.

### B'nai Tovim

The next six units of the Tosephta begin with a tangential link to the topic of the same Mishna text. Their major concern is the poor of former means. Here is an outline of these units.

M. 8:7 - F. Soup Kitchen

G. Public Assistance Fund

H. Collection/Distribution Procedures for G.

T. 4:10 - Unit 1: A-F. The poor may give to either of these institutions, but are not obligated.

Unit 2: G-U. We provide the poor according to their need, i.e. what they were accustomed to before poverty

T. 4:11 - Unit 3: V-AA. Newly poor should adjust their standard of living i.e. reduce level of ostentation

Unit 4: BB-CC Illustrative example:

Keep people from moving (out of Jerusalem)

T. 4:12 - Unit 5: A-D. A prideful person who refuses support  
We offer him a loan

T. 4:13 - Unit 6: E-F. One who is not prideful and does come to ask,  
We give it to him as a gift

The actual text of Unit 1 of the Tosephta is as follows:

#### Unit 1

T. 4:10 - I. A. [As regards] a poor person, who [like any other person,] gave a perutah to [support] the communal fund  
or a piece of bread to [support] the soup kitchen --

B. They [the collectors] may take [food or money] from him.

C. But if he did not contribute, they do not force him to give.

II. D. If they [the distributors] gave [to a poor person] new clothes, and he exchanged [his] worn out clothes [in partial payment] --

E. They may take [the clothes] from him.

F. But if he did not exchange, they do not force him to do so.

Even though Unit 1 still relates to the prior discussion of the Soup Kitchen and Public Assistance Fund, it addresses a new issue, shall the



the poor give to these institutions and under what circumstances?. Like the normal householder, even the poor man may contribute, but unlike the householder, the poor person may not be compelled to do so.<sup>22</sup> Perhaps one explanation is that here we are discussing those of former wealth or social standing who were previously accustomed to giving. This would link Unit 1 with the Units 2-4 as all relating to the issue of those of former social standing.

#### Unit 2

- T. 4:10 - I. G. One who used to wear fine wool [before he became poor],  
                   H. they supply him with [clothes of] fine wool.  
 II. I. [One who was accustomed to] a coin [in pocket change(?),  
                   before he became poor],  
                   J. they give him a coin.  
 III. K. [One who was accustomed to eating (?)] dough [before he  
                   became poor],  
                   L. they give him dough.  
 IV. M. [If he was accustomed to eating] bread [before he became poor],  
                   N. they give him bread.  
 V. O. [If he was accustomed to] being spoon feed [before he became  
                   poor],  
                   P. they spoon feed him.  
 VI. Q. [These all are in accord with] what is written [in Scripture],  
                   "Sufficient for his need according to that which he is  
                   wanting"<sup>23</sup>

#### (Secondary Expansion)

- VII. R. This refers to providing even a horse or a slave,  
                   [if this is deemed his need],

S. "For his need (lw)" -- this refers to providing him with a wife.

<sup>22</sup> The two descriptions are unfortunately not absolutely analogous.

<sup>23</sup> The full reading begins in verse 7: "If there be among you a needy person, one of your brethren, within any of your gates, in your land, which the Lord your God is giving you, then you shall not harden your heart, nor shut your hand from your needy brother, 8. Rather, you shall surely lend him sufficient for his need according to that which he is wanting."



as it is written [in Scripture], "Then the Lord God said, 'It is not good that the man should be alone. I will make a helper for his need (lw)'" (Gen. 2:18)

- T. Hillel the elder once gave to a certain poor person, a member of a good family, a horse for the man to ride for exercise, and a slave to be the man's servant;  
[providing a precedent for the ruling of R. above]
- U. The people of Galilee each day would send to a certain man a pound of meat [according to the weights used in] Sephoris.

Unit 2 is not only new, it is clearly unrelated to the topic of the communal institutions, demonstrating the more associative structure of the Tosephta's arrangement. Up until now both the Mishna and Tosephta have addressed the generic poor, with no regard to if they have always been poor, or only recently have become poor. Now the Tosephta clearly take up the subject of how we treat those who were once well to do.

Tosephta Unit 2 takes up a different approach to what are the rights/needs of the poor. Based on Deut 15:18 (dei mahsoro<sup>24</sup>), the Tosephta will claim that the poor have a right to, not merely enough food to live on, but to a standard of living to which they were accustomed to before becoming poor, at least as regards food, clothing, personal care, and spending money.<sup>25</sup>

#### Unit 3

- T. 4:11 I. V. If a poor person was used to using gold utensils (kly zhy)  
W. he must sell them, and use silver ones

<sup>24</sup> Rambam's use of this concept in application to the Commandment of Charity in Sefer HaMitzvot, and shared the Commandment of Loans to the poor, has its locus here and in a parallel text in Sifre Devarim.

<sup>25</sup> The notion of ben tovim, the poor of noble birth, found in Unit 2, is discussed in the Rabbinic Anthology, p. 425. Rambam also makes mention of this concept in his Commentary on the Mishna, see that chapter, on taking into account a person's former social standing.

- II. X. If he was used to silver utensils (kly ksf)
  - Y. he must sell them and use copper ones
- III. Z. If he was used to copper utensils (kly nhsht)
  - AA. he must sell them, and use glass ones

- Unit 4
- BB. They told [the following story]: A family from Bet Nebaltah was visiting in Jerusalem. They were related to the family of Arnon, the Jebusite. [i.e. their family was among the original inhabitants of Jerusalem.]
  - CC. The sages sent them three hundred gold sheqels, for they did not want them to [be forced to] leave Jerusalem [due to a lack of money].

Unit 3 now makes a corollary point. While Unit 2 urges us to enable the poor of former means to live as they were accustomed, Unit 3 informs us that they must nevertheless reduce their level of ostentation. The distinction between Unit 2 and 3 is that they may maintain their style of living, but the actual standard must be reduced. To draw a better analogy than the Tosephta makes, let us replace the discussion of precious metal utensils, with a discussion of the horse Hillel provided. The rule might be formulated as. If a poor man was used to riding a horse, we should provide one if possible, but if he was used to an Arabian stallion, he should now accustom himself to an old mare.

Unit 4 confirms that these four Units are concerned with the poor of former standing. We should do whatever it takes to keep poverty from totally abasing them. The worst degree of such abasement would be to be forced to move out of one's home or city. The implication is that the family in Unit 4 probably at one time lived in Jerusalem, but had been forced by poverty to move elsewhere. This seems to be built on an exposition of the phrase in Deuteronomy 14:29, of providing the poor-tithe to our brethren

within our gates.

#### Unit 5

- T. 4:12 I. A. "[As regards] one who says, 'I shall not be supported by others'--  
 B. "they act considerately toward him, and support him by giving [money to this poor person] as a loan and when later on they convert it to a gift," says R. Meir.  
 C. But the sages say, "They give [the poor person money] as a gift, and later they convert it to a loan."  
 D. R. Simeon says, "They say to him, 'Bring us some collateral,' in order to allow him to take the money."

This unit continues to address the issues revolving around the poor of former means. His pride might prevent him from taking charity at the level prescribed in Unit 2. According to R. Meir it is offered to him in the guise of a loan. Later on if he cannot repay it is converted into a gift. The Sages advise that such a person be offered a gift. I understand their formulation to mean that if he will not accept it as a gift, then in that circumstance they offer it as a loan. The other possibility is that the sages are advising to give it to him as a gift, and he is not obligated to repay it until such time as he restores his wealth and position. I find this second possibility less desirable, but a closer parallel to R. Meir's formulation. R. Shimon's point is positioned after the Sages statement, but it clearly speaks to R. Meir's opinion. R. Shimon is advising we allow such a person the face saving device of taking a pledge as collateral.

#### Unit 6

- T. 4:13 II. E. [As regards] one who says, "I cannot support myself"--  
 F. they act considerately toward him, and support him by giving [this poor person money] as a gift, and later they convert it to a loan.

Unlike the person above, this person's pride or circumstances does not

prevent him from asking for or accepting charity. Perhaps "acting considerably toward him" is a euphemism for providing an appropriate amount. The point is again made that he is not expected to repay until such time as he is restored to his former means.

### Charity Collectors

According to the arrangement of the Tosephta, our next unit (T. Peah 4:15) is treated as the companion to the aggadic portion of M. Peah 8:9. The reason for this is that T. Peah 4:14 (which our text follows) does indeed parallel the aggadic portion of M. Peah 8:9. None of the aggadic material is included in this study.

The location was established on the basis of a comparison of the rules governing charity collectors (T. 4:15) and the aggadic warning against judges taking bribes (M. 8:9). Both roles are positions of communal authority and trust and therefore must not be abused. Nevertheless, I believe that T. Peah 4:15 is better understood, as a halachic source text, in relation to M. Peah 8:7 (H).

- M. 8:7 H. [Money] for the public assistance fund is collected by two [people], and distributed by three [people].
- T. 4:15 A. Charity collectors are not permitted to separate from each other  
 B. Not even if one of the collectors friends wants to repay him money that he owes him  
 not even if [one of them] saw [lit: found] money in the road, he must not [leave his companion to] take it  
 C. As it is written [in Scripture], "You shall be free of obligation before the Lord and before Israel" (Num. 32:22)  
 D. But they may separate from each other if they are collecting within a courtyard, or with in a shop.

The Tosephta's expansion is concerned with the details of the procedure describes in Mishna 8:7 H. Even the appearance of impropriety must be avoided by charity collectors. The trust worthiness of the collectors derives from the fact that they supervise each other. They cannot afford to separate from each other to take money, even if it is rightfully theirs. People watching them take alms think that it is going to the collectors personal funds purse.

However, once in the private domain of home or business, out of the sight of the public eye, the charity collectors may separate. The text is unclear as to whether this refers to the collector's courtyard or shop, or to the person from whom they are seeking a collection. Is this because they are out from public scrutiny, or because when they are both within the same courtyard or shop they can keep eye contact?

### Eligibility Requirements

M. Peah 8:8-9 is understood as a definition of the poverty line: generally less than 200 zuz with certain specific exceptions enumerated. Here is the outline from the beginning of this chapter:

- ii - Definition of who is Poor
  - A - Anyone with less than 200 zuz in liquid assets, [8:8]
  - or less than 50 zuz in capital [8:9]

This is the text:

- M. 8:8 - A. Whoever possesses two hundred zuz, [i.e. enough money to maintain oneself for a full year, from one harvest season to the next], may not collect gleanings, forgotten sheaves, peah, or poor man's tithe [that have been designated from that year's crops].
- B. If he possesses two hundred [zuz] less one denar [i.e.
- C. Even if one thousand [householders pledged to] give him [a denar], all at the same time, [so that the poor person potentially possesses

far more than two hundred zuz]

- D. Lo, this person may collect [produce designated for the poor].  
[This is because, when he gathers the food, he has not yet received the money from the householders, and so in fact is still poor and therefore eligible.]
- E. [If he possesses two hundred zuz that he cannot freely use, because the money serves as collateral for a creditor, or for his wife's marriage-contract --
- F. Lo, this person may collect [produce designated for the poor].
- G. They may not compel him to sell either his house or the tools of his trade [in order that he might thereby acquire two hundred zuz in cash.]  
[That is to say, a person's eligibility for gathering poor-offerings is determined by his possession of less than two hundred zuz in liquid assets. Property used for shelter or earning a living cannot be sold off to acquire solvency.]
- M. 8:9 H. Whoever possesses [as little as] fifty zuz, yet conducts business with them --
- I. lo, that person may not collect [produce designated for the poor, because he derives a steady income from his money] <sup>26</sup>
- [J.- U. Aggadic Conclusion]

Or we can summarize this as:

Eligibility: Less than 200 zuz in currently available liquid assets

Exception: One who is generating sufficient income with as little as 50 zuz utilized as capital.

My translation in M. Peah 8:7 G is based on the contextual issues, but is taken by every traditional commentator as a reference to either furnishings or other housewares. Nevertheless, the clear statement is that a person cannot be compelled to sell that which he would then have to be provided with at any rate; i.e., he must be sheltered and allowed to work at his trade if

<sup>26</sup> M. Peah 8:9 H-I are clearly misplaced and have no thematic relationship to the rest of the Mishna. They should either comprise their own mishna, or, more likely, be attached to M. Peah 8:8 as its conclusion.

he is to climb out of his impoverishment. Furthermore this translation is supported by the fact that it is immediately followed in the mishna by a discussion of some one whose money acts as a tool for supporting himself. But that person is not allowed to accept any poor provisions.

This exception, in M. Peah 8:9, is clearly a recognition that some people actually did manage to provide for themselves sufficiently even drastically below poverty line assets. Without this exception they too would be eligible despite their lack of need. This makes two interesting points. Poverty is described by insufficiency of assets but defined by insufficiency of income. This is a sensible method, as one with more than 200 zuz in assets but with insufficient generation of income will have to use his assets up until he does indeed fall below the poverty line. Secondly, the rabbis recognized that 200 zuz was an approximation. It provided a limit to how far the community's resources could be stretched. If someone could survive below that line, then he lost his claim to public assistance.

T. Ketubot 9:3 [cf. M. Ketubot 9:2-3]

- A. He who died and left movable property,
- B. and his wife's ketubah and a creditor laid claim against it [that property]
- C. whoever seizes it first has effected acquisition [of whatever he left]
- D. And [since there is then nothing left], he is buried by the charity fund

This Tosephta passage appears to confirm the descriptive nature of the Tannaitic material. The same image is used again and again.

Pledges

- T. 4:17 - A. [If] one pledged (>mr) to give [money to charity],
- B. and then gave [this money],
  - C. they accord him the merit both on account of the pledging to



- give and on the account of the deed [of giving],
- D. [If] he pledged to give [money to charity],
- E. But then [when the time came to pay his pledge he] no [longer] had [the economic means] in hand to give [the amount that he had pledged],
- F. they accord him the merit on account of pledging [to give] just as [they would have accorded him] merit on account of the deed [of giving],
- G. [If] he did not pledge [to give money to charity],
- H. but said to other people, "Give!",
- I. they accord him merit on account of this,
- J. as is stated [in Scripture], "... and for this word [i.e., the word "Give!"] the Lord will bless you" (Deut. 15:10),
- K. [If] he did not say to other people, "Give!",
- L. but placed [a poor person's mind] at ease with kind words,
- M. From what [verse may we derive] that he should be accorded merit for his act?
- N. It is stated [in Scripture], "...and for this word [i.e., the kind words spoken to the poor man] the Lord will bless you" (Deut. 15:10)

H. above is remarkable. We are expecting the converse of the previous statement, but it is never given, namely that one who does not pledge, but gives, receives merit for giving, but not for pledging. Instead we go straight to one who gets others to give. Apparently the intent is as follows. One who has money to give can get credit for pledging and giving. One who has no money can still get merit points if he pledged to give when he had. One who has no money to give can still get merit points by urging others to give. And finally if he cannot do even that, he can get merit points for offering kind words. In other words, you get credit for your pledge and money, other people's pledge and money that you motivated, and even your own words.

These are not vows but mere verbal promises. Note that this text is unique in that it is only praising and never derogatory.

T. 4:19 A. Charity (tzedaqah) and righteous deeds (gemilut hasadim) outweigh



all other commandments in the Torah.

- B. Nevertheless, charity [can be given only to the] living, but righteous deeds [can be performed for the] living and the dead.
- C. Charity [is given only] to poor people, but righteous deeds [are done for both] poor and rich people.
- D. Charity [is given as an aid for a poor person's] finances, but righteous deeds [aid both a poor person's] finances and his physical needs.

Although this text cannot be described as halachic, A. above parallels the first halacha of Maimonides at the beginning of his last chapter on this subject.

MA Chapter X:1

It is our duty to be more careful in the performance of the commandment of almsgiving than in any other positive commandment...

Finally it should be mentioned that a number of Tosephta Peah units find an almost exact equivalent in Sifre Devarim. Of those that interest us the following correspond:

**T. Peah 4:2**

4:10 I-Q  
4:10 Q-U  
4:11 G-H  
4:12  
4:17

**Sifre D. Pisqa 110 (303)**

Pisqa 118  
Pisqa 116  
Pisqa 110 (303)  
Pisqa 116  
Pisqa 117

Especially interesting is Pisqa 116 which provides a fuller version of what we have referred to in the Tosephta text as a secondary expansion. In T. Peah 4:10 Q-U, the entire verse (Deut 15:8) seems to be commented upon. In Sifre, the verse is divided into halves and the each receives its own contrasting commentary. Sifre introduces there the idea of not being obligated to restore the poor man's wealth.

"Sufficient for his need" - you are not commanded to make him rich  
"in that which he wants" - be it even a horse or a slave.

## Chapter 2 - Rambam's Commentary on Mishna Peah

The "Siraj", or "Maor" in Hebrew, was Maimonides first literary accomplishment. Maimonides was 23 when he began his writing and 33 when he finished. During that time the fanatical Almoades had gained control of much of North Africa and Spain. Completed in 1168, it had taken ten arduous years to produce. For seven years the family wandered through Spain, north Africa, and Egypt, until they finally settled in Fostat in 1165. The Siraj was finished in 1168. Written in Arabic, it was intended for the masses as a general introduction to Jewish law. In his introduction Rambam describes the benefits of his commentary are: 1) to learn the accurate meaning of the Mishna's statements, 2) to clarify the final rulings which the Mishna reached, 3) to serve as an introduction to Talmud study, and 4) to serve as a permanent record of Mishnaic knowledge.

As we shall see Rambam's commentary in Peah is very concerned with giving terminological explanations. The commentary is heavily dependent on the Bavli and has only a few sources found in the Yerushalmi. Likewise, most of the baraita material seems to have been taken from the Bavli as opposed to the Tosephta. This is especially striking given that this tractate has no Babylonian Gemara, and because Rambam's decisions in Hilchot Mattenot Aniyyim demonstrate extensive research into both the Yerushalmi and Tosephta to Tractate Peah. Nevertheless, some Tosephta and Yerushalmi Peah material is found here.

### M. Peah 8:5

One does not give to the poor at the threshing floor less than half a qab of wheat and one qab of barley.

R. Meir says: Half a qab

[Nor less than] a qab and a half of spelt and a qab of dried figs,  
 or a maneh of dried figs;  
 R. Aqiva says a peras.

Peras - This is half the amount, and its specification here is half a maneh, and this is a weight of 50 denars. And they were designated -- these specified amounts -- based on God's statement, "When you have made an end of tithing all the tithe of your produce in the third year -- which is the year of tithing -- and have given it to the Levite, and the stranger, and the orphan and the widow, **that they shall eat in your gates and be satisfied**..." (Deut 26:12).

And it is found in the tradition: Give him until his satisfaction. And this amount is given to the poor from the poor tithe because it is [designated specifically] for the poor. Every time a poor person makes his way to the threshing floor, and the owner of the threshing floor has poor tithe, he shall not give [the poor person] less than these measures from whatever [type of produce] which he is giving.

But if he wants to give more, he may. If he [the owner] had poor tithe at his home, he is under no obligation to give a poor person a specific measure [at his house]. Rather, he may give to whomever he pleases among the poor, either more or less. [T. Peah 2:18]

The halacha does not follow R. Meir, nor R. Aqiva [regarding the measure of the poor-tithe]. The halacha [specifying the measurement of poor tithe] follows Abba Shaul [i.e. an amount whose value can purchase two meals].

#### M. Peah 8:7 (commentary only)

Kikar - A loaf of bread

Pondion - Half a meah

Seah - It is a quantity whose measure is six (6) qabs, and we have already explained the measure of a qab.

Sela - Four (4) denars. One (1) denar is equal to six (6) meahs. [1 sela = 24 meahs]

The explanation of the terms by Rambam is indicative of the fact that they were no longer in use. Pondion above is the Greek dupondion. Here, pondion, denar, meah, and sela are monetary measures. Seah and qab are dry volume measures.

[Now], 4 seahs equals 24 qabs [there being 6 qabs to 1 seah]

[According to the Mishna], the going rate is 1 qab to 1 meah,

if the wheat-grain was [valued at] 4 seahs to 1 sela [as described in the Mishna]

[However], in a loaf which is worth a pundion [1/2 meah] there is approximately 1/4 qab [instead of an expected 1/2] They attributed this to the loss [of wheat-grain] from grinding and baking.

[All of] which is to say: A poor person who is going from place to place, if he passes through whatever town, he is not given less than a loaf of bread the [net] content of which is 1/4 qab of flour.<sup>27</sup>

This explanation seems to be in response to two texts. First, the debate in M. Eruvin 8:2 which uses a strikingly similar formulation for an eruv t'humim:

What is the prescribed quantity [for an eruv t'humim]?

**Food for two meals** for each person...

R. Jonathan ben Baroka says: A loaf [worth] a pundion,  
[when] four seabs are worth a sela. [i.e., 1/2 a qab]

R. Shimon says: Two thirds of a loaf [when] three [such loaves] are made from a qab [i.e., 2/9 of a qab]

Here the Mishna actually equates the measure of two meals with a loaf of bread worth a dupondion. We saw (in Chapter 1: Mishna and Tosephta Peah) that the loaf of bread was probably taken by the Mishna to be equal to one meal. Nevertheless, the proximity of the one text, concerning the measure of poor-tithe wheat, to the other text, concerning the poor man's loaf of bread, must have early on created this impression. Also relevant is the comment of R. Eleazar in Y. Peah 8:5 (V. A) which clearly states the

<sup>27</sup> This amount is intended for a man. See M. Ketubot 8:5 which describes what must be given to wives provided for by a third party. Each week she should receive "not less than two qab of wheat or four qab of barley." If the expectation is that she prepares this into a loaf for herself, then she has maximally, with no loss in preparation, between a third and a fourth of a qab allotted for each day. Since a half qab (before preparation) constitutes two meals, the woman clearly has been allotted a smaller quantity.

parallel with M. Eruv. 8:2.

R. Eleazar said: "[The quantities listed in M. Peah 8:5 for distributing poor tithe] also [apply to the establishment of] an eruv.

This along with the fact that the Mishna itself in Eruvin supports such an equation led Rambam to accept two qabs as the intended measure of the loaf of bread.

The Gemara to Eruvin argues, following one version of a statement by R. Hisda, that the shopkeeper makes a fifty percent profit (B. Eruv. 82b). Hence a loaf costing a dupondion would contain not  $1/2$  qab, but  $1/4$  qab of wheat. According to the Gemara there, the discrepancy between the two tannaim can be harmonized since the first tanna speaks of the wholesale value, while the second speaks of the sale price. Hence Maimonides apparently considered the actual loaf to contain between  $1/4$  to  $2/9$  of a qab.

The second text is Yerushalmi Peah 8:7 (I. A-C).<sup>28</sup>

Rav Huna said: [the actual measure of the loaf] is reduced by a third on account of the reduction [of material during preparation and baking]

The main point of both the Bavli and Yerushalmi is that although M. Peah 8:5 and 8:7 both seem to define the 'two-meal provision' as  $1/2$  qab, there is a gross difference. Providing the poor at the threshing floor with  $1/2$  qab of wheat and producing a loaf valued at a dupondion (when  $1/2$  qab of wheat costs a dupondion) cannot be equated. The problem is that no

<sup>28</sup> Brooks mis-renders the unit. Especially in regard to the 'third' mentioned by Rav Huna in [B]. Brooks mistakenly translates y'tziah as 'their trip'. Y'tziah here should be translated as either 'separation', 'diminishment', or 'reduction', or even 'expense', see Jastrow p. 588 column 2.

account has been made of the practical considerations, such as loss of material, expenses, or profits to the baker. Hence the actual loaf's gross ingredients ( $1/2$  gab) are reduced by a third.

Parnesat Layna - Those are the requirements for night, e.g., a mattress and a pillow. However, if he is a poor person who is known to us, he is given clothing.

The sages determined that a person is obligated to eat three meals during the Sabbath. They based the determination upon God's statement, "Eat it **today** for **today** is a Sabbath unto the Lord, **today** you shall not find it (manna) in the field" (Ex 16:25)

The word "**today**" is repeated three times [in the verse]

All of this is based on the material found from B. Shabbat 117b onward. See ahead at the end of Rambam's comments on Kuppah.

Tamhui - The name [is derived from] the vessel out of which they ate. Every day they would bring the vessel by the houses and take from every house some of the relish (?) they [the householder] had cooked and placed it in that vessel and distributed [the food] among the poor.

It was required that the [number of] bursars for [both] collection and distribution be three people, since it [the food] is collected and distributed on the same occasion.

Kuppah - The name [is derived from] the vessel; that is to say here the charity is collected every week from Friday to Friday.

It is a rule among us that whoever does not give to the fund according to his obligation, they enter his house and levy an assessment upon him. Thus the [sages] said: Charity is exacted even on Fridays.

And therefore they do not assign the collection [to] less than two [people], since the rule among us is not to give authority over the community to less than two.

Three distribute, since it is a monetary case, like all other monetary cases, and because [it involves the determination of] giving to this one more according to the degree of his needs and social status, and giving to that one less according to his degree likewise. [cf. B. Baba Batra 8b where the Gemara explains, "they must



assess the poor people's merits - see MA IX:5]

This notion, which we commented on in the chapter on Mishna and Tosephta Peah, was applied to differentiate between those who once had means and social standing, and those who never had them. But this notion which is clearly stated here, will disappear in the relevant part of Hilchot Mattenot Aniyyim IX:5, and be replaced with the more objective sounding "according to his need"

Another rule among us is that monetary cases are [presided over] by three.

Whoever has food for two (2) meals -- for that is a single day's supply -- does not take from the Tamhui which is distributed every day.

Whoever has food for fourteen (14) meals -- for that is a week's supply -- does not take from the Kuppah [which is] collected each week.

Fourteen (14) meals is a week's food. Since there are three (3) meals on the Sabbath and [therefore] eleven (11) meals during the six remaining days: 2 meals each day -one during the daytime and one at night. According to such calculations there would need to be 12 meals (for six days), except that the Saturday evening meal is not counted for him, because he does not need it, since he already ate during the afternoon (on Saturday)-- and this meal is the completion of the three Sabbath meals.

To get an idea of how much Talmudic material Rambam had to digest to reach this one explanation and statement of halacha, let us review the sugya by which he arrived at his comments.

#### B. Shabbat 117b

Mishna: They save food for three meals  
 What is appropriate four people for people  
 What is appropriate for beasts for beasts  
 How [does this happen]?  
 If a fire breaks out on a Friday night [lit: Sabbath eve]  
 They save food for three meals  
 If in the morning: they save food for two meals  
 At Minha: food for one meal

R. Yose says: We may always save food for three meals

Mishna lemma: How [does this happen]? If fire breaks out, etc.

Gemara: Baraita: How many meals should be eaten on the Sabbath?

Answer: Three

R. Hidka: Four

Each based his answer on his exposition of Ex 16:25

And Moses said: Eat it **today**, for **today** is a Sabbath unto the Lord, **today** you will not find it [manna] in the field"

The rabbis arrive at three meals by including the Friday night meal

R. Hidka arrives at four meals by excluding the Friday evening meal [because of the word 'day' and not 'night' ?]

118a

Mishna lemma: If a fire breaks out Friday night [lit: Sabbath eve] food for three meals may be saved

Is this before or after he has already eaten a meal?

Mishna lemma: If in the morning, food for two meals may be saved

Is this before or after he has already eaten a meal?

Mishna lemma: At [the time of] Minha, food for one meal

Is this before or after he has already eaten a meal?

Since the Mishna concludes: 'R. Jose said: At all times we may save food for three meals.' this indicates that the anonymous tanna of this mishna held that three meals [are required for the Sabbath] Therefore it is clear that the mishna does not agree with R. Hidka's position of four meals on the Sabbath]

Now [let us consider the following:]

Baraita: He who has food for two meals

must not accept from the soup-kitchen

[He who has] food for fourteen meals

must not accept from the [charity] fund

Who is the authority for this [rule]?

It cannot be either the Rabbis or R. Hidka (from above)

According to the Rabbis there would be fifteen meals

According to R. Hidka there would be sixteen meals

No, it really is the Rabbis for we say to [the recipient]:

Move the meal you would eat Saturday night [after sundown,

hence the first meal of the new week] to the Sabbath [itself]

[thereby making 3 meals on the Sabbath and 11 during the week]

[and the Rabbis therefore allocate on fourteen meals to such a person during the week]

No, it really is R. Hidka for we say to [the recipient]:

Move the meal you would eat Friday [morning] to the Sabbath

[For this to equal fourteen meals during the week we must assume

that the argument being made is that R. Hidka would also follow the Rabbinic practice immediately above - thereby allocating 4 meals on the Sabbath and 10 during the week]

What? We make him fast all of Friday [until sunset]?

Rather the author of this [baraita] is R. Aqiva who said:  
Treat your Sabbath like a weekday [i.e., two meals]  
rather than be dependent on people [i.e. take charity].

Now the Gemara will try the same argument with a different baraita:

Baraita: A poor person traveling from place to place is given no less  
than a loaf [worth] a pundion [when] 4 seabs cost a sela  
If he spends the night, we give him provisions for spending  
the night  
If he stays over the Sabbath, we give him food for three  
meals.

Shall we say that this [baraita proves] the Rabbis' position, and  
not R. Hidka's in regard to the number of meals on the Sabbath?/  
In truth it [the baraita] may agree with R. Hidka  
For example [under the circumstance]

where he [the itinerant poor] already has one meal with him  
[giving him three will add up to four meals].  
We say to him 'Eat that which you have with you'  
[I.e., let the meal you already have count as your fourth meal]  
You would have him depart empty handed ?!  
We provide him with a meal to accompany him.  
[Which is not mentioned in the Baraita]

What is meant by 'provisions for spending the night' ?  
R. Papa said: A bed (purya) and a bolster (sadya)

#### B. Pesahim 99b

- Mishna 10:1 1 - On the Eve of Passover, close to Mincha  
A man must not eat until nightfall  
2 - Even the poorest man in Israel must not eat [then]  
until he assumes a reclined-position  
3 - He [the poor man] should be provided with,  
not less than, four cups [of wine] -  
even if [it must be provided] by the soup kitchen

112a Gemara: Mishna lemma; 'Even if [it must be provided] by the soup kitchen'  
Isn't this obvious?

Even R. Aqiva (who said: Treat your Sabbath like a weekday rather  
than be dependent on people [i.e., take charity])  
agrees with this particular case [of taking charity]  
in order to advertise the miracle [of Passover]

Tangent:

Regarding this statement [about the Sabbath] by R. Aqiva  
Tanna deBe Eliyahu [taught]: Even though Aqiva said :  
'Treat your Sabbath like a weekday rather than be dependent on people'  
Nevertheless one must prepare some trifle at home [in honor of the  
Sabbath]  
What [sort of trifle]?

R. Papa: Fish hash...<sup>29</sup>

Rambam rejects the use of R. Aqiva's statement as a means of explaining how to reach fourteen meals per week. Rather, he relies on the Gemara's refashioning of the Rabbis' ruling. It is important to note the degree to which the plain meaning of the Rabbis' statement of fifteen meals per week must be forced by the Stam in order to come out to fourteen meals. Yet Rambam avoids the issue entirely, merely accepting the ruling. In Hilhot Mattenot Aniyyim Chapter X, Rambam will reject the notion that Aqiva was referring to meals. Instead, Rambam uses Aqiva saying to derive a general principle of avoiding dependence on the community. But the passage from Pesahim makes it clear that the general Rabbinic understanding was that Aqiva was referring to meals when he made his statement.

#### M. Peah 8:8

Memoshkanim- Security

U Vaal Hovo- His creditor [lit: the one who has a claim against him]

Even if he had utensils [lit: items] of gold and silver, such as cups and plates, he is not obligated to sell them before he [can] receive poor-provisions. And he is considered one of them [i.e., the poor] [B. Ket. 67b, T. Peah 4:11, Y. Peah 4:11]

But after he receives charity they say to him "Exchange those utensils for others and do not exhaust [lit: trample upon] the poor provisions."

This is one of the most interesting sections of the commentary because Rambam here resolves a confusing and unresolved textual difficulty. The locus for this problem is B. Ketubot 68a:

It was taught in a Mishna elsewhere

A) [M. Peah 8:8]: A poor man may not be compelled to sell his

<sup>29</sup> R. Papa seems to be a repository of such tidbits of information.

- i) house
- ii) articles of service

Can this be correct in light of the following Baraita:

**B)** [T. Peah 4:11]: If [a poor man] is used to gold articles, let him use silver.  
If he is used to silver articles, let him use copper.

Harmonization Attempts:

1. R. Zebid: I - One refers to the bed and table  
II - The other refers to cups and dishes

2. Q. Why doesn't he need [to sell] cups and dishes?  
[Assuming I = B, and II = A]

A. Because [lesser quality dishes and cups] might be repulsive to eat on.  
[cf. Y. Peah 8:8 II. 1]

*Exception: Could he not also be repulsed by an inferior bed and table?*

3. Rava son of Rabbah: B - refers to a silver skinning knife  
[i.e. no difference in functionality]

4. R. Papa: A - refers to one has not yet applied for public assistance  
B - refers to one who has applied for public assistance  
[According to the understanding of Alfasi]  
[cf. Y. Peah 8:8 II. E-J for a similar problem and attempted solution]

According to his commentary to the Mishna, the poor man with these valuable items cannot be forced to sell them before, or after, he takes from the poor provisions. But after taking them, he should be told to voluntarily exchange these objects for ones of lesser value (but equal functionality).

In Hilchot Mattenot Aniyyim IX:14, Rambam seems to have changed his mind. However, perhaps in his commentary to the Mishna, his intent was only to present the decision of the Mishna, while utilizing the Gemara only for illustrations. His decision in MA IX:14 could then represent his view on how the Mishna's decision in this case had been modified by the later Sages.

#### Mattenot Aniyyim IX:14

A poor man who [still] has his own courtyard and home-furnishings, even if these include utensils of silver and gold, he may not be compelled to sell either his house or his furnishings; rather he is permitted to accept [private] alms,

and it is a religious duty to give him alms.

To what furnishings does this apply?

To eating and drinking vessels, clothes, mattresses, and the like.

If, however, he has other silver and gold utensils,

such as a strigil, a pestle, and the like,

he should first sell them and buy less expensive ones.

When does this apply? Before he comes to ask for public assistance.

If he has already asked for it, he must be compelled to sell his vessels

and buy less expensive ones, and only then may he take from public funds.

In this ruling, the opinion of R. Papa is accepted.

#### **M. Peah 8:9**

Hamishim zuz- with which he negotiates [i.e. utilizes as capital], they [50 zuz] are equivalent to 200 [zuz] with which he does not negotiate.

According to that which is stated in the previous halacha [i.e. mishna (M. Peah 8:8)]: whoever has 200 zuz should not take [poor provisions] if [his money] is inactive and he does not know [how] to do business with it.

But, if he knows [how] to do business, even if he has only 50 zuz left to him, [in that case] it is forbidden for him to take poor provisions.

Here is a remarkable instance. According to his commentary above, the issue is not whether or not one is using fifty zuz for business, but whether or not one has the knowledge to use it. The Mishna clearly states that the issue is the activity, or lack thereof, of the fifty zuz in producing income. Rambam says it is the ability, or lack thereof, of the possessor that determines eligibility. the implied statement is fascinating: a person with business skills and a small sum should not be permitted to sit idly and live off charity. Such a person should, for all intents and purposes, be told to use his ability or starve.

But ten years later in Hilchot Mattenot Aniyyim, this notion is as absent as it is in the text of the Mishna.

### Chapter 3 - The Book of Commandments

If Maimonides' Siraj (Rambam's Commentary on the Mishna) represents his first scholarly review of the rabbinic tradition, then his Kitab al-Fara'id (Sefer HaMitzvot: the Book of Commandments), represents his next and almost immediate attempt to systematize the entirety of Rabbinic tradition, according to their connection to the Divine Commandments.<sup>30</sup> But to do that, Rambam needed a blue print, and this is how and why his Sefer HaMitzvot came to be composed.

Sefer HaMitzvot clearly demonstrates how much Rambam the Poseq was influenced by Maimonides the Philosopher. Even though Sefer HaMitzvot was originally only a working blue print for the Code, it is here in his Book of the Commandments that we can most clearly see Rambam's philosophy of law demonstrated.

Whereas in the Code, Rambam chose to group his decisions together in an arrangement similar to the Mishna, in Sefer HaMitzvot, Rambam arranged the commandments according to a different approach. Maimonides could have chosen a number of other methods to list and arrange the commandments. The simplest would have been to list them according to their occurrence in the Pentateuch.

The next choice, would have been to rely on the system of arrangement used in prior list of the commandments. Shimon Kairo attempted such a list in the Gaonic period in the preface to his 'Halachot Gedolot.' But he

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<sup>30</sup> Sefer HaMitzvot was composed between 1168 and 1170 when Rambam was already settled in Egypt. His Mishna commentary was completed in 1168 and he began writing the Mishneh Torah in 1170. Two versions, both composed in Arabic, existed and were translated later in his life. The first unrevised version was translated by Abraham ibn Chasdai and that translation was used by Nachmanides and Aaron HaLevi of Barcelona - the author of Sefer HaHinuch.



failed to follow the dictum of the fourth century C.E. Palestinian Amora R. Simlai found in B. Makkot 23b. R. Simlai states that the six hundred and thirteen commandments are divided into two hundred and forty-eight positive commandments, and three hundred and sixty-five negative commandments. A number of paitanim attempted listings in various Azharot. Finally, Hefetz b. Yatzliah wrote his own Sefer HaMitzvot, preceding Rambam's work, and to which Rambam makes reference to in the introduction to his own version. Like Rambam, Hefetz begins with theological prerequisites such as the belief in God, and in God's unity. Yet, according to Rambam's comments, some of Hefetz' listings were of rabbinic and not divine origin.

The divine origin of each commandment listed was of great concern to Rambam and constitute his 'first principle' of enumerating the commandments. The various sections of the Code are introduced by Rambam's statement of the positive and or negative commandment. These initial statements provide the basis for the rabbinic rules which follow in each unit.

The arrangement and categorization of the commandments is important for us to consider because of what Rambam's placement and formulation say about the commandments which interest us, namely those that relate to almsgiving. Before looking at these, it is worthwhile to look at the two biblical sources (in their rabbinic rendering)<sup>31</sup>, from which Rambam will derive the Commandments of Charity.

Deut. 15:1,7-11 - At the end of every seven years you shall establish a release. ...

<sup>31</sup> The modern scholarly understanding of these texts does not always conform with the traditional rabbinic reading of even the plainest sense of these verses.

If there is among you a needy person from among your brethren, within any of your gates, in your land -- which the Lord your God is giving you -- you shall not harden your heart, nor shut your hand from your needy brother; rather, you shall surely open your hand to him sufficient for his need in that which he is wanting. Beware unto yourself that there be not a base thought in your heart, (saying: "The seventh year is at hand, the year of release";) and your eye be evil against your needy brother, but you give him nothing, and he cry against you to the Lord, and it be held as a sin against you. You shall surely give him, and your heart shall not be grieved when you give to him, because of this thing [you are doing], the Lord your God will bless you in all your works, and all the things you make an effort at. And because the poor will never cease from the land, therefore I command you, saying: You shall surely open your hand to your brother, your poor, and your needy in your land."

Lev. 25:35-36 - [If during the Jubilee] your brother becomes impoverished, and his failing resources [bring him] to you, then you shall uphold him, as a resident alien, and he shall live with you. Charge him no usury or interest -- for you shall fear your God -- in order that your brother may live with you.

We are familiar with the fact that charity was considered by the rabbis to be among the category of agricultural provisions for the poor. Nevertheless, the biblical verses on which Rambam bases the commandment clearly are not related to those provisions.

The issue of whether alms fits into the category of agricultural provisions for the poor, or duties regarding our fellow-men is resolved differently by Rambam in his various writings. To compare these, we must be aware of the categorization of the commandments in each of his different works. We have already seen in the Mishna and Tosephta that charity is clearly associated with the agricultural poor provisions, and in fact began as a means of caring for the poor in the non-harvest season.

In Sefer HaMitzvot, Rambam chose not to include charity among the category of divinely ordained agricultural poor provisions. Rather, he included it in the category of "duties toward our fellow-men." Not only is charity in a different category, it is quite distant from its former partners.

Chavel offers the following approximate categories for the arrangement

of Sefer HaMitzvot<sup>32</sup>:

The Positive Commandments:

1. Belief in God and our duties toward him (Comms. 1-19);
2. The Sanctuary, Priesthood and Sacrifices (Comms. 20-95);
3. The Sources of Uncleaness and modes of purification (Comms. 96-113);
4. Gifts to the Temple, the poor, the Priests and Levites;  
the Sabbatical year and the Jubilee; the preparation of food (Comms. 114-152);
5. The Holy Days and observances connected with them (Comms. 153-171);
6. The proper functioning of the Jewish State (Comms. 172-193);
7. Our duties toward our fellow men (Comms. 194-209);
8. The duties attached to family life (Comms. 210-223);
9. The enforcement of criminal law (Comms. 224-231);
10. The laws relating to property, real and personal (Comms. 232-248).

The Negative Commandments:

1. Idolatry and related subjects (Comms. 1-59);
2. Our duties to God, the Sanctuary, and the services therein (Comms. 229-270);
3. Sacrifices, Priestly gifts, Priests, Levites, and related subjects (Comms. 89-171);
4. Prohibitions affecting food (Comms. 172-209);
5. Cultivation of the Land [including poor provisions] (Comms. 210-228);
6. Our duties toward our fellow men, toward the poor and toward employees  
(Comms. 229-270);
7. The administration of justice, the authority of the Courts, and similar matters  
(Comms. 271-319);
8. The Sabbath and Festivals (Comms. 320-329);
9. The forbidden degrees of marriage and related subjects (Comms. 330-361);
10. The head of the Jewish State and its officers (Comms. 362-365).

Although Chavel's categorization is imperfect, Rambam's organization is itself imperfect. He does not attempt for groupings to correspond in placement between the positive and negative commandments. Rather they follow a consequential ordering, each unit and individual commandment

<sup>32</sup> The categorization of the commandments offered in Principle Nine of the Introduction to Sefer HaMitzvot is too reduced to be worth comparing. there he writes that the Commandments all can be categorized as relating to 1) beliefs, 2) actions (not related to our interaction with others), 3) disposition toward our fellow-men, or 4) speech.

connected to what preceded it , and what follows after. We can reduce the categories to the following arbitrary ten:

Commandments Concerning:

- 1- God and our duties toward God
- 2- The Temple Service
- 3- The Temple Personnel
- 4- The Land
- 5- Food
- 6- Holy Days
- 7- National Government
- 8- Courts and Laws
- 9- Our Fellow Men
- 10- Family Life

This listing is fairly close to the division of the commandments Maimonides mentions in the Guide <sup>33</sup> which likewise begins with God and descends toward the family life. In that listing however he lists the following two categories:

- 3 - Those directed to the improvement of man's moral condition, including e.g. the laws against hating one's fellow-man, putting him to shame, taking vengeance, harboring a grudge, etc.
- 4- Those relating to charity, and the various dues paid to the priest and the Levite from the harvest.<sup>34</sup>

This is similar to the arrangement of the negative commandments given in Sefer HaMitzvot. But in the listing of positive commandments there, charity is not merely separated from the agricultural category, but its connection to that category is actually quite distant.

In the Code, charity is once again united with the agricultural

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<sup>33</sup> MN III, 35

<sup>34</sup> Ibid

provisions. The various laws relating to our duties toward our fellow-men are scattered through out the Code. Above, in the listing from the Guide, Rambam seems to have maintained charity's connection with both categories throughout the later part of his life<sup>35</sup>. Charity remains the segue between "duties to our fellow-men" and "agricultural provisions for the poor and the priests."

Therefore, the positioning of the Positive Commandment -- to perform charity -- in Sefer HaMitzvot, may represent an earlier position of Maimonides both halachically and philosophically. It certainly seems likely that the positive commandments were written down and commented on before the negative ones, which may explain the different flow of categories.

Now let us turn to Rambam's enumeration of the commandments themselves.

#### Charity

"P.C. # 195 - By this injunction we are commanded to give charity, to support the needy and ease their lot. This commandment is expressed in various ways in Scripture, as, *Thou shalt surely open thy hand unto thy poor and needy brother* (Deut. 15:11), and again, *[And if thy brother be waxen poor ...] then thou shalt uphold him* (Lev. 25:35), and further on, *that thy brother may live with thee* (Lev. 25:36). The meaning of all these expressions is the same, namely, that we are to help our poor and support them according to their needs.

The provisions of this Commandment are explained in various places, most of them in Ketubot and Baba Batra.

According to Tradition, even a poor man who lives on charity is under obligation to observe this Commandment; that is to say, he must give charity, however small in amount, to one who is poorer

<sup>35</sup> The Guide was written after the Code.

than himself, or as poor as himself."

As he stated in his First Principle, the multiple statements of the same commandment are only that. Of the specifications that the Torah itself provides is that when we supply relief it be according to the poor person's needs and not merely our own determination.

The last paragraph implicitly makes a point stated explicitly by Rambam at the end of Sefer HaMitzvot.<sup>36</sup> Charity is among those commandments that is absolutely binding on all Jews at all times and in all places. Even the poor man must give because of the absolute nature of the commandment. Although the poor man cannot be compelled by the court to give, and neither must he give an minimum amount, he must practice charity for the same reason as the rest of Israel, namely to inculcate appropriate and responsible behavior for other people.

"N.C. # 232 - By this prohibition we are forbidden to fail to give charity and relief to our needy brethren, when we have become aware of their distressing circumstances and it is in our power to support them. This prohibition is contained in His words (exalted be He), *Thou shalt not harden thy heart, nor shut thy hand from thy needy brother* (Deut. 15:7). This forbids us to behave in a miserly and penurious fashion to the point of failing to give to the deserving."

From the Rabbinic viewpoint, violation of a negative commandment carries a harsher penalty than the mere failure to perform a

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<sup>36</sup> Introduction to the Fourteen Principles - "My intention however, in this treatise is by no means to delve into the details of the provisions of any the commandments; only to enumerate them (i.e. the commandments)[is my intent]. And if I shall explain some small part of it (i.e. the provisions) in the process of listing [the commandments], it will be only by way of explaining its name, so that the contents of the positive or negative [commandment] be understood, and the reason why the name has been attached to it."

commandment that only has a positive formulation.

The negative formulation adds more specifications than did the positive version. For example, we are told that the commandment, even if it is absolute, is applicable only "when we have become aware of their distressing circumstances and it is in our power to support them." This leads us to ask who is responsible for making the potential giver aware, the poor man, or the giver himself? According to the positive formulation, the poor person defines the maximum extent of his own need. The negative formulation, on the other hand, appears to make the point that the giver defines the minimum parameter. The poor man has a right to as much as he needs, but the giver gives only when he is aware, and then only as much as he is able.

We can risk the following extrapolation: In one case a poor person will have to turn to more than one person to have the entirety of his needs met; in another situation, the giver will have to give to more than one needy person before he exhausts both his means and awareness. This is covered in detail in Chapter VII of Hilchot Mattenot Aniyyim.

The notion that charity is in some manner a form of communal social behavior modification is supported by Rambam's last phrase in the Negative Commandment:

"This forbids us to behave in a miserly and penurious fashion to the point of failing to give to the deserving." Charity is the safety net that prevents normally stingy people from dropping to an unacceptable level of human relations. There seems to be just a hint here of the notion that such people might not give because they did not want to give to deceivers. As the Rabbis in the Talmud stated the principle, the deceivers keep us in the habit of



regularly giving, thus insuring that the truly deserving have a reliable system on which to depend.

It is surprising to find that while Rambam does list Bavli Tractates Ketubot and Baba Batra, he does not mention the Mishna, Tosephta, or Yerushalmi to Tractate Peah. It is at once indicative of the halachically superior position of the Bavli over all previous works. It may also reflect the difficulty which most people had finding copies let alone understanding the Tosephta and Yerushalmi.<sup>37</sup>

### Loans

P.C. # 197 - By this injunction we are commanded to lend [money] to a poor man so as to help him and ease his position.<sup>38</sup> This is a greater and weightier obligation than charity; for the poor beggar, whose need compels him to ask openly for alms, does not suffer such acute distress in doing so as one who has never yet had to do it, and whose need is for help which will save him from disclosing his poverty. This injunction is contained in His words (exalted be He), *If thou lend money to any of My people, even to the poor with thee, etc.* (Ex. 22:24)

The Mechilta says: 'Every 'if' in the Torah implies an option with the exception of three, one of which is the verse, *If thou lend money to any of My people.*' 'If thou lend money,' say the Sages,

<sup>37</sup> In his conclusion to Sefer HaMitzvot, Rambam writes,

"You must know that in saying of each commandment 'its provisions are explained in such and such a place' I do not mean that the chapter or tractate mentioned contains all the provisions of that down to the very last detail. I merely indicate the place where the principle regulations and most of the provisions of that commandment are to be found, though there are many scattered references to its regulations in other parts of the Talmud, which I do not specifically mention."

<sup>38</sup> We should note that although the laws of loans to the poor (Treatise 3 - Laws Concerning Creditor and Debtor) are located in an entirely different book (The Book of Civil Laws) of the Mishneh Torah, the opening formulation follows the same pattern:

1. It is a positive commandment to ..... Scripture says .....
2. He who violates the command ..... transgresses a negative commandment.

implies an obligation. In case you question this, and suggest that it is merely permissive, Scripture further says, *Thou shall surely lend him sufficient for his need* (Deut. 15:8), [which proves that it is] an obligation, not merely a matter of option.<sup>39</sup>

The provisions of this Commandment also<sup>40</sup> are explained in several places in Ketubot and Baba Batra."

Loans are less embarrassing than charity. As we saw in the Tosephta (T. Peah 4:12), according to R. Meir and R. Shimon's position, even giving money under the guise of a loan is preferable then outright charity.

Also, by looking at the commandments in order in Sefer HaMitzvot we can see, because of their immediate proximity<sup>41</sup>, that both the commandment to give charity and the commandment to provide the poor with a loan are based on the same biblical unit. The phrase "sufficient for his need" has been used for the specification of both commandments. Likewise, both commandments find the major sources for their rabbinic specification in the same two tractates. But when we look in the Code, the laws of loans are found in Book 13. Here we have an opportunity to see and compare Rambam's formulations. "This is a greater and weightier obligation than charity" he writes above, but in Chapter X of Hilchot Mattenot Aniyyim, providing a poor person a loan is a member of the tripartite top of the ladder of charity. Nowhere above in either commandment is the claim made in the Code, that the greatest performance of either commandment is to keep a person from falling into

<sup>39</sup> Ex. 22:24 - Mechilta

<sup>40</sup> Is the use of 'gam' a reference back to P.C. # 195 which mentions Ketubot and Baba Batra, or is the intention 'in addition' to the previous Mechilta citation, you can find provisions in these two tractates?

<sup>41</sup> In fact in the abridged version of Commandments still applicable today, they follow one another.

impoverishment. Again, the superior practice advised here is that we offer a "privately" poor person a loan to help him keep his poverty out of public knowledge.

Note how in Sefer HaMitzvot Rambam has established a distinction between the recipients of loans and charity. The poor beggar relies on loans while the recently poor are helped with loans to avoid having to publicly reveal their poverty. As we have seen this is paralleled in the Siraj under the discussion of former social standing. Likewise, in the Code, halacha 14 of Chapter IX differentiates between one who has not applied, and one who has already applied for public assistance. We see that Rambam's distinction between all these concepts was fluid.

#### Vows

N.C. # 155 - By this prohibition we are forbidden to delay [payment] of vows, freewill offerings, and other offerings for which we are liable. It is contained in His words (exalted be He) , *When thou shalt vow a vow unto the Lord thy God, thou shalt not be slack to pay it* (Deut. 23:22); and according to Tradition one does not contravene this prohibition until three [pilgrimage] festivals have passed [without payment of the dues] (cf. P.C. # 83)  
The provisions of this Commandment are explained at the beginning of (Tractate) Rosh HaShana.

N.C. # 157 - By this prohibition we are forbidden to infringe any obligation by which we have bound ourselves orally, even without an oath. What is in mind here is a vow,... or any other vow involving an obligation of the kind of which examples are given in (Tractate) Nedarim - he is bound [by Positive Commandment #94] to fulfill that vow, but he is also forbidden to break his word by His words (exalted be He), *He shall not break (yahel) his word* (Num. 30:3), which are understood [in Sifre] to mean: 'He shall not make his words profane (hullin)', - that is to say, he shall not fail to fulfill what he has bound himself to do. In the words of the Gemara of (Tractate) Shevuot (20b): 'Vows come under the prohibition: *He shall not break his word*.'

In Sifre we read: He shall not break his word tells us that one who does not keep his word transgresses two prohibitions - *He shall not break his word*,

and *Thou shall not be slack to pay it*. That is to say, if one vows an offering, or anything similar to an offering, as for instance, a gift to the Temple treasury, or to charity, or to a synagogue, or the like, and has failed to fulfil his vow after the passing of three [pilgrimage] festivals, he is liable under both *Thou shalt not be slack to pay it*, and *He shall not break his word*. And one who transgresses by doing something which he has bound himself not to do is punished by whipping.

The provisions of this Commandment are fully explained in Tractate Nedarim.

In N.C. #155 Rambam states that failure to fulfil a vow of giving charity immediately puts a person in violation of "Do not delay." This is not original to Rambam but is straight from B. Rosh HaShana. Surprisingly, here in #157 he does not mention that exception. Some scholars have suggested that the reason is that this commandment speaks to the occasion when there are no poor people to give to. This explanation might be slightly emended. A person violates "Do not delay" immediately if there are poor people around. This commandment functions as a reminder of sorts. By failing to give to the poor the money you vowed, you initially violate "do not delay" but you will also violate "do not break your word" if you leave it at that.

Interestingly, the beginning of Chapter VIII of Hilchot Mattenot Aniyyim is devoted to this subject. And in fact, N.C. #155 is quoted there, but N.C. #157 is not mentioned at all, although the content of Halachot 1-8 in Chapter VIII follows the description in N.C. #157 above, "an offering, as for instance,... to charity, or to a synagogue,..." How can it be that Rambam failed to mention this commandment in that later work? Had his enumeration of the commandments changed? Or perhaps Rambam decided, as is clear from the first line of the first halacha of Chapter VIII

that "Almsgiving is included in the category of vows," and perhaps charity is indeed an offering and this rule does not in fact apply to "vowed offerings" but only to the types of self restricting vows described in Nedarim. The question remains.

#### Loving our Neighbor

"P.C. # 206 - By this injunction we are commanded that we are to love one another even as we love ourselves, and that a man's love and compassion for his brother in faith shall be like his love and compassion for himself, in respect of his money, his person, and of whatever he possesses and desires. Whatever I wish for myself, I am to wish the like for him; and whatever I do not wish for myself or for my friends, I am not to wish the like for him. This injunction is contained in His words (exalted be He), *Thou shalt love thy neighbor as thyself.*" (Lev. 19:18)

The performance of "deeds of kindness" is also authorized by this commandment. In Sefer Shoftim, Hilchot Avel 14:1 & 3, Rambam explicitly mentions some of the rabbinic enactments built upon this commandment.

"The following positive commands were ordained by the Rabbis: visiting the sick; comforting the mourners; joining a funeral procession; dowering a bride; escorting departing guests; performing for the dead the last tender offices; acting as a pallbearer; going before the bier; making lamentation (for the dead); digging a grave and burying a body; causing the bride and the bridegroom to rejoice; providing them with all their needs (for the wedding). These constitute deeds of loving kindness performed in person and for which no fixed measure is prescribed. Although all these commands are only on rabbinical authority, they are implied in the precept: *And thou shalt love thy neighbor as thyself* (Lev. 19:18), that is what you would have others do unto you, do unto him who is your brother in the law and in the performance of the commandments...

This commandment also gives us the opportunity to make an

important if often ignored point. The commandments are applicable to Jews only, and apply to Gentiles only as far as they specify them. The common terms reicha (neighbor, fellow) and ahicha (brother), are used in all of the commandments we have examined. The Rabbinic inclusion of Gentiles into the category of "commandments relating to our duties to our fellow-men" did not always meet with the approval of all the Sages or later decisors. The general explanatory principle, "for the sake of peace", is taken as derogatory by some, as laudatory by other.

But the very nature of the commandment to love our neighbor was philosophically carried over into the Rabbinic application of these laws to Gentiles. Maimonides himself wrote in the Guide:

The general object of the Law is twofold: the well-being of the soul, and the well-being of the body. The well being of the soul is promoted by correct understandings communicated to the people according to their capacity... The well-being of the body is established by a proper management of the relations in which we live with one another. This we can attain in two ways: first by removing all violence from our midst; that is to say, that everyone does not do as he desires and is capable of doing; but each of us acts in a manner which contributes toward the common welfare. Secondly, by teaching every person such good morals as must produce a good social state.<sup>42</sup>

In his conclusion to Sefer HaMitzvot, Rambam also gives a list of the mitzvot still in effect after the destruction of the Temple and the exile from Israel. Charity is numbered among these, but it is also one of the sixty mitzvot Rambam describes as absolutely obligatory on men, and one of the forty-six absolutely obligatory on women. In both cases it is part of the

<sup>42</sup> MN III, 27

following uninterrupted sequential order:

#) Charity, #) Lending money to the poor, #) Loving our neighbor. We have seen how these three are interrelated

Even within this special category of commandments, charity is given a unique emphasis in Rambam's concluding remarks to Sefer HaMitzvot.

"If you examine all the commandments thus far presented, you will find that some of them are obligatory upon [the collective and not the individual, or vice versa, or upon an individual or has done a particular act]. Other commandments are binding only during the existence of the Temple ... others are binding only on the owners of property<sup>43</sup>, as for instance [those relating to] tithes, the heave-offering, the provisions prescribed for the Priest, and the provisions for the poor, such as gleanings, the forgotten sheaf, peah, and defective grape clusters, and it is possible for a man to be exempt from them because he has no property, and to go through life without being obliged to fulfil any of this class of commandments. Charity, however, does not belong to this class, because it is a duty incumbent even upon a poor man who is himself supported by charity, as we have explained. Other commandments, again [such as charity], are absolutely obligatory on every individual, at all times, everywhere, and in all circumstances ..."

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<sup>43</sup> In Israel, Babylon, Egypt and Syria.



#### Chapter 4 - An Overview of Chapters VII-X of Hilchot Mattenot Aniyvim

As interesting as the content and structure of the four chapters under study are, these same chapters are informed by their position in the unit Mattenot Aniyvim, as well as that unit's location in Sefer Zeraim of the Code. Therefore a few words about the Mishneh Torah itself are a prerequisite to understanding the nature and structures of the material found in it, as well as how it came to be codified.

Maimonides began writing the Mishneh Torah in 1180 and completed it ten years later. Unlike his previous works it was intended not merely as a study guide, but as a definitive and comprehensive pronouncement and enunciation of the entire scope of Rabbinic legal thought from the Mishna down to his own day. Whether the Mishneh Torah was intended as a Code or Encyclopedia is a moot point. The key issue is that Rambam intended the Mishneh Torah to systematically present the final word on all matters of Jewish law, whether they had been settled in the Mishna, or as late as the decisions of his own teachers.

He arranged the Mishneh Torah around the general pattern of the Mishna, but refined the system of classifications and division. He clearly sought to introduce each section with the biblical commandments and then follow through with the Rabbinic specifications. Hereby one recognizes the influence of his Sefer HaMitzvot in structuring the chapters and divisions of the Code.

Sefer Zeraim is the counterpart to Seder Zeraim of the Mishna. Although some other books of the Yad are departures from the arrangement of the Mishna, that is far from the case with Sefer Zeraim.<sup>44</sup>

<sup>44</sup> For example, the Books of Knowledge and Love, and especially Sefer Haflaah - the

Rambam's organizing hand was conservative as regards the book in which we find our unit of study.

Seder Zeraim - The Mishna

Peah (Corner-Crop)  
 Demai (Doubtful-Tithed)  
 Kilayim (Diverse Kinds)  
 Sheviit (Sabbatical Year)  
 Terumot (Heave Offerings)  
 Maaserot (Tithes)  
 Maaser Sheni (Second Tithe)  
 Hallah (Dough Offering)  
 Orlah (First 3 Year's fruit of Trees)  
 Bikkurim (First Fruits)

Sefer Zeraim - Mishneh Torah

Kilayim (Diverse Kinds)  
 Mattenot Aniyyim (Poor Provisions)  
 Terumot (Heave Offering)  
 Maaser (Tithes)  
 Maaser Sheni v'Neta Rebai (Second Tithe  
 and Fourth Year's Fruit)  
 Bikkurim (First Fruits (and Other  
 Priestly Gifts))  
 Shemittah v'Yovel (Sabbatical and  
 and Jubilee Years)

Rambam incorporated the Mishnaic tractates into these Units:

Mishneh Torah

Kilayim  
 Mattenot Aniyyim  
 Terumot  
 Maaser  
 Maaser Sheni v'Neta Rebai  
 Bikkurim  
 Shemittah v'Yovel

Mishna

= Kilayim  
 = Peah  
 = Terumot  
 = Maaserot and Demai  
 = Maaser Sheni and Orlah  
 = Bikkurim and Hallah  
 = Sheviit

It is clear from Rambam's Introduction to Seder Zeraim, in his Mishna Commentary, that he did not consider Berachot so much a main component of Seder Zeraim as an introduction to it. The material of Berachot is found in Sefer Ahavah of the Code.

Whereas R. Judah the Prince arranged the sequence of tractates according to issues of association and biblical citation<sup>45</sup>, Rambam

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Book of Asservations, collect material scattered through out several sedarim in the Mishna.

<sup>45</sup> Rambam attempts to explain Rabbi's organization of the tractates in his introduction to Seder Zeraim in his Commentary on the Mishna. Modern scholarly opinion is that

organized his chapters according to chronology of each topic. In choosing to do so, he followed the precedent already set by Mishna Peah's choice to address the agricultural poor provisions chronologically (according to the agricultural process) rather than by each product.

Hence the chapter begins: *Diverse Kinds* deals with seeds at sowing time, *Gifts to the Poor* are given at harvest time, *Heave Offerings* and *Tithes* after harvesting and threshing. *Second Tithe*, *Fourth Year's Fruit*, and *First Fruits* all follow these and are linked together by the obligation to bring them to, and consume them in Jerusalem. Finally, *Sabbatical* and *Jubilee* years come at the end of the *Book of Seeds* because they occur less frequently.

Although ostensibly the major concern of such a grouping of laws would be transparent, Rambam writing years later in the *Guide* describes these laws, and a few from other Books (such as *Loans*), as part of a broader theme:

I have divided all the commandments into fourteen classes...  
The fourth class comprises commandments concerned with giving alms, lending, bestowal of gifts, and matters that are connected with this ... and all the commandments we have enumerated in *Sefer Zeraim* (with the exception of those relating to *kilayim* and *bikkurim*). The reason for all these is manifest, for they are all equally useful in turn to all men. For one who is rich today will be poor tomorrow, or his descendants will be poor; whereas one who is poor today will be rich tomorrow, or his son will be rich.<sup>46</sup>

The commandments comprised in the fourth class are those included in *Sefer Zeraim* of our compilation, (with the exception of those dealing with *kilayim*), also [included in the fourth class are] ... the commandments we have enumerated in the Laws concerning the Lender and Borrower ... If you

the present arrangement of the tractates may reflect the quantity of their content, the largest coming first, and smallest going last.

<sup>46</sup> MN III:35

consider all these commandments one by one, you will find that they are manifestly useful through installing pity for the weak and the wretched, giving strength in various ways to the poor, and inciting us not to press hard upon those in straits and not to afflict the hearts of the individuals who are in a weak position.<sup>47</sup>

The unit in which our four chapters are found -- Hilchot Mattenot Aniyvim -- is Rambam's version of Tractate Peah. The change in name was meant as a more accurate description of the contents of the tractate/unit. Peah, after all, is only one component of the agricultural produce available to the poor. Gleaning, forgotten sheaf, poor tithe, and finally charity-relief, are all part of the mishnaic tractate. The name Hilchot Mattenot Aniyvim is found in Mishna Avot 5:9 (12 in some versions). Rambam writes on this phrase in his Commentary of Avot:

The poor-provisions are: the gleanings, the forgotten sheaf, peah, the grapes that fall off during picking, and the gleanings of the vine.

I prefer to translate Mattenot Aniyvim as Poor-Provisions rather than Gifts for the Poor since in modern English a gift is a voluntary offering, while the intent of these laws is that such offerings are a requirement. The name Mattenot Aniyvim also has the advantage of sounding similar to Mattenot Kehunah - the Priestly Provisions - with which most of the remainder of the Unit is concerned.

Ultimately, Rambam has decided to stay close to R. Judah the Prince's organization. Halachically and philosophically the positioning of the laws of almsgiving also are best left in their original location at the end of the tractate. But whereas we saw in the chapter on Mishna and Tosefta Peah that the laws of non-harvest poor relief comprised only a minor addendum,

<sup>47</sup> MN III:39

along with the rules for eligibility to the provisions as a whole, in Hilchot Mattenot Aniyyim the three mishnayot that were the entirety of that addendum, are here expanded into four chapters. In other words, the last three mishnayot of Mishna Peah, which were certainly less than one percent of all the material in the tractate, now accounts for forty percent of the entire unit. To do this Rambam had to gather material spread throughout the other sedarim of the Mishna and Gemara. In choosing to bring all that material into one place, and to choose for its location the original topical locus of the Mishna, reminds us how much Rambam must have seen himself as R. Judah the Prince a thousand years later. After all, Rebbi had not written the Mishna, he had arranged the material in it. Rebbi had provided the framework and pattern. We know that the earlier compilations, such as Eduyot, were collections organized according to any theme but topic. Rambam must have seen the vast quantity of Rabbinic writing from after the Mishna down to his own day, as the same sort of ataxia of material that Rebbi had taken upon himself to organize for the Jewish people lest its disorganization lead to irretrievable loss and failure to follow the laws properly. Rather than moving the laws of almsgiving into another book, such as Sefer Ahavah (into which certain formerly unclassified topics were collected), Rambam decided to stay with the accredited pattern of Rebbi.

But whereas the Mishna had little concern for organizing three mishnayot, Rambam had enough material to add to fill four chapters. The content and arrangement of those four chapters could not be based on the arrangement of three mishnayot at the end of Tractate Peah. He had already begun his organization of the Mishneh Torah in Sefer HaMitzvot.

Although the arrangement of the Mishneh Torah does not follow the exact arrangement in Sefer HaMitzvot and does follow the general principle that the biblical commandment is the basis of the rabbinic specifications. Therefore any Unit of any Book of the Yad can be divided into Subsections composed of one or more chapters always begun by a statement of the commandment and its category (positive and/or negative). In this we see that the Mishneh Torah is more than a compilation of rabbinic law, it is actually a compilation of biblical and rabbinic law. In choosing this approach, Rambam was surely responding to the implicit critiques of the Gemara and Halachic Midrashim which tried to reconnect the independent Mishna back to the biblical text. What Rambam failed to realize was that in his time, people would probably have accepted the lack of Scriptural prooftexts, but could not break the thousand year old habit of citing rabbinic sources by tradents.

For all their connection and relationship to the topic of Sefer Zeraim and to the first six chapters of Hilchot Mattenot Aniyyim, Chapters Seven through Ten are an independent and complete unit. They begin with a statement of the positive and negative biblical commandment of giving charity<sup>48</sup>. These chapters continue with the rabbinic specifications,

<sup>48</sup> I have used the english word charity throughout this study, nevertheless the word is problematic as an English translation of tzedakah. Charity is derived from the Latin caritas, meaning costliness, high regard and love. At this level it has some relationship to the Hebrew, but the modern overlay of meaning makes the word charity a misleading translation because of the sense of charity being a spontaneous and unprescribed donation. Yet the Jewish tradition is quite clear that while such free-will offerings do comprise some portion of tzedakah, its major defining component is its obligatory nature. Tzedakah, unlike charity, could and was compelled from each Jew. It was a social welfare tax. The word alms is likewise derived from the Greek eleemosyne, meaning pity or gifts of pity. My preference for the term alms is based on the fact that the word is not as overused today and still has an association of giving money to the

somewhat following the order of M. Peah 8:7-9, and they conclude as would any tractate of the Mishna, with a homiletic discourse on the topic just finished. Before beginning a more in depth analysis of the structure and content of these Four Chapters, it would be worth our while to topically review M. Peah 8:7-9:

7. a. Non harvest provisions for the transient and local poor, and quantities.
- b. The institutions which provide these provisions.
- c. The collection and distribution system of these institutions,
8. a. Eligibility for poor provisions in general,
- b. Exceptions to that definition,
- c. What a poor man cannot be compelled to sell
9. a. A further exception to the definition,
- b. Homiletic Conclusion

Actually 7b begins the discussion of eligibility for provisions, but it is interrupted by 7c discussing the administration of the collection and distribution system. I have already argued in the chapter on Mishna and Tosephta Peah, that 9a is misplaced, and should most likely be moved back into mishna 8, as 8d. We can now topically compact the above outline even further:

- What and how much are given
- Institutions and Administration
- Eligibility
- Homiletic Conclusion

Although Tosephta Peah generally expands on these topics, it does add one independent issue, that of promising charity. Frankly most of that

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poor. The word is more descriptive of the action than in what prompted the action. One would not think to say s/he gave alms to the Metropolitan Museum of Art, or Temple Emmanuel no less, but most people would be quite comfortable saying they had made a charitable contribution to those institutions. To this extent, alms is a preferable English equivalent.



discussion is sermonic in nature, but given the fact that the theme of pledging charity will reappear in the Gemara (although not our Tosephta passage itself), this is the one topic we could add on.

A number of other topics do find their way into Chapters VII through X, but that material, specifically donations to synagogues, and ransoming captives, is brought in by virtue of its position in the Gemara. In other words, those topics piggy-back their way in, most likely because Rambam did not have a better place to put them. This is especially true of the issue of synagogue donations which is included only because it follows the issue of pledges of charity in Nedarim (and it maintains the same position in Chapter VIII). The topic of ransoming captives has much stronger support for its placement because it constitutes, as far as the Gemara is concerned, a preeminent form of charity and many of the laws concerning charity and ransoming captives are compared in the Gemara (especially of Baba Batra and Ketubot).

My point, however, is that in the Tosephta, which clearly functions as a commentary on the Mishna, the only additional topic is that of pledging charity. We now have all of the components that form the outline of Chapters VII through X.

Chapter VII	A. The Biblical Commandments
	B. The Rabbinic specifications:
	i. What and how much are given
Chapter VIII	ii. Pledges of charity
Chapter IX	iii. Institutions and Administration
	iv. Eligibility
Chapter X	C. Homiletic Conclusion

The question of the location of Pledges of Charity requires several

comments. Twersky, in his Introduction, speaks of the introduction of the topic of pledges as a "stress and strain on the system."<sup>49</sup> But the implication that Rambam was uncertain or uncomfortable placing the topic at the beginning of Chapter VIII ignores Rambam's goal as organizer. In truth, there is no strain on the arrangement either topically or coherently. Chapter VIII, is the most appropriate place to introduce the topic for a number of reasons. First of all charity pledges, being vows, fall under the biblical commandment "do not delay its payment" which we already reviewed in the chapter on Sefer HaMitzvot. Rambam clearly would not want to introduce a biblical commandment in the middle of a chapter. Likewise, to have it immediately follow the commandments of charity in Chapter VII would confuse the flow of that chapter which addresses the rabbinic specification of what and how much to give. Furthermore, Chapter VII speaks to the individual while Chapter IX describes the system. Chapter VIII provides a bridge between the two being concerned with the transfer of pledged money from the individual to the collector. Where Chapter VII closes with a discussion of the prioritization of needy individuals in a family, Chapter VIII closes with a discussion of the institutional prioritization of needy members of the community.

Thus, Rambam use a discussion of charity as a personal vow to go from a chapter of halachot directed at the individual, to a chapter of halachot describing the institutional administration of charity. Since the only other opportunity would have been to insert the topic after the discussion of institutions and before the homiletic peroration, the argument that the topic is strained in its present position is anything but accurate. As we will see it is not only in regard to this issue that Rambam demonstrates his mastery

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<sup>49</sup> Twersky, Introduction, pp. 281-282

of keeping the flow of the text seamless.

The following outlines attempt to describe in a broad fashion the topical arrangement of each chapter.

## Chapter VII

### The Individual as Giver and Receiver

#### The Commandments: Positive

Negative

#### Biblical Specification: Rabbinic Specifications

Items Provided

Annual Minimum and Maximum [Money]

Who is obligated - even poor ->

#### Rules For Giving to the Poor:

- A. If we don't know the person: a) For food no investigation made  
b) For clothing we investigate
- B. If we know the person: no investigation made
- C. People we know aren't local poor: must give something  
[e.g., Gentiles and beggars going door to door]
- D. Transient Jew:
  - a) Passing through Town,
  - b) Staying Overnight,
  - c) Over Sabbath

#### Exceptional Persons:

##### Among The "Needy"

- a) One who will not accept charity, but has no personal means
- b) One who will accept charity, but has personal means he will not use

##### Among The Givers

- a) Gives too little - we compel him to give
- b) Gives too much - we avoid taking from him

##### Orphans (who are considered technically among the needy)

- a) May give or not give, but cannot be compelled
- b) exception: Can be compelled for their own benefit

#### Prioritization of Giving:

- a) One's Poor Relatives
- b) One's Poor Household Members ('adoptees', etc.)
- c) The Poor of One's City <which now moves us toward the communal issues>

## Chapter VIII

### A. Charity Vows and Payment

Biblical Commandment Not to Delay Payment

Give immediately

Setting Aside Amount If One Cannot Give Immediately

Substituting Funds for that Amount: a) Before Given to Charity Collectors - Yes

b) After Given to Charity Collectors - No

Synagogue Donations and Substitutions a) By Jews

b) By Gentiles

<Segue to:>

### B. Gentile Charity Prohibited

<Segue to:>

Ransoming Captives and Others [From Gentiles]

### C. Communal Prioritization of Communal Funds for Charity and Ransoming

A. Men before Women

B. Among the same gender: a) Ideal (all things equal)- according to caste descent

b) Scholarship takes precedence of caste descent

## Chapter IX

### Community: Institutions of Charity

Institutions For Food and Money

#### A. Appoint Collectors for Each

Aside: Some places no longer have Charitable Food Institution

Related: Food is distributed after Fast Days to the Poor

#### B. How many Collect for each

#### C. When they collect

#### D. Who is eligible for Each Institution

Use of Institutional [Collected] Funds

#### A. Community can use for other needs

Collector Protocol - Avoid Appearance of Suspicion

#### A. Keep together when collecting

#### B. All money on job goes into Charity Purse

- Even money that is not for the Charity Funds

#### C. When they have none to distribute to:

To prevent loss to poor:

- Can change money into easier denominations to hold onto

but must do this with other people and their money, cannot use their own

- Can sell food [money goes to poor], but must sell to a third party

#### D. Charity Collectors do not need to account for, or justify distribution of funds

The Community: Town Charity Taxes

The Poor: Definitions of Poverty and Eligibility  
 For institutions  
 For agricultural provisions

What the poor man may be compelled to sell

- A. Never can be compelled to sell house or furnishings  
 But, if he has furnishings or utensils of precious metal
  - a) Before applying for public charity -  
 cannot be compelled to sell and replace with cheaper ones
  - b) After applying for public charity -  
 compelled to sell for the money, replaces with cheap functional ones
- B. Cannot be compelled to repay after regaining wealth
- C. One with many houses, etc.  
 Cannot be compelled to sell at wrong time or bad price
- D. Cannot be compelled to return excessive funds collected for him
- E. Poor Man cannot be compelled to give to Communal Institutions  
 But his donation should be accepted - no matter how little or in poor condition  
 < segue to aesthetics of almsgiving >

## Chapter X

### The Aesthetics of Almsgiving: Homily on Tzedakah

Manner of Giving as important as Giving  
 Rebuke of those who give with Bad Manners  
 Particularly: Don't give with Harsh Words

How to Give

- A. No Money? Offer Kind Words
- B. Encourage others to Give, better than Giving
- C. The Ladder of Tzedakah
  - i - Prevent someone from becoming impoverished
  - ii - Almsgiving; Based on Combination of Four Factors
    - 1) Secrecy of both identities, (if not possible then ->)
    - 2) Before Requested (if not possible then ->)
    - 3) Appropriate Amount (if not possible then ->)
    - 4) Give in Considerate Manner

Opportunities for Giving  
 Merit for not Taking  
 a) Homiletic Conclusion

The next four chapters present a translation of Chapters VII through X of Hilchot Mattenot Aniyyim as well as each halacha's source texts and an analysis of both. The text of each halacha is given in the larger indented type. Sources texts are given in the smaller indented type; their identity and location are underlined at the beginning of each one. My analysis is presented in the non-indented smaller type.

## Chapter 5

Hilchot Mattenot Aniyyim: Chapter VII

## Halacha 1

It is a positive commandment to give alms to the poor of Israel, according to what is fitting for them, if the giver can afford it, as it is said, *You will surely open your hand unto him* (Deut. 15:8) and again, *Then you will uphold him; as a stranger and a settler he will live with you . . . that your brother may live with you* (Lev. 25:35-36).

## Halacha 2

He who seeing a poor man begging turns his eyes away from him and fails to give him alms, transgresses the negative commandment, as it is said, *You will not harden your hear, nor shut your hand from your needy brother* (Deut. 15:7).

"P.C. # 195 - By this injunction we are commanded to give charity, to support the needy and ease their lot. This commandment is expressed in various ways in Scripture, as, *Thou shalt surely open thy hand unto thy poor and needy brother*, and again, *[And if thy brother be waxen poor ...] then thou shalt uphold him*, and yet again, *That thy brother may live with thee*. The meaning of all these expressions is the same, namely, that we are to help our poor and support them according to their needs.

"N.C. # 232 - By this prohibition we are forbidden to fail to give charity and relief to our needy brethren, when we have become aware of their distressing circumstances and it is in our power to support them. This prohibition is contained in His words (exalted be He), *Thou shalt not harden thy heart, nor shut thy hand from thy needy brother*. This forbids us to behave in a miserly and penurious fashion to the point of failing to give to the deserving."

These two halachot serve as an introduction to the entirety of the last four chapters of Hilchot Mattenot Aniyyim. They simply serve to define that charity exists in both positive and negative formulations. The negative formulation is an important point, as mentioned in the earlier chapter on Sefer HaMitzvot, because failing to give is not a



mere omission, but the transgression of a negative commandment. Note the change in organization from Sefer HaMitzvot to the Code. In Halachá 1 (the positive commandment), Rambam writes "according to what is fitting for them, if the giver can afford it", while the corresponding formulation is found in the negative formulation from Sefer HaMitzvot "when we have become aware of their distressing circumstances and it is in our power to support them." A new formulation is offered in the negative formulation of the Code: "when we become aware of their distressing circumstances," has been transformed into "He who seeing a poor man begging turns his eyes away from him ..." which is nothing less than a short hand form of the first warning. In this way both positive and negative formulations in the Code carry essentially the same warning that was found only in the negative formulation of Sefer HaMitzvot. Halacha 2 introduces a theme that Rambam uses only in the Code, namely the notion of seeing a beggar and turning away. There is no more basic level of becoming aware of a person's poverty than to see them in the street begging. Once again Rambam reduces the circumstance and description to the most basic possibility. Every person walks the streets and sees the poor. You cannot claim to be unaware of those who are in need under the Code's formulation.

These prerequisites are not part of the biblical formulation, neither are they clearly stated in the rabbinic tradition. These provisions represent Rambam's attempt to present as realistic and accomplishable, a commandment might otherwise be taken as impossible to fulfill, especially when we consider that for all the charity provided, the poor were probably an endemic problem. Rather, this formulation follows the general theme of this chapter - personal giving. The mitzvah is a commandment to the community, but through each individual. As is noted in the sources, the strength of tzedakah is based on the numerousness of small, personal, contributions. Therefore the Code avoids a formulation that would only speak to the community at large, but not directly address the individual. (Also note that the same biblical verses have been quoted as the source of this mitzvah.)

### Halacha 3

You are commanded to give the poor man according to what he needs.

Rambam uses this statement to provide the linkage from biblical commandment to the Rabbinic specification of particulars. The English fails to convey Rambam's use of language. The biblical commandment is to provide for the poor person dei mahsoro asher yehsar lo, which is translated "sufficient for his need according to his need"; the above line -- "according to what he needs" -- is in Hebrew mah sheh-haser lo, which differs just slightly from the biblical formulation - asher haser lo. Although Rambam theoretically could have began with the next verse, we will see his penchant for using the

end of a halacha or chapter to introduce or segue into the next halacha or chapter.

If he has no clothing, he should be clothed.

It is peculiar and puzzling why Rambam fails to mention feeding the poor here, especially since halachot 6-8 constitute a unit on the topic of feeding and clothing the poor. It seems that this halacha acts as a preview or digest of the items. The discussion, for example, about who and when to give clothing must wait until halachot 6-7.

If he has no house furnishings, they should be bought for him.

If he has no wife, he should be helped to marry.

A summary version of Halacha 4 below; based on the second half of the baraita (from B. Ket. 67b) listed there.

If it is a woman, she should be given in marriage.

By implication from M. Ketubot 6:5 found in B. Ketubot 67b, which describes a female orphan being married off by her guardian. This is the first in a large number of instances when Rambam attempts to define charity as a comprehensive system. In doing so he will appropriate material from other areas, or, as he does here, apply general rules of logic to derive a ruling. On this level Rambam is more than a mere collector and arranger of previous materials. He might be compared to a jig saw puzzle expert who has been given an apparently incomplete puzzle which he is convinced must create a total picture. When a piece that strikes him as missing is noticed he fills in the gap relying on the pieces closest to it to provide the correct picture.

Even if it has been his wont to ride a horse, with a servant running in front of him, and he has now become poor and has lost his possessions, one must acquire for him a horse to ride and a man servant to run before him, as it is said, *Sufficient for his need in that which he wants* (Deut. 15:8).

You are thus obligated to fill his want; you are not, however, obligated to restore his wealth.

#### B. Ketubot 67b

Baraita: How is "sufficient for his need" to be understood against "according to what he desires"?

- I. "Sufficient for his need" means his maintenance, but we need not make him rich.
- II. "According to his desires" implies providing him with even a horse to ride on, and a slave to run before him. Hillel the Elder did just that, and when he could not find a slave, he himself ran three miles.

[Sifre Devarim, Pisqa 116, T. Peah 4:10 Q-R, T]

[At B. Ket. 67b, this baraita actually precedes the one below in Halacha 4]

Although the halacha is borrowed from the baraita above, Rambam has rearranged the order. The clear purpose is to conclude the halacha with the statement that we need not restore the poor person's lost wealth. By this editorial rearrangement, Rambam attempts to answer a problem that begins in the Tosephta [T. Peah 4:10-11] and is actually asked, in somewhat different form, in the Yerushalmi to Peah [8:8 II. B-J], namely how can we on the one hand be obligated to provide the poor person with his desires and yet not be obligated to restore his wealth. The answer offered here by this formulation is ingenious. The poor man has a right to have such things given to him, but the giver need only give as he is able. This conforms with the general theme in this chapter - personal giving.

It is possible that Rambam had a version of T. Peah 4:10 which better corresponded to Sifre Devarim Pisqa 116. Today, Pisqa 116 is the only Tannaitic source, outside of the Bavli, for the ruling that we need not restore the poor man's wealth.

Here we see the first among many direct borrowings of Scriptural quotes from the source text which contained them. In other words, Rambam does not insert Scriptural quotes, he takes them directly from the text upon which he is relying for his ruling.

Note that even the name of Hillel is omitted. This follows with the general practice of avoiding the use of tradents in the Code.

#### Halacha 4

If an orphan who applies to be wed, they must first rent a house for him, ready a bed for him, and provide his home furnishings, and afterwards marry him to a wife.

#### B. Ketubot 67b

Baraita - An orphan who applies [lit: comes] to be wed [from charity]:

- Is given:
- a) a rented house
  - b) a prepared bed
  - c) objects [for] his use
  - d) and afterwards, a wife

The above items are justified by an exposition on Deut. 15:8.

"Sufficient for his need (dei mahsoro) according to what he desires." [T. Ketubot 6:8, c. above is not found there]

"Sufficient for his need," refers to a house

"according to what he (lo) desires," refers to a bed and table;

[But, T. Peah 4:10 R., T. Ketubot 6:8 L. and Sifre D. Piska 116 read '... refers to a slave, a horse]

"for him (lo)," refers to a wife, as Scripture says,

"I will make him a help mate for him (lo)." (Gen. 2:18)

[T. Ketubot 6:8 M-N, T. Peah 4:10 Q-S]

Rambam clearly relies on the formulation of the Baraita as found in Ketubot. Note that the Code avoids borrowing Scriptural verses that are used in an expository manner, such as relying on the extraneous use of "lo".

Orphans are accorded a special status as regards charity in the sources and likewise by Rambam. Unlike the generic poor, or the captive, the orphan is unable to change his or her status. Orphan, by the way, does not mean parentless but fatherless. Rambam had the obvious choice of grouping together halachot concerning orphans. Rather, he chose to spread them through out the four chapters, perhaps to demonstrate that how they fit into the structure of the overall system. I suspect, however, that it is more likely that he chose this organization, because the material concerning orphans is spread through out the sources and Rambam often follows the arrangement of rulings in the sources for his own arrangement (see the introduction to these four chapters).

The halacha's formulation "home furnishings" is based on the baraita's "objects for his use" which is lacking in the Tosephta, and has clearly been imported from M. Peah 8:8 G. - "They may not compel him to sell his house or the objects for his use." I explained in the chapter on Mishna and Tosephta Peah that this phrase originally probably meant "tools of his trade." The interpretation "home furnishings" is based on B. Ketubot 68a, which discusses what the poor can be compelled to sell. [For an analysis of that discussion see MA 9:14 which utilizes that source directly.]

Like Halacha 5 below, the orphan must come forward and make a request, although in the case of an orphan, the provisions given him are specified regardless of what he might ask for or want.

## Halacha 5

If the poor man comes forth and asks for that which is 'sufficient for his need', and if the giver is unable to afford it, the latter may give him as much as he can afford. [cf. T. Peah 4:17 E]

B. Baba Metzia 31b

"You shall surely give (Naton titen)" (Deut. 15:10)

From this you might infer that you only need give a large gift

[sufficient for the poor person's need,

[and that lacking that amount, you need not give anything to him].

But the double use of the verb implies

[you must give whatever you can afford,] even a small gift, in all cases

If the giver is unable to fulfill the total request he may give as much as he can afford. This confirms my comment on the arrangement of halacha 3. Namely, the poor person may request as much as he wants, but to make this mitzvah accomplishable by the average individual, we need not restore the poor person's wealth, nor give beyond our capacity. This last notion introduces the second half of this halacha which defines how much is too much and too little. As we will see in halacha 11 of this chapter, a person who would give beyond his capacity to give -- (perhaps in order to fulfill a poor person's personal request) -- should be avoided by collectors.

How much is that?<sup>50</sup>

In choice performance of this religious duty, up to one-fifth of his possessions; [cf. Yad, Sefer Haflaah, Hilchot Arakin, 8:13]

B. Ketubot 50a

R. Elai: It was ordained at Usha that if a man wishes to spend liberally [in regard to charity]

he should not spend more than a fifth [of his wealth].

Baraita: If a man desires to spend liberally [on charity],

he should not spend more than a fifth [of his wealth],

[since by spending more] he might himself become in need [of the charity] of people [and further tax the charity system].

Incident follows to prove the rule,

They derived the limit from Gen. 28:22, based on the double use of the verb for tithing: i.e. they took it to mean two tenths, instead of the plain meaning: a single tenth.

<sup>50</sup> Hoffmann, in Midrash Tannaim gives this halacha on p. 82. The source for the text is Midrash HaGadol and Hoffmann notes the correspondence to our halacha here. Nevertheless, it remains unclear whether Midrash Gadol has preserved a tannaitic text or perhaps incorporated Rambam's own writing. Strack himself noted that Rambam's writing is often included in the anthology.

B. Ketubot 57b

When Mar Uqba was about to die  
 He had his charity account brought to him  
 He had 7,000 Sijan (gold) denars  
 He gave away half his wealth

Objection: But R. Elai taught that at Usha they established  
 a limit of one-fifth.

Response: The limit applies only during a person's lifetime  
 (for fear of his own impoverishment)

Y. Peah 1:1

Mishna: These are the things for which there is no specified  
 measure [of allocation]: Peah, ... and deeds of kindness.

Gemara: This statement is in regard only to personal-deeds, but  
 as regards monetary-deeds, there is a specified measure.

This is according to R. Shimon b. Lakish quoting R. Yosi b. Hanina:  
 At Usha a decision was made that a man should give away one  
 fifth of his possessions for a mitzvah.

R. Gamliel b. Ininu asked of R. Mana: If he allocates a fifth each  
 year, at the end of five years will he not have given away everything  
 [he has]?

He replied: At the beginning he gives away from his capital,  
 and afterwards from his earnings.

Pesikta Rabbati Pisqa 25

According to R. Shimon b. Lakish quoting R. Judah b. Hanina:  
 At Usha a decision was made that a man should give away one  
 fifth of his possessions for charity.

Why a fifth?

In order to provide an amount equal to that which [formerly] was set  
 aside for the priests and the tithes.

Two things should be noted. First, Rambam transforms the maximum limit into the optimal level of giving. Although it is not a difficult transformation, he could have limited it to those with wealth and made ten percent optimal. Second, absent is any discussion of the topic that concerns the Yerushalmi, namely, twenty percent of what. "Possessions" [nekasav], might also be translated as "business", perhaps he means "[gross yearly] income"? Rambam seems content to use the wording of the sources.



Also absent is any discussion about how much can be willed to charity.

There is one problem with the segue and arrangement here. The beginning of the unit is concerned with fulfilling the request of an individual poor person who has made a request. Logically we should probably have the rule about not turning away a poor person going door to door without at least a dry fig (MA VII:7), but this provides Rambam with an opportunity to describe the parameters. Nevertheless, I cannot imagine that his intent was that a person should give his entire twenty percent to a single poor person at one time, rather than letting the charity overseers determine the distribution. On the other hand, this probably represents an ideal, especially since halacha 3 has already described such a situation as possible. [See my comments there.] Also missing is any explanation of how the figure was arrived at.

in middling performance, up to one-tenth of his possessions,

Sifre [as quoted by Tosafot to B. Taanit 9a]

Aser T'aser: The following is found in Sifre: "You shall surely tithe all your agricultural produce which is produced in the field every year."

From this we might only deduce that agricultural produce is tithed. How do we know that this also applies to loan interest, business, and other profits?

From the word 'all' ; for the verse could have stated "your agricultural produce".

What is the significance of "all"? To include loan interest, business, and all other profits.

The Code's statement of "middling performance" represents a logical middle ground between the optimal (maximum) amount of twenty percent and the absolute minimum amount of a third of a sheqel.<sup>51</sup>

less than this brands him as an ill spirited person [lit: of the evil eye].

M. Avot 5:13 (and Rambam's commentary)

There are four types among almsgivers:

One who desires that he [himself] gives, but not that others should give  
he is ill spirited regarding other people's giving]

One who wants others to give, but he will not give,  
he is ill spirited toward himself

<sup>51</sup> On the topic of tithing money, see Maaser Kesafim, edited by Cyril Domb, Feldheim Pub.



One who would himself give, and have others give,  
he is a saintly man.

One who does not want to give, nor wants others to give,  
he is a wicked man.

The statement serves here as a warning preceding the upcoming statement of the absolute minimum. Rambam is in effect saying, 'yes, there is this absolute minimum of a third of a sheqel, but even if you have fulfilled the mitzvah thereby, you are personally going to be scorned by your community.

At all times one should not permit himself to give less than one-third of a sheqel per year. He who gives less than this has not fulfilled this commandment at all.

B. Baba Batra 9a

R. Ashi: The minimum charitable contribution each year is a third of a sheqel [not more than one or two zuz] - based on the figure set down (Neh. 10:33) for the Temple's repair.

"At all times" clearly implying, even when you've had a bad year economically, you are not exempted from the mitzvah. As we already noted in the chapter on Sefer HaMitzvot, charity is an absolute obligation at all times and places and upon all Jews.

Remarkably, the verse from Nehemiah is not used. That verse is certainly among the type that Rambam likes to use. Perhaps space was a concern. If he offered a proof text for this figure, he might have felt compelled to provide a proof text for each figure.

Even a poor man who lives entirely on alms must himself give alms to another person.

B. Gittin 7b [Exposition of Nahum 1:12]

"And though I have afflicted you": Mar Zutra said:

Even a poor man who subsists on charity should give charity.

Much of the originality of this halacha is its gathering together of rulings from disparate sources. The arrangement moves from the wealthiest and how much they should give to the poorest and how much they should give. It is no coincidence that the ruling -- that even the poor must give -- comes below the prescribed minimum. by listing the poor person's requirement to give, Rambam also returns us to the overall theme of the chapter - personal giving. Even the poor person must give.

Halacha 6

If a poor man unknown to anyone comes forth and says, "I am hungry; give me something to eat," he should not be examined as to whether he might be an imposter -- he should be fed immediately. If however he is naked and says, "Clothe me," he should be examined as to possible fraud.

If he is known, he should be clothed immediately, according to his dignity, without any further inquiry.

B. Baba Batra 9a

R. Huna: Applicants for food are examined

Applicants for clothing are not examined

The rule can be based on Scripture or common sense:

Common Sense: One without clothing is exposed to contempt,  
but not so one without food

Scripture: Isaiah 58:7, reading paros (deal) as parosh (examine),  
hence changing the plain meaning from  
"deal to thy bread to the hungry" to  
"examine the hungry before giving thy bread"

Scripture also states:

"When thou seest the naked that thou shalt cover him"  
[Is. 58:7b]

R. Judah: Applicants for clothes are examined

Applicants for food are not examined

The rule can be based on common sense or Scripture:

Common Sense: One without food is actually suffering,  
But not so, one without clothing

Scripture: Isaiah 58:7, reading the plain sense of the text,  
"deal thy bread to the hungry"

Scripture also states:

"When thou seest the naked", that is to say,  
When you have examined his need

There is a Baraita in agreement with Rab Judah:

If a man says "clothe me", he is examined

If a man says "feed me", he is not examined

[cf. T. Peah 4:8 A]

Y. Peah 8:7 H-J

R. Ba b. Zavda said, "Rav and R. Johanan had a dispute.

One said: We examine when considering to clothe a person.

But not in matters of things that maintain life (i.e. food),

The other said: Even in regard to clothing, we need not examine,  
because of the covenant made with Abraham our Forefather."

But the Baraita [below] seems to contradict this last opinion that we do not investigate in regard to clothing. This [apparent contradiction] is explained [away] by the Baraita [itself]. [T. Peah 4:8]

H. Under what circumstances does this [limiting to food] apply?

I. [It applies] so long as [the town's people] do not recognize the poor person.

J. But if they recognize him, they even provide clothing for him.

\*. And everything is according to his dignity [not found in our Tosephta]

[This is taken to mean that we only investigate when we are called upon provide him with fine clothing as mentioned in T. Peah 4:10 G-H:

"If he used to wear fine wool before he became poor, they supply him with clothes of fine wool."

But if he requests only simple clothing, we do not investigate]

[cf. Y. Hor. 3:4(7) IV. A-E, Lev. R. 34:14, Y. Shimon, & Y. Mahiri: Is. 58]

Rambam is obviously familiar with all these texts. Rambam utilizes the Baraita in Baba Batra as the basis of his formulation. Note however that the baraita is framed by the Tosephta's concept of recognition [T. Peah 4:8 J]. So Rambam speaks only of an unknown person. If the person is known he is not investigated, and furthermore he is clothed immediately according to his dignity. The Yerushalmi text, and Rambam's formulation, suggest that there existed a Tosephta variant following T. Peah 4:8 J that said lefi kevodo, [we may even clothe him] according to his dignity. Rambam rejects the resolution of the Yerushalmi, that we only investigate unknown poor who request fine clothing.

#### Halacha 7

One must feed and clothe the Gentile poor together with the Israelite poor, for the sake of the ways of peace.

#### M. Gittin 5:8

A. They prescribe these [following] things in the interests of peace;...

I. If a poor person beat the top of an olive tree

J. Whatever [falls] beneath it [the tree] comes under the law of theft,

K. for the sake of peace

L. R. Jose says: This is complete theft

M. They do not prevent the Gentile poor from gathering gleanings, forgotten sheaf, and peah<sup>52</sup> -

N. for the sake of peace

<sup>52</sup> T. Peah 3:1 M-N reads, "They do not designate poor man's tithe for poor Gentiles, but as a kindness, householders may give poor Gentiles common produce that has been properly prepared [i.e., tithed]."

T. Gittin 3:13

- A. A poor man who takes them [olives which he gleaned from a tree] in his hand and throws them down one by one --
- B. what is under it [the tree] is wholly subject to the prohibition against thievery.
- C. A city in which Israelites and Gentiles live --
- D. the collectors of funds for the support of the poor collect equally from Israelites and from Gentiles,
- E. for the sake of peace.
- F. They provide support for the poor of the Gentiles along with the poor of Israel.

T. Gittin 3:14

- A. They make a lament for, and bury, Gentile dead,
- B. for the sake of peace.
- C. They express condolences to Gentile mourners,
- D. for the sake of peace.

Rambam interprets "support for the poor of the Gentiles" in its most basic and minimal formulation, i.e., "we feed and clothe..." Note how C. (above) is unnecessary since there were no communities where Jews truly lived separately from Gentiles in Rambam's time. I will return to D.-E. (above) at MA VIII:9

In the case of a poor man who goes from door to door, one is not obligated to give him a large gift, but only a small one. It is forbidden, however, to let a poor man who asks for alms go empty-handed, just so you give him at least one dry fig [*g'rogeret*], as it is said, *O let not the oppressed turn back in confusion* (Ps. 74:21)

B. Baba Batra 9a

- Baraita: We do not give [lit: pay attention] to beggars going from door to door. [T. Peah 4:8 K-L]
- Gemara: R. Papa followed this ruling,  
R. Samma objected - "If you do not give him, no one else will give him; is he then to die of hunger?"  
R. Papa quotes the above rule  
R. Samma responded: "This [prohibition] applies to large requests, but we do respond to his request for a small gift" [cf. T. Peah 4:2 I, 4:10 I-J]

[Also see the first text analysis of Halacha 5, above.]

Y. Peah 8:6 IIA-B [after which follows M. 8:7, below in Halacha 8]

A. It is stated in the Tosephta [T. Peah 4:8 K-L],

[If a poor person] went from door to door, [begging for food from each family],

they are not obligated to give him in any way, [because he should receive his needs from the appropriate charity institution and not from bothering individuals.]

B. R. Jonah said, "[This law applies] only so long as [the householder] does not shortchange [such a beggar] from the aguron, the beggar's penny, that most would give him."

The mention of a small gift as opposed to a large one is also reminiscent of Baba Batra 8a's source text [ahead in halacha 12]. It is also reminiscent of the small snack the householder gave to the poor when returning to the city from the farms in T. Peah 2:18 C-D.

There is some speculation that Rambam had a version of the Yerushalmi, or another text, that read g'rogeret instead of aguron. This would be more convincing if the verse from Psalm 74 was also found in the Yerushalmi, which it is not. If we could find the text using that scriptural text, we could probably find the true source text for the "dry fig."<sup>53</sup> This assertion is based on the fact that Rambam consistently imports his biblical quotes from his source texts.

What joins these two seemingly disparate topics together in this one halacha? What does feeding and clothing the Gentile poor have to do with beggars going door to door? On the one hand, the beggar who goes from door to door may be of indiscriminate religion. One is therefore prohibited by this halacha from turning such a person away on the presumption he might be a Gentile. In the same vein, if Gentile poor are reluctant to go to Jewish institutions of charity, and prefer to go door to door, the Jewish community will not get a bad reputation for not giving to them. We can only wonder what is reflected from Rambam's own situation in Egypt in this halacha.

## Halacha 8

'A poor man traveling from one place to another must be given not less than one loaf of bread that sells for a pundion when the price of wheat is one sela per four seahs.' [M. Peah 8:7]

We have already explained the value of all measures.

See Hilchot Eruvin 1:12-13. This comment is reminiscent of a similar comment in his Mishna Commentary: "Seah- It is a quantity whose measure is six (6) qabs, and we

<sup>53</sup> For an incidental story on figs and charity see B. Taanit 24a.

have already explained the measure of a qab." Rambam clearly prefers not to repeat explanations of measures. Also added are clarifying words absent in the Mishna such as: "one loaf [of bread that sells] for a pundion when [the price of wheat is] one sela per four seahs." The fact that this loaf is supposed to be the equivalent of two meals (mentioned in the Mishna Commentary) is omitted. Likewise any discussion of the value system is absent. The description of the Mishna could certainly no longer hold true to the variety of monetary systems in Rambam's time and place. Rambam merely reproduces the Tannaitic valuation.

'If he spends the night' [M. Peah 8:7], he must be given a mattress to sleep on and a pillow to put under his head, as well as oil and beans for his repast. [T. Peah 4:8 B-D]

#### B. Baba Batra 9a

It was taught in a Mishna elsewhere [M. Peah 8:7]:

- A) Minimum given to the transient poor: One loaf of bread; worth a pundion (when 4 seahs of wheat equals a sela [4 zuz] in value)
- B) A [poor person] staying overnight is given:  
Provisions for spending the night

R. Papa: These are 1) a bed [metza] and, 2) a pillow [keset]

#### Shabbat 118a

What is meant by 'provisions for spending the night'?

R. Papa said: A bed [purya] and a bolster [sadya]

The Code combines the different opinions of the Tosephta and Bavli regarding what constitutes provisions for spending the night. The fact that it is somewhat obscure is made clear by the need of R. Papa to comment on the phrase. What shall we make of the two different formulations, one Hebrew, one Aramaic. Perhaps they were both necessary for different audiences and were used by R. papa in different circumstances. Rambam clarifies the slight problem in differentiating the two items -- both of which can be taken to mean mattress -- by adding the phrases "to sleep on", and "to put under his head."

If he stays over the Sabbath, he must be provided with food for three meals, as well as oil, beans, fish, and vegetables. [T. Peah 4:8 F-G]

B. Baba Batra 9a: [Mishna Peah 8:7] (continued from above)

- C) A [poor person] staying over the Sabbath is given:  
Food for three (3) meals

Once again rambam combines the Tosephta and Bavli provisions. Unlike his Mishna commentary, there is no discussion here of how many meals are left to be eaten during the rest of the week.

If he is known, he must be supplied according to his dignity.

[cf. T. Peah 4:8 I-J, where if he is known he is even supplied with clothes.]

As I commented in Halacha 6, Rambam seems to be familiar with a variant Tosephta passage at T. Peah 4:8 that adds the phrase "according to his dignity." The place we do find this phrase is in M. Ket. 6:5. One way or the other, the <sup>54</sup>implication is that the phrase "according to his dignity" always applies to clothing, or minimally, to non-food relief.

#### Halacha 9

If a poor man refuses to accept alms, one should get around him by making him accept them as a gift or a loan.

If, on the other hand, a wealthy man starves himself because he is so penurious with his money that he would not spend it on food and drink, no attention need be paid to him.

#### T. Peah 4:12

- A. "[As regards] one who says, 'I shall not be supported by others'--
- B. "they act considerately toward him, and support him by giving [money to this poor person] as a loan and when later on they convert it to a gift," says R. Meir.
- C. But the sages say, "They give [the poor person money] as a gift, and later they convert it to a loan."
- D. R. Simeon says, "They say to him, 'Bring us some collateral,' in order to allow him to take the money."

<sup>54</sup> However, Hoffmann in Midrash Tannaim, p. 82, uses the phrase as a precursor to an exposition of Deut. 15:8. According to his comments, this phrase finds its source in Sifre Devarim. But according to the critical edition of Finkelstein, the use of the phrase in this particular exposition is found in Midrash Tannaim, and he attributed its source to Midrash HaGadol. Hoffmann on the other hand makes the opposite claim. One way or the other, there is little support for this usage in any other source text.



Sifre Devarim Piska 116

*You will surely open [your hand]* -- open first with words,  
for if he is ashamed, you should say to him, "Do you need a loan?"  
Hence the Sages have said: Charity should be offered the same way as a loan.

*And will surely lend him* -- you should first give him what he needs,  
and then suggest that he deposit a pledge with you; so taught R. Judah.  
The Sages say: You should say to him, "Bring a pledge," in order to encourage him

B. Ketubot 67b

Baraita - If a man has no means and does not wish to be supported  
from poor funds,  
give it to him as a loan; later on they can convert it  
into a gift.- R. Meir  
Give it to him as a gift; later on they can convert it  
into a loan.- the Sages  
[T. Peah 4:12 A-C]

How can the Sages declare this when (according to the Baraita) this one refuses gifts?

Rava: [Their meaning is that] it is [always] presented as a gift at the outset.  
[When he refuses, they then follow R. Meir's ruling]

Baraita - If a man has means, but does not maintain himself [with them]  
(cont'd) They give him [support] as a gift, later on they demand he  
repay. [This formulation is not found in the Tosephta]

Exception: How can that be, he would then never accept another "gift" ?

Explanation: R. Papa: Repayment is claimed after his death.

Baraita - A. R. Shimon [replying to both questions in the baraita]  
(continued) 1) If he has the means, but will not maintain himself:  
Then no one need pay attention to him. [Not in T. Peah]  
2) If he has no means, but will not accept maintenance  
He is told: "Bring a pledge and you will receive a loan"-  
in order to raise his sunken spirit/esteem [T. Peah 4:12 D]

Baraita - What is the meaning of the doubled verb form of "lend"

in Deut. 15:8?

a) "To lend": refers to one with no means who will not accept maintenance.

Give it to him as a gift; later on they can convert it into a loan

b) "Thou shalt lend him": refers to one with means who does not maintain himself [with them].

Give him [support] as a gift, but later on they demand his repayment after his death. - R. Judah

Sages: Do not pay attention to this type (b).

Exception: Then how shall we interpret the repetition of the verb?

Answer: It is not significant. The Torah is using human phraseology.

#### B. Baba Metzia 31b

"You shall surely lend him" (Deut. 15:7) According to this statement,

I might deduce only that we must lend him if he has no means and does not wish to be supported from charity.

But from the use of the double verb form we learn this statement applies in all cases, even to one who has means, and does not wish to be supported from charity.

But according to R. Shimon: (who holds that if he has means and does not wish to be supported from charity, we are not obligated to help him),

why then is there a double verb form?

The Torah is using human phraseology.

This halacha begins a section of this chapter devoted to the issue of exceptional circumstances. Halachot 10-12 are concerned with issue of collection and exceptional groupings of people from whom we demand or refuse to take at all. But this halacha, 9, is concerned with exceptions in distribution as regards the receiver. The two examples are different sides of the same coin, he who will not take but has no means to support himself, he who will take but has means to support himself.

Rambam was probably in the same dire circumstances we are when comparing all these texts. The traditions and their traditions are hopelessly confused. His solution was ultimately to disregard the debate over whether to offer such a person a gift or a loan first. Nevertheless he does put the word "gift" before "loan" in the formulation, which is of course the 'order' that the Sages and Rava suggest.

Absent from the formulation of the halacha is the notion found in the sources of reclaiming the loan or gift after a man's death (that absence is supported by MA IX:15 -

"A poor man who has become wealthy is not asked to repay past assistance." Also absent is the notion of asking for or accepting a pledge to give the money the guise of a true loan. Notice how the source texts themselves blur the distinction between charity and loans to the poor. Somewhat irksome to the scholar is the fact that the second half of the halacha -- not paying attention to those with means who starve themselves -- is found as a baraita only in the Bavli, but not in any other texts, especially the Tosephta passage that seems to be the source of this discussion. Rambam has spelled out the meaning of the refusal to maintain oneself as "starving oneself" and refusing to spend one's own money "on food and drink," which are the two basic needs of the poor. (cf. MA IX)

Rambam finally does spell out what is being attempted in this process when he writes "one should get around him [i.e., his objections to taking charity]"

### Halacha 10

He who refuses to give alms, or give less than what is appropriate for him, should be compelled by the court to comply, and should be flogged for disobedience until he gives as much as the court estimates he should.

#### B. Ketubot 49b

A court cannot compel a father to support his children.

Exception: A wealthy man can be compelled to support his children.

Related Exception: A wealthy man can be compelled to give to charity.

This was the case with Rava who compelled R. Nathan b. Ammi to give 400 zuz to charity.

#### B. Sanhedrin 17b

Mishna lemma: What must the population of a city be in order that it may qualify for a Sanhedrin? One hundred and twenty, etc.

Gemara: ....Baraita: A scholar should not reside in a city where the following ten things are not found:

A court of justice that imposes flagellation and decrees penalties; a charity fund collected by two and distributed by three . . .

Note the introduction of the notion that the court has the power not merely to compel a previously promised amount, but to compel an amount it deems "appropriate for him to give." Although this is not a surprising ruling, it does demonstrate how charity was clearly considered an obligatory tax. How the balance was reached between giving coins on the street and money to public assistance fund is unclear. It is reasonable to assume that the community supervisors kept track of people's public contributions.

Rambam also turns the descriptive text of Sanhedrin which mentions the court's capability to flog, and transforms it into something of an obligation. Furthermore, the ruling is extrapolated from the text only on the basis of the 'flogging' court and the charity overseers being mentioned together. It is quite a jump to Rambam's ruling. Nevertheless, the court clearly had the ability to compel, and this most likely was one of the means, if the most drastic of them. (For example they could seize a person's house or property, as below.) By its nearly prime position in this unit which addresses exceptional circumstances, especially compelling the recalcitrant giver.

The court may even seize his property (in his presence) and take from him what is appropriate for him to give. One may take a pledge<sup>55</sup> for charity, even on the eve of the Sabbath.

#### B. Baba Batra 8b

What is the nature of the authority [of charity collectors] ?!

They can take a pledge for charity even on Friday

[i.e. even when the householder is busy preparing for the Sabbath]

#### B. Qiddushin 76a

Mishna: He who marries a priest's daughter must investigate her descent up to four mothers [i.e. generations], which are eight [women] ... in the case of the daughter of a Levite or an Israelite, one more [generation] is added.

... those whose parents were established to have been among the public officers or charity overseers are permitted to marry into the priesthood, and their descent is not investigated.

Gemara: Mishna lemma: Or charity overseers are permitted to marry  
What is the reason?

Because they quarrel with people.

Explanation: "Pledges may be taken for charity, even on Friday"  
If there were a blemish in this person's family, it would become known [such is the nature of people]

<sup>55</sup> The various English translations all seem to be somewhat ambiguous. The plain meaning is that charity collectors may enter a person's home (even on Friday before the Sabbath) and forcibly take a possession of his as a security if that person has failed to give his allocation to charity

### Mishna Commentary

It is a rule among us that whoever does not give to the fund according to his obligation, they enter his house and levy an assessment upon him. Thus the [sages] said: Charity is exacted even on Fridays. And therefore they do not assign the collection [to] less than two [people], since the rule among us is not to give authority over the community to less than two.

The importance of taking a pledge on the Sabbath can be compared to saying the IRS has the right to take possession of your house for back taxes on the day of your child's wedding. The householder is busy preparing for the Sabbath, and in walks the charity collector who might take the dinner table. Clearly this happened on occasion as the Qiddushin text makes clear. Rambam follows the general precedent involved with pledges and loans, i.e., securities can not be claimed from someone unless he is physically present at the time (cf. B. Ketubot 48a).

### Halacha 11

A munificent person who gives alms beyond what he can afford, or denies himself in order to give to the collector of alms so that he would not be put to shame, should not be asked for contributions for alms.

Any alms collector who humiliates him by demanding alms from him will be surely called to account for it, as it is said, *I will punish those that oppress them* (Jer. 30:20).

### B. Taanit 24a

The charity collectors would hide whenever they saw Eleazar of the village of Bartota, because he would give them all that he possessed. One day he went to the market to buy his daughter a wedding outfit, when the collectors saw him and tried to hide. Eleazar followed them and said to them. "I adjure you to tell me for what purpose you are collecting?" They replied, "For a marriage between an orphan boy and an orphan girl." He replied, "By the Service of the Temple, they have precedence over my daughter," and he put together all he had, and gave it to them, except for one zuz which he kept. With this he bought wheat and deposited it at the granary. Afterwards, his wife asked his daughter what her father had brought her. The daughter replied, "All that he brought me he took up to the granary." The wife went up to the granary and found it full of wheat, so much so, that it came through the door hinges. When Eleazar returned from the Study

House, she said to him, "Come and see what God has done for you!" He replied [upon seeing], "By the Service of the Temple! All this wheat shall be consecrated property, and your share in it shall be no more than that of any of the poor of Israel."<sup>56</sup> [cf Y. Horayot 3:4 III. A, *editio princeps* 3:7; Maaseh b'R. Eliezer]

#### B. Baba Batra 8b

What is the nature of the authority [of charity collectors] ?!

They can take a pledge for charity even on Friday

[i.e. even when the householder is busy preparing for the Sabbath]

Is that true [correct]?

Isn't there a warning against such a practice in Scripture,

*I will punish those that oppress them* (Jer. 30:20) ?

Does this [warning] not apply to the charity collectors as well ?

Harmonization:

One speaks of a well-to-do man [who may be compelled]

The other [Jeremiah] speaks of a man who is not well-to-do.

This halacha compliments the previous one. Where halacha 10 dealt with those who must be compelled to give, halacha 11 is concerned with those who give too much and would impoverish themselves. Collectors should avoid such people altogether. Nevertheless, if such a person insists, he is not to be refused.

Although the halacha bases its legal strength on the Baba Batra text, the description offered by the Code, and therefore the circumstances of when that rule applies, is determined by an aggadic text, Taanit 24a. Rambam will continue to rely on realistic incidents as precedents of case law. This text also has the first borrowing of a Scriptural verse from its locus in the source text since Halacha 3. as i noted at halacha 7 (which lacks a correspondence with the source texts available to us), Rambam's general rule seems to be to borrow his Scriptural quotes straight from the source text.

#### Halacha 12

Orphans may not be assessed for charity, not even for the ransom of captives, not even if they have much money.

But if the judge assesses them in order to have them acquire a good name, he may do so.

<sup>56</sup> Also see B. Taanit 24b, the same principle seems to be at work. One may not derive any benefit from miracles.



B. Baba Batra 8a

Even orphans may be assessed for contributions to those imposts from which they derive benefit; such as town walls.

A Case: Rabbah imposed a levy on orphans of the house of Meron for charity.

Objection: Abaye: Is this practice not prohibited by R. Samuel b. Judah who ruled that we do not levy charity imposts -- even for ransoming captives -- upon orphans.

Explanation: It was permitted in this particular case because it was levied for the benefit of the orphans themselves -- to improve their standing [in the community].

The halacha is a rather verbatim borrowing of the above objection and explanation. The one difference is that Rambam says "even if they have much money", apparently based on a presumption that the House of Meron was wealthy [Is there a text to confirm this?] Note that Rambam borrows the rule with out any comment, yet the proviso to allow levying charity from orphans, when it is for their benefit, clearly undermines the entire prohibition. Rambam, like the text, does not specify what or who determines that benefit. Rambam often acts as gatherer and repeater of his texts and avoids commenting on the internal dynamic. Then again, analysis and commentary are exactly what he is avoiding in the Code.

As I commented earlier, orphans are a unique group in regards to charity by virtue of their inability to change that status.

This unit is connected to the general theme of halachot 9-12, which addresses exceptional circumstances, such as compelling people to give, or refusing charity from certain people.

Collectors of alms may accept contributions from women, bondsmen, or children, provided that it is a small item and not a large [valuable] one, because the presumption is that a large item was stolen or extorted from other persons.

What is a small item in their case?

It all depends on the wealth or poverty of their masters.

Baba Qamma 113a

- Mishna: I. Change should not be taken from either  
the box of the customs-collectors, or  
the purse of the (Government's) tax-collectors  
II. Charity should not be taken from these people



However, charity may be taken from them

1) at home, and 2) at the shop [lit: market]

[Whose? I think the charity collectors']

Baba Qamma 119b

(lemma) Mishna: They may purchase from housewives

[woolen goods in Judea, flaxen goods in Galilee,  
or calves in Sharon]

Gemara: ... Charity collectors may accept from them small items  
but not large items. [but see Tosephta below]

Incident: Ravina once came to the city of Mahuza

Housewives came and threw to him chains and bracelets  
He accepted them

Another sage challenged his practice based on the above  
rule

Ravina replied: Among the people of Mahuza such items are  
considered small items.

T. Baba Qamma 11:5-6

A. They may purchase from women woolen goods in Judah

[M. B.Q. 10:9]

B. But they may not purchase wine, oil, or produce, from either  
women, slaves, or minors.

C. Abba Shaul says, "They purchase them from a woman for five  
denars, so that she may buy a covering for her head.

11:6 A. Charity collectors accept from them some small item for the  
alms-fund,

B. but not a large [expensive] item.

Rambam integrates both the Tosephta and Bavli texts to create his formulation. Note how the subjects in 11:5 B (women, slaves, and children) are brought into the positive formulation (in the halacha) by analogy, although the Tosephta text does not actually permit the collectors to accept from slaves or children. This technique is used again and again by Rambam in these four chapters.

I can find no textual precedent for Rambam's explanation, i.e., that there is a presumption that a large item was stolen. On the other hand, the notion of it being stolen is not clear to the modern reader. The concern would not be that women, slaves, or children went out and stole a valuable item, rather, the assumption is that a valuable possession would be their master's and that there would be no way to confirm his intention to give such an item to charity. If it was not his intention, despite their good intentions, the woman, slave, or child would be considered guilty of theft. Woolen goods

are acceptable, because the husband had to provide these for his wife, as her property.

Also relevant is how Rambam relies on an incident at Mahuza, and Ravina's explanation, to determine the halacha. Clearly, Ravina is not making a halachic ruling. Furthermore, Rambam interprets the entire incident to be based on "the wealth of their masters", while the story and Ravina's answer are concerned with the standard of wealth of the town as a whole.

I included the Mishna, on which this Gemara is based, because of its second unit regarding acceptance of charity from Government tax collectors. The absence of this rule anywhere in Hilchot Matenot Aniyyim is remarkable given Rambam's attempt to draw together all of the relevant rulings. The Mishna, furthermore, is a clear halachic ruling, much more authoritative than many of the incidents Rambam uses as the basis of some of the halachot in this section of the Code. Did Rambam perhaps assume this applied only under Roman rule? I suspect this may have something to do with the sharing of charitable endeavors, on some level, between Jews and Muslims in Rambam's own world. Whatever the reason, we can extrapolate a general principle from the Mishna's statement. It closely parallels the rules applied to charity collectors, and confirms the impression that different rules apply regarding the collecting of charity in the public and private domains.

This unit completes the topic covered in halachot 9-12, namely exceptional circumstances when we either compel people to give, or refuse to take charity.

### Halacha 13

A poor man who is one's relative has priority over all others, the poor of one's household have priority over other poor of his city, the poor of his city have priority over the poor of another city, as it is said, *Unto your poor and needy brother, in your land* (Deut. 15:11).

#### B. Baba Metzia 71a

R. Joseph learned:

*If you lend money to any of My people that is poor among you*

(Ex. 22:24) [this verse teaches that if the choice is between]:

*My people* [Israel] and a Gentile; [then] *My people* take precedence.

A poor man and a rich man; the poor man takes precedence.

Your poor [relatives] and the poor of your town;

your poor take precedence.

the poor of your city and the poor of another city;

the poor of your city take precedence.

Mechilta deRebbi Ishmael, Tractate Kaspas, Chapter 1, Ex 22:24

*[If you lend money] to any of My people, [even to the poor with you],  
To Any of My People:*

If an Israelite and a Gentile stand before you to borrow,

*My people* [i.e. Israel] take precedence,

If it be a poor man and a rich man,

the poor man takes precedence,

If it be your poor [relatives] and the poor of your city,

Your poor [relatives] take precedence over the poor of your city.

If it be the poor of your city and the poor of another city,

the poor of your city take precedence,

for it is said, *Even to the poor with you.*

Sifre Devarim, Piska 116, (Deut. 15:7)

*[If there be among you a needy man, one of your brethren, within any of  
the gates in your land, which the Lord your God is giving you ...]*

*If there be among you -- not among others -- a needy man --*

the one most needy takes precedence.

*one of your brethren -- your paternal brother,*

indicating that your paternal brother takes precedence over  
your maternal brother.

*within any of your gates --* the inhabitants of your own city take  
precedence over the inhabitants of another city.

*in your land --* the inhabitants of the Land [of Israel] take precedence  
over those who dwell outside the land.

The first two texts are for all purposes exactly the same and are the clear basis of Rambam's formulation of this halacha. However the Sifre text above, clearly provided an expansion (regarding prioritization of siblings and the land of Israel) of which the Rambam either did not know, or did not care to utilize. It is surprising considering Rambam's anthologizing method. Here we see the general and repeated tendency to apply to charity, rules derived from texts dealing with loans. The major focus of the texts are prioritization based on geographic and biological proximity. One would expect then, that this halacha should be found with MA VIII:17-18, which addresses that very issue. This unit [Halachot 13- 15] is preferably located here for two reasons. First it avoids the necessity of resolving the conflict that would arise by putting this next to MA VIII:17-18 [see P. Horayot where a similar problem occurs], and secondly, the theme of halacha 13 is 'charity begins at home' (and how far outward it extends) which is more rooted with this chapter's theme of personal giving.

## Halacha 14

One who has gone on business to another city, and is assessed for alms by the inhabitants thereof, must contribute to the poor of that city.

If a large group of such visitors is assessed by the city for alms, they must contribute, but when they return home they must bring the assessment back with them and contribute it to the poor of their own city.

And if there is there a scholar in charge of alms, they should give it to him, to be distributed as he sees fit.

B. Megillah 27a

R. Johanan said in the name of R. Meir

If members of a town go [on a trip] to another town

And there they are assessed for a charity contribution

They should pay it

But when they leave they bring the money back with them

To assist the poor of their own town with it

Likewise there is a baraita:

If members of a town go [on a trip] to another town

And there they are assessed for a charity contribution

They should pay it

But when they leave they bring the money back with them

If an individual goes [on a trip] to another town

And there they assessed him for a charity contribution

It is given to the poor of that town [and not returned to him]

An Incident:

R. Huna declared a fast day

Another sage and the members of that place came to visit him

They were called upon for charity contributions

And they gave it

When they were ready to leave they asked R. Huna to return their money so that they could assist the poor of their own town

27b R. Huna replied: That rule applies only when there is no town scholar <sup>57</sup> in authority there,

<sup>57</sup> Others vocalize hbr to mean group; referring to either a municipal or religious council, or perhaps charitable organization.

but if there is a town scholar in authority there,  
the money is given to the town scholar [with out the  
expectation of it being returned]

This is even more applicable in this case where the poor of both  
my town and your town are dependent upon me.

The baraita clearly provides the basis of the first two units of halacha 14, although notably in reverse order. Although the language of the third unit of the halacha is ambiguous, the meaning must be taken to be in agreement with R. Huna's modification of the Baraita, i.e., the rule of returning a group's money applies only when there is no scholar in the town they are visiting who determines such matters. Nevertheless, the exception is supported premise that R. Huna supervises the poor of both towns. The halacha takes this issue to be irrelevant, and does not even mention it. The last phrase of the halacha is reminiscent of R. Ashi's statement regarding stipulations in B. Baba Batra 9a, namely that people who give him money to distribute as charity relied on his judgement (cf MA IX:7 where the same phrase -- as he sees fit -- is used). This may explain why R. Huna's modification is accepted by the Code as the rule.

### Halacha 15

If a person says, "Give two hundred denars to the synagogue," or  
"Give a Torah Scroll to the synagogue," these should be given to the  
synagogue he regularly attends.

(If he attends two synagogues, they should be given to both.)

If one says, "Give two hundred denars for the poor," they should be  
given to the poor of that city.

### T. Baba Qamma 11:3

- A. One who says, "Give [these] two hundred denars to a synagogue,"
- B. "Give a Torah Scroll to a synagogue,"
- C. They are to be given to the synagogue he customarily attends.
- D. If there were two synagogues which he was accustomed to frequent,  
let them be given to both of them.
- E. One who says, "Give [these] two hundred denars to the poor,"
- F. let them be given to the poor of that town.
- G. R. Aha says, "To the poor of all Israel."
- H. One who says, "Give such and such a field to the poor" -
- I. the gleanings, forgotten sheaf, and peah are to be given to the poor of that  
town

J. [If one said], "... to the poor of such and such a town,"

K. the gleanings, forgotten sheaf, and peah are to be given to the poor of that other town.

T. Megillah 2:15

- A. An individual who pledged to give charity in his town,  
gives it to the poor of his town.
- B. [If he pledged to give] in another town,  
he gives it to the poor of that other town.
- C. The charity-supervisors who in their town agreed to give charity,  
must give it to the poor of their town.
- D. [If they promised it] in another town,  
they give it to the poor of that other town.

This is the only halacha in the four chapters under study that is so singularly based on a Tosephta passage. It demonstrates the remarkable breadth of knowledge and research that preceded the formulation of the Code.

The halacha is remarkable, by virtue of its inclusion of A-D which are only peripherally related to almsgiving. The exact nature of gifts to the synagogue are left unclear (here), but they are not alms. Nevertheless, such gifts show up again in Chapter VIII when discussing priorities of ransoming captives. The giving of a Torah scroll, while not technically an act of charity, is a religious duty, though not on the same level as charity or ransoming captives. It may be that the Code maintained this first unit to strengthen the validity of the Tosephta's text. The analogy drawn between the giving of Torah scrolls and charity appeals to the legalist, and neatly avoids questions of the rule's origin. Once again, the Code addresses a real life possibility, and draws its rule from all available sources.

The location may seem odd. Perhaps it would have better been connected with Halacha 2 of Chapter VIII, concerning abbreviated charity pledges. But the connection is predicated on the previous two halachot, both of which concern the precedence that the poor of one's own town have over the poor of other towns. This argument is supported by the (contrary) opinion of R. Aha in G. Also see my comment on the agricultural poor provisions (mentioned above in the Tosephta, but lacking in the halacha) at MA IX:15.

The T. Megillah passage makes a related point, that location influences are understanding of to whom one's promise was intended.

## Chapter 6

Hilchot Mattenot Aniyyim: Chapter VIII

## Halacha 1

Almsgiving may be included in the category of vows.

B. Shevuot 25a

[The Gemara begins with a Baraita discussing how oaths and vows differ.]

- 1) A vow may be made regarding mitzvot as well as optional matters.  
But oaths may be made regarding optional matters only.
- 2) An oath can be made upon tangibles and intangibles.  
But vows can be made upon tangibles only.

One who says "I swear (an oath) to give [charity] to so and so," has violated the second half of rule (1) above, because charity is a mitzvah, [and therefore only vows can be made in regard to charity.]

B. Arakin 6a

There is a Baraita in accord with Rava:

Vows are similar to charity,

but consecrations to the Temple are not like charity.

Is this not the meaning of:

Charity is similar to vows in respect to the warning

"Thou shall not delay its payment",

but charity is unlike consecration

because anything consecrated may not be used thereafter,

whereas money vowed to charity

may be used for oneself in the meantime.

Ultimately charity is like vows only as far as the prohibition, "Do not delay its payment." But particular coins promised for charity, either as a vow or free will offering, can be substituted with other coins. In other words, the particular coin need not go to charity as long as an equivalent amount does.

But charity, being a vow, also falls under the prohibition, "He will not break his word" which Rambam listed as Negative Commandment #157. One who makes a vow, such as charity, falls under two negative commandments: "Do not delay its payment" and "He will not break his word." This is covered in the chapter on Sefer HaMitzvot. Yet, oddly, any mention of this prohibition is absent now in the Code. It seems



extremely unlike Rambam not to state explicitly here that failing to fulfill our charity promises would mean the violation of not one but two negative commandments.

Therefore one who says either, "I obligate myself (to give a sela in alms)," or "This sela (is to be for alms)," <sup>58</sup> is obligated to give it to the poor immediately.

If he tarries, he transgresses the commandment *You shall delay its payment* (Deut 23:22), inasmuch as it is within his power to dispense the sela immediately, and poor people are available.

#### Rosh HaShana 4a-b

Baraita: Those who are liable for a monetary valuation, for a valuation, for a herem, for consecrations, for sin offerings, trespass offerings, burnt offerings and peace offerings, charity contributions, tithes, first born and tithe of cattle, paschal lamb, gleanings, forgotten sheaves and peah:  
as soon as three festivals have elapsed [they] transgress the commandment of "not delaying its payment"

What is the scriptural authority for this ruling?

Baraita: Exposition of each phrase in Deut 23:22 - "When you make a vow to the Lord your God, you will not be slack to pay it, for He shall surely require it from you..."

"The Lord your God": This indicates charity contributions, tithes and first born

"From you": this indicates gleanings, forgotten sheaves and peah.

#### Rosh HaShana 6a

Baraita: *That which has gone out of your lips:*

*This is an affirmative precept,*

*You shall keep:* this is a negative precept,

*And do:* this is an injunction to the court to compel you

*According to what you have vowed:* this means a vow

*To the Lord your God:* this means sin offerings, and trespass offerings, burnt offerings and peace offerings.

*A free will offering:* this has its literal meaning.

*Even that which you have promised:* this means things

<sup>58</sup> The first is the formulation for a vow [neder], the second is the formulation for a free will offering [nedavah]

consecrated for the repair of the Temple.

*With your mouth*; this means charity. (Deut. 23:24)

...

*With your mouth*; this is charity

Rava: One becomes liable for paying charity immediately

Why? Because the poor are waiting [lit: are available]

What about the three festival grace period

where charity is specifically mentioned?

It doesn't apply.

Why? All other offerings are dependent on the occurrence of the festival and going to the Temple to offer it.

Not so with charity. And the poor are waiting.

If there are no poor people in that place, he should set aside the sela and leave it until poor people are available.

Rambam bases this rule on a discussion in B. Rosh HaShana 6a concerning the Tannaitic exposition of Deut. 23:24, and 22 by implication. These verses describe complimentary aspects of the vowing process, namely the verbal statement and the setting the offering aside. Since we saw above at the beginning of Halacha 1 (in Arakin 6a), that charity may be used for other purposes after it is pledged, we must interpret Rambam's rule here in one of two ways. The money pledged for charity should always be set aside, but having been set aside it can be 'unset' if another need arises. Or, the amount of money vowed -- and not the actual coins -- should be set aside. A combination of the two may yield the best explanation. If one specifically vowed charity money, he should distribute it immediately, but if he cannot find poor people he should set it aside, as with any other vowed offering, but he may make a substitution of the actual coins with others of the same value, this being permitted only in the case of charity but not other offerings. This rule is repeated below at the beginning of Halacha 4. All of this concerns a vow formulation which must mention the specific object being pledged; i.e., "this sela." Free will offerings do not fall under this obligation of being set aside, nor is substitution an issue. The halacha below describes how a vow may be formulated in such a way as to permit the promiser to treat the money as if he had made a free will offering.

If he stipulates that he is to give alms only when he finds a poor man, he need not set aside the amount of the vow.

Similarly, if he stipulates at the time when he makes the vow or

offers the free-will offering that the alms collectors are to be free to change the sela or to combine it with others for conversion into gold coin, they are permitted to do so.

See the discussion of this rule, which is given in a different formulation, in Halacha 4. Gold coin should be taken as the equivalent of "large bills."

## Halacha 2

If one pledges alms by way of abbreviation, he becomes obligated for them the same as for any other vows.

How so? If he says, "This sela (is to be) like this one," the former becomes due for alms.

If one sets aside a sela and says, "This one (is to be for alms)," and thereupon takes a second sela and says, "and also that one," the second sela is likewise pledged for alms, even though he did not say so explicitly.

### B. Nedarim 6b/7a:

How analogous are peah and sacrifices?

only as regards the warning "Do not delay its payment",  
or also as regards the bindingness of abbreviations (yad)?

According to a Baraita:

Gleaning, forgotten sheaf, and peah are under the warning of "Not to delay payment"

How analogous are charity and sacrifices?

only as regards the warning "Do not delay its payment",  
or also as regards the bindingness of abbreviations?  
[i.e. can we enforce the entirety of a charity promise in which  
part of the pledge is stated in an obscure manner?]

If abbreviations are binding for charitable promises are they binding  
in the case of declarations of hefker?

(since hefker is assumed to be charity)

Perhaps hefker is not charity, charity being for the poor only,  
while hefker is for the rich and the poor...

Are abbreviations valid or not [in regard to the topics of qiddushin,  
peah, charity, hefker, designation]? This question remains (Tibba Si

Leh)<sup>59</sup>

Obviously Rambam has decided the issue on a practical level. Abbreviations are binding in the case of promises of charity. For a discussion of this sugya see Louis Jacob's analysis in his Teyku, pp. 111-115, as well as his Appendix I, "Teyku in the Works of the Post-Talmudic Halakhists." The rules by which Rambam arrives at the ruling he gives is beyond the scope of this study.

On a practical level, such a ruling was clearly a necessity. To claim that abbreviations in regard to charity were not binding, would mean that many persons might resort to obscure formulations in order to back out latter, or worse, claim that they had offered their promise as an abbreviation -- even if they had not in actuality -- in order to get out of paying at a latter time.

### Halacha 3

If one has made a vow of alms but does not know how much he had vowed, he should continue giving until he can say, "I did not intend to give this much."

#### M. Menahot 13:4 [Temple Offering Prescriptions]

- I. A. [If one said ,] "I obligate myself to give gold";  
 B. he must not give less than a gold denar.  
 C. [If] "... silver";  
 D. he must not give less than a silver denar.  
 E. [If] "... copper";  
 F. he must not give less than [copper worth] a silver meah.
- II G. [If one said,] "I expressly said [how much I would give],  
 H. but I do not remember what I expressly said",  
 I. he must give until he says, "I did not intend to give this much"

This halacha demonstrates Rambam's attempt to broadly define and fill in the practical gaps in the area of charity. While the Mishna is concerned with Temple offerings, it is an easy and justifiable step to applying the rule to charity which is so similar to Temple offerings as we have seen, even to the extent of being listed with them. This technique of reasonable analogy is one which characterizes Rambam the halachist. Ultimately this halacha addresses only the most punctilious in their observance. The reason being that such a vow would have been a private one, otherwise the charity overseers or others could remind him of the amount he pledged.

<sup>59</sup> See Louis Jacob's analysis in his Teyku, pp. 111-115

## Halacha 4

Whether one says, "This sela (is to be for alms)," or "I obligate myself (to give a sela in alms)," and sets it aside, if he wishes to substitute another sela for it, he may do so.

Arakin 6a: If one says "this sela is dedicated to charity," he is permitted to exchange it.  
 Now it was assumed that this is permitted only with himself, but not with anybody else: [cf. #1 above: last line of B. Arakin 6a] but there is a statement in the name of R. Johanan that it is permitted with oneself and with someone else.  
 We have learned that this permission applies only when a person says "I take upon myself", but not if he said "[I vow to give] this sela."  
 In that case, he is obliged to give that sela.  
 Rava demurred: Quite the opposite:  
 If he makes a vow regarding a particular sela, he may then use it for himself, since he will be responsible for it, but if it is a vow upon himself [i.e., a free will offering], he should not be permitted to exchange it. [?]  
But the fact is that it makes no difference  
[whether he states the pledge as a vow or a free will offering]  
 ...  
 A different version of the first tradition is offered.  
 If one said: "I vow a sela for charity,"  
 i - he may exchange it either with himself, or with someone else,  
 ii - regardless of formulating it as a vow or free will offering

Although, as is quite clear from the sources, a free will offering never really fell under the obligation of setting the offering aside until it was given. Rather than explaining this, Rambam merely reports the ruling.

Once that sela has reached the hand of the alms collector, however, no substitution is allowed.

Baraita: If one promises: "this sela is for charity" -- before it is collected by the charity treasurer, it may be exchanged, but not after it comes into the treasurer's hands.

T. Megillah 2:15

- E. One who pledges funds for charity,  
before the charity supervisors have taken possession of [what was pledged],  
is permitted to use the thing for some other purpose.
- F. Once the charity supervisors have taken possession of [what was pledged], he is not permitted to divert it for some other purpose,
- G. except with their knowledge and consent.

The decision of the Tosephta passage is rejected, at least in regards to the giver reclaiming his money from the charity treasurers, but see ahead in halacha 5 where the Code permits the charity collectors to use the charity money for other purposes.

If alms collectors wish to convert small coins into large ones they are not permitted to do so.

But if there are no poor people in that place to be given alms, the collectors may convert the small coins into larger ones with other people, but not with themselves. [MA IX:11]

B. Baba Batra 8b and B. Baba Metzia 38a

Baraita: Charity Collectors: who still have money,  
but no poor to whom to distribute it,  
should change small coins [meahs] into larger ones [denars]  
with another party, but not themselves.

Soup Kitchen Stewards: who still have food stuffs,  
but no poor to whom to distribute it,  
may sell the food [since it is perishable]  
to another party, but not themselves.

[T. Baba Metzia 3:9 A-D, see ahead MA IX:11]

Although the first half of the formulation above seems to be the mere compliment of the second half, the restriction is an invention of Rambam's. No where in any of the sources is the restrictive first half of this formulation to be found. Rather, Rambam clearly exercised his powers of analogy. However, this restrictive formulation seems to

be contradicted by Halacha 5 -- immediately below

-- which rules that the charity collector can use charity money even to pay his own debts. The explanation lies in the fact that the charity overseer is increasing the amount of charity for the poor by paying his bills, while the conversion of the coins benefits the collectors -- being easier to keep -- but not the poor themselves.

#### Halacha 5

If the poor would benefit by the money remaining in the hand of the collector, in order to encourage others to contribute, the collector may borrow this money belonging to the poor and pay his own debts with it,

#### B. Arakin 6a

Baraita: If one promises: "this sela is for charity "--

before it is collected by the charity treasurer, it may be exchanged, but not after it comes into the treasurer's hands.

6b This cannot be so,

we have a case of R. Jannai who borrowed from the charity fund and then paid it back.

This is an exception because

R. Jannai apparently was a collector, and

increased the return to the poor by these borrowings [lit: delays].

#### T. Sheqalim 1:12 (end)

They do not collect for a given garment,

[and give the poor man another] garment.

They do not collect funds for a particular person [lit: captive],

and use those funds for another person [lit: captive].

But they do not interfere with the charity collectors on that account.

Once the money comes into the charity collectors hands it assumes a different status, and not merely set aside, since the notion of thereafter making a substitution with the collector (T. Meg. 2:15 above in Halacha 4) has been ignored by Rambam. Nevertheless the collectors may make use of the money, without interference (as the Tosephta immediately above shows), provided that the direct beneficiaries of their use of the funds are the poor themselves. [also see B. Gittin 88b]

because alms money is not like property consecrated to the Temple, from which one is forbidden to derive any benefit.



M. Sheqalim 4:3

What was done with the surplus of the residue  
from the Temple Treasury Chamber?

They bought with it wines, oils, and fine flours [for resale at the Temple]  
and the profit was consecrated.

This is R. Ishmael's opinion.

R. Aqiva says: They may not make a profit from consecrated property nor  
from [that which was given for] the poor.....

B. Arakin 6a

There is a Baraita in accord with Rava:

Vows are similar to charity,  
but consecrations to the Temple are not like charity.

Is this not the meaning of:

Charity is similar to vows in respect to the warning  
"Thou shall not delay its payment",

but charity is unlike consecration

because anything consecrated may not be used thereafter,

whereas money vowed to charity

may be used for oneself in the meantime.

The issue of course is who derives the benefit. Before the money goes to the charity overseers, the person who promised the money may derive benefit from it. But once it goes to the charity overseers, the only people who can derive benefit from it, directly, are the poor themselves. The key factor is the action of giving. Once the money has been turned over, it is in a new status. This explains why the decision offered in T. Megillah 2:15 G (in Halacha 4 above) is rejected.

Halacha 9

It is forbidden for an Israelite to accept alms publicly from Gentiles.

T. Sotah 14:10 [A series of how when various bad types multiplied such and such happened]

A. When those who accept charity from Gentiles became many --  
as it were -- did the Gentiles begin to become smaller and the  
Israelites to become exalted?

B. Quite the opposite: It is not easy for Israel in the world

B. Sotah 47b

When there multiplied they who accepted Gentile charity,  
Israel became on top and they below ?

Israel went forward and they backward [euphemism for reverse]

T. Gittin 3:13 [cf. Y. Demai 4:6]

A. A poor man who takes them [olives which he gleans from a tree] in his hand  
and throws them down one by one --

B. what is under it [the tree] is wholly subject to the prohibition against thievery.

C. A city in which Israelites and Gentiles live --

D. the collectors of funds for the support of the poor collect equally from  
Israelites and and from Gentiles.

E. for the sake of peace.

F. They provide support for the poor of the Gentiles along with the poor of Israel.

T. Gittin 3:14

A. They make a lament for, and bury, Gentile dead.

B. for the sake of peace.

C. They express condolences to Gentile mourners.

D. for the sake of peace.

The Tosephta ruling is ignored altogether in favor of deriving the halacha from a non-halachic homiletic statement. Rambam seems to have relied on rabbinic attitudes rather than precedent.

But if he cannot sustain himself with the alms provided by Israelites, and is unable to receive alms from Gentiles privately, he may accept them publicly.

B. Sanhedrin 26b

- I. Those who accept charity from Gentiles are incompetent as witnesses
- II. This applies only if it is accepted in public,  
but does not apply if they accept in private,
- III. Even if they accepted in public  
this rule (I) applies only when it was possible to receive [Gentile charity] in private and they nevertheless degraded themselves by public acceptance.  
When private acceptance is not possible,  
public acceptance becomes a matter of life [and death].

An excellent example of how the Code borrows from one area of case law, and derives a general principle to be applied elsewhere as a specific rule. The Sanhedrin text is concerned with the competency of witnesses. Note how placing this rule immediately following the first statement -- that it is forbidden to accept charity from Gentiles -- reinforces the first assertion with a quasi legal precedent. The analogy is based on the premise that whatever invalidates an individual in court must naturally be prohibited (although this logic is clearly flawed).

If a king or a prince among the Gentiles sends money to Israelites for alms, it should not be returned on account of the peace of the kingdom. Rather it should be accepted from him and secretly distributed to the gentile poor, so that the king may not hear about it.

B. Baba Batra 10b

400 gold dinars were sent by a Gentile king's mother to R. Ammi.  
He would not accept them.  
She then sent them to Rava,  
He accepted them,  
In order to be at peace with [i.e., not offend] the Gentile Government.  
R. Ammi objected to Rava's action.

Question: What did he object to?

Perhaps R. Ammi wanted to offend the Gentile Government?

No!

His objection was based on the belief that Rava distributed the money to poor Jews.

11a Rava distributed the money to poor Gentiles, but R. Ammi had not known.

Here is a wonderfully clear demonstration of how an aggadah is used to support one ruling and create its own law. This aggadah further supports the contention that accepting Gentile charity is prohibited, in fact, further reinforcing it. The notion, that when forced to accept Gentile charity we divert it away from poor Jews to the Gentile poor, reinforces the rabbinic belief that Gentile money is tainted and suspect of being stolen. Note how Rambam transforms the phrase "in order to be at peace with the Government", into "so that the king may not hear about it." The Bavli is not concerned with whom the money was distributed to so much as the fact that it was not returned. returning the money, as R. Ammi did, is considered to be what endangers the peace.

According to Rambam, the danger to the peace is if the king finds out that the Jewish poor did not receive the money. Therefore Rambam added in the phrase "and secretly distributed to the Gentile poor." Perhaps Rambam based this decision on the incident in the story of R. Ammi not knowing that Rava had in fact distributed the money to Gentile poor.

#### Halacha 10

The ransoming of captives has precedence over the feeding and clothing of the poor.

##### B. Baba Batra 8a

Even orphans may be assessed for contributions to those imposts from which they derive benefit; such as town walls.

A Case: A levy was imposed on orphans of a certain house for charity.

Objection: Is this practice not prohibited since it is an accepted principle that we do not levy charity imposts -- even for ransoming captives -- upon orphans.

Explanation: It was permitted in this particular case because it was levied for the benefit of the orphans themselves - to improve their standing [in the community].

8b - Tangent: From the objection above we learn that ransoming captives is a preeminent form of charity.

Indeed there is no religious duty more meritorious than ransoming captives, for not only is the captive included in the category of the hunger, the thirsty, and the naked, but his very life is in jeopardy. ...

In other words, the captive already fills the requirements for simple poverty, i.e., hunger, thirst, and nakedness. His priority derives from fulfilling all these requirements and having the additional problem of immediate danger to his life.

#### Halacha 15

A woman takes precedence over a man as far as feeding, clothing, and redemption from captivity are concerned, because it is customary for men to go begging from door to door, but not for a woman, as her sense of shame is greater. If both of them are in captivity, and both are exposed to forcible sin, the man takes

precedence in being ransomed, since it is not customary for him to submit to such sin.

M. Horayot 3:7

A man's life must be saved before a woman's life,  
His lost property must be restored sooner than hers,  
A woman's nakedness must be covered sooner than a man's,  
and she must be redeemed from captivity sooner than him.  
When both stand in danger of sexual defilement,  
the man must be freed before the woman.

B. Ketubot 67a

Baraita - An orphan girl and an orphan boy who seek to be supported;  
they support the orphan girl first,  
then they support the orphan boy,  
for the orphan boy can go begging in any event,  
but the orphan girl cannot go begging in any event  
[T. Ket. 6:8 E-G]  
(continued below in Halacha 16)

Note how the issue of embarrassment will inform both this halacha and the one below. The concern for a poor persons embarrassment is the topic of MA Chapter X. The issue of supply maintenance is in the formulation of the halacha here, but noticeably absent is the mention of orphans. Nevertheless, the explanations -- 'because she cannot go begging', 'because her shame is greater' -- are directly imported into the text of the halacha. M. Horayot is the basis for this halacha, but the baraita of B. Ketubot is the source of the explanatory comments.

**Halacha 16**

If two orphans, male and female, apply to be married, the female should be wed before the male, because a woman's sense of shame is greater.

B. Ketubot 67b

(cont'd) Baraita - If an orphan boy and an orphan girl apply to be married,  
they marry off the orphan girl first, and then the orphan boy,  
because the shame women suffer is worse than mens'.  
[T. Ket. 6:8 H-J]

She should be given not less than the weight of six and a quarter

denar of pure silver.

If the alms treasury has enough funds available, she should be given according to her dignity.

M. Ketubot 5:8

If a husband provides for his wife through the agency of a third party he must not grant her less than . . .

He must give her . . . clothing worth 50 zuz each year.

B. Ketubot 67a

- Mishna: 1) An orphan girl is allotted no less than 50 zuz  
 2) If '[charity]-funds' are available - she is provided  
 "according to her dignity". [M. Ket. 6:5]

Gemara I - Fifty zuz refers to common zuz

[i.e. not silver denars, but an eighth of a denar]

Funds, refers to the charity-fund.

How do we know 50 zuz refers to common zuz?

Based on the mention of the charity fund:

since we are told to give her no less than '50 zuz' when there are no charity funds available, how much more we would have to give if charity funds were available. [In other words: the charity fund could probably not bear 50 silver denars to begin with, how could it bear more than 50 actual zuz.]

Therefore 50 zuz must be taken as referring to common zuz.

[cf Y. Ketubot 6:5]

This explains the halacha's formulation: "She should be given not less than the weight of six and a quarter denar of pure silver." I cannot find the source for the valuation, but all the commentators agree that the zuz described is valued at one eighth of the silver denar (zuz). One eighth of fifty is six and a quarter. Yet, despite the protest of the Gemara, I think that 50 silver zuz were intended based on M. Ket. 5:8, which describes this amount as the annual minimum clothing allowance for a wife.

The objection is based on the notion of depleting the charity fund. Initially I had thought the problem arose solely from confusing who was responsible for which money. The 50 zuz must be provided by the husband, with the money for her outfitting is provided from the charity fund if available. But then I realized there may also be the issue of valuation changing over time and place. Fifty zuz in Palestine in the time of the Mishna probably did not have much correspondence to 50 zuz in Amoraic Babylonia. Therefore the Gemara takes the word zuz to mean "common coin".

Again, the phrase "according to a person's dignity" is associated with clothing, i.e., her wedding outfitting.

#### Halacha 17

If there are before us many poor people or many captives, and there is not enough money in the alms treasury to feed, or clothe, or ransom all of them, the procedure is as follows: a priest takes precedence over a Levite, a Levite over an Israelite, and Israelite over a profaned priest, a profaned priest over a person of unknown siring, a person of unknown siring over a foundling, a foundling over a mamzer, a mamzer over a Nathin, a Nathin over a convert, (inasmuch as the Nathin has grown up with us in a state of holiness), a convert over an emancipated bondsman, (inasmuch as the bondsman was once included among the accursed.) (cf. Gen. 9:25)

#### Halacha 18

When does this [halacha #17 above] apply?

When both are equal in wisdom. If however a high priest is unlearned and a mamzer is a disciple of a Sage, the latter takes precedence. In the case of two scholars, the one greater in wisdom precedes the other.

But, if such a one [in need] is a person's teacher or his father, and if there is another [in need] who is greater in wisdom than them, [In this case,] one's teacher or one's father -- [provided] he is a disciple of a Sage -- takes precedence over the one who greater than him in wisdom.

#### M. Qiddushin 4:1

Ten castes immigrated from Babylon:

The priestly, the levitic, and the Israelite castes;

the convert, emancipated bondsman, mamzer and Nathin castes;

the unknown siring and the foundling castes...

#### M. Horayot 3:8

A priest precedes a Levite, a Levite an Israelite, an Israelite a mamzer, a mamzer a Nathin, a Nathin a convert, and a convert an emancipated bondsman.

This applies when all are [otherwise] equal;

but [in the case of] a mamzer who is a student of the Sages

and an unlearned High Priest,

the mamzer who is a student of the Sages precedes the unlearned High Priest



B. Horayot 13a

[an explanation of each group's precedence is given either by a Scriptural proof text, or a matter of fact statement.]

**A Nathin [takes precedence] over a convert:**

for the one was brought up with us in holiness,  
and the other was not brought up with us in holiness.

**A convert [takes precedence] of an emancipated bondsman;**

for the one was included in the curse [of Ham] (Gen. 9:25),  
and the other was not included in the curse.

M. Baba Metzia 2:11

If one has the choice of retrieving that which he has lost  
and that which his father has lost, his own takes precedence.

If he has the choice of retrieving that which he has lost  
and that which his teacher has lost, his own takes precedence.

If he has a choice of retrieving that which his father has lost  
and that which his teacher has lost, that of his teacher takes precedence  
over that of his father.

For his father has brought him into the world;  
but his teacher, who taught him wisdom, has brought him into  
the life of the world to come;

But if his father is a Sage, that of his father takes precedence.

If his father and his teacher were each carrying a burden,  
he unloads his teacher's and afterwards he unloads his father's.

If his father and teacher were in captivity, he redeems his teacher,  
and afterwards he redeems his father.

But if his father is a Sage, he redeems his father and afterwards he redeems  
his teacher.

The introduction of Halacha 17 is Rambam's innovation. I did not find a situation in the literature where funds were insufficient to take care of everyone, at least as regards food and clothing, but is certainly conceivable. The text from Horayot deals with priority in time, i.e., who goes first, similar to the preference given to priests and levites for Torah aliyot. Rambam has refashioned it into the notion of having to choose between these groups, i.e., not having resources for all of them.

The formulation of groups as given here in the Code is found first in Rambam's Mishna Commentary to M. Horayot 3:8. The addition of the one of unknown siring and

the foundling is clearly a product of the groupings described in M. Qiddushin. Their addition may represent practical necessity as much as Rambam's compulsive comprehensiveness.

The expansions, via comments on the Natin and the emancipated bondsman, are from the Bavli. The reason for inserting these comments into the Code's formulation, when ones were available for each grouping, seems based on obsolescence of those two groups.

Rambam formulation in regard to Sages, teachers and fathers requires some explanation. Rambam seems to be arguing that one's teacher is in the same category as one's father. Now the tradition supports this by implication since one's teacher has priority over one's father in most situations, unless the father is himself a student of a Sage. Rambam avoids that particular exception. What he argues by virtue of his formulation is that one might think if everyone in need is a Sage the sage of greatest learning has priority. But that would ignore the issue of familial relations. We already saw in MA VII:13, that one's relatives have priority. Therefore we make an accommodation: one's teacher and one's father (who is at least a student of a Sage), precede "one greater in wisdom" who is not part of the family, so to speak. Rambam apparently required that the father be at least a student of a Sage based on the M. Baba Metzia section above, which seems to imply by its ruling, that as long as the father is a Sage, the measure of his wisdom is not an issue. Nevertheless, the principle has been oddly carried over. One would expect one's father to take precedence over any Sage, except of course for one's teacher.

This rule of course applies to an individual's responsibilities, and not the community's.

## Chapter 7

Hilchot Mattenot Aniyyim: Chapter IX

## Halacha 1

In every city inhabited by Israelites, they are obligated to appoint from among themselves well known and trustworthy persons as alms collectors,

B. Sanhedrin 17b

Mishna lemma: What must the population of a city be in order that it may qualify for a Sanhedrin?  
One hundred and twenty, etc.

Gemara: ....Baraita: A scholar is not permitted to reside in a city where the following ten things are not found:  
A court of justice that imposes flagellation and decrees penalties; a charity fund collected by two and distributed by three . . .

Y. Qiddushin 4:5 I A-E

It is written, "You may indeed set as king over you [him whom the Lord your God will choose]" (Deut. 17:15)

I know that the law [that genealogical searches are required] encompasses the king. How do I know it should include those who hold office as public officials or charity collectors, judges' scribes and those who carry out the flogging of a court?

Scripture says, "One of your brethren you shall set as king over you"  
Anyone you appoint over you should be only one of those who are select among your brethren.

Hilchot Sanhedrin 1:1

It is a positive biblical command to appoint judges and executive officials in every city and every district.  
[cf I:10]

The issue of trustworthiness is a reference to R. Hanina b. Teradion (see ahead in MA X:8). The notion that we are obligated to appoint charity collectors is not explicitly stated in the sources, but is clearly implied. At best, the sources state what the procedures are when we appoint collectors. Rambam uses the descriptive nature of the Talmud to

determine this halacha. Perhaps Rambam is implicitly arguing that we should apply the residency requirements of scholars on every Jew. By the way, the notion of making an investigation into charity collectors' genealogies is contradicted in B. Qiddushin 76a where we are told charity collectors' daughters are allowed to marry priests without such investigation because people quarrel with charity collectors as a result of their ability to seize property. "If their were a blemish in this person's family, it would come out publicly."

who will go around to the people every Friday, [see Halacha 6]  
taking from each person that which is appropriate for him to give,  
and this is the amount which he has already been assessed for,

this is one of the rare mentions of the assessment system, but the details of the actual system itself are never given further detail. However the Tosephta does mention pledges for charity were made in the synagogue.

and they distribute the money every Friday, [see Halacha 6]  
giving each poor man sustenance sufficient for seven days,  
[T. Peah 4:9 which does not actually mention money, only sustenance.]

That is what is called the "alms-fund."

The public assistance fund is not a voluntary charitable organization. It operates in the manner of our social welfare system, though perhaps a bit better, because it was run at a local level. The fund collector, as we saw in Chapter VII, was empowered to seize a person's property if necessary to compel his payment.

## Halacha 2

They must similarly appoint other collectors to gather every day,  
[Above and T. Peah 4:9]

from each courtyard, bread and other edibles, fruits, or money  
[See Halachot 4 and 8 below, from where this summary has been appropriated.]

from anyone who is willing to offer [something] at that time.

The notion that the alms-fund was obligatory, while the charity-plate was optional is not found in the sources. Perhaps because of the perishable nature of food, which is discussed in the sources, Rambam decided that the collectors were not in a position to

demand foodstuffs. In his Mishna Commentary, he was quite clear that the collectors only find out if and what they will receive when they arrive at the house of the person. Apparently, women were the more usual donators of food stuffs to the charity-plate. Practically speaking, food that was given to the charity-plate depended on what was cooked and left over that particular day. Money on the other hand was more easily compelled. But the halacha does mention money as one of the things collected with the charity-plate.

Halacha 3, below, also reflects Rambam's contemporary world where some locales did not have charity-plates. It would be inconsistent to say it was an acceptable practice to have only an alms-fund while making food donations a required contribution.

They should distribute these toward that same evening among the poor, giving therefrom to each poor man his sustenance for the day.

The charity-plate was not the exact equivalent of our modern soup-kitchen. A better term might be "bread basket" because food stuffs were distributed from it once each day. The poor person was given enough for two meals, although whether or not he ate two distinct meals is impossible to say [cf. T. Peah 4:9]. The choice of evening seems consequential from the assumption that the food was collected during the day time until a sufficient quantity was collected. Note both here and immediately ahead that Rambam will prefer the formulation of the baraita in the Bavli to the actual text of the Mishna: e.g., "sustenance for a day", as opposed to "two meals", or "sustenance for a week" as opposed to "fourteen meals."

This is what is called the "charity-plate."

### Halacha 3

We have never seen nor heard of an Israelite community that does not have an alms fund.

As for an charity-plates, there are some localities where it is customary to have it, and some where it is not.

Here is a rare glimpse behind the research and the scholar to Maimonides the man.<sup>60</sup> Although his comment is intended to state that the charity-plate is optional, we are left with the first phrase as either a broad and bland generalization, or a sermonic rebuke.

The custom widespread today is for the collectors of the alms fund to go around every day, and to distribute the proceeds every Friday.

<sup>60</sup> See Twersky's comments in his Introduction, pp.118 -119

Hence the alms fund was collected in Rambam's day in the same manner as the charity-plate, but still only distributed on Fridays. Although there is no textual justification in the sources, Rambam apparently is comfortable, to this degree at least, to allow contemporary circumstances to influence current practice. Nevertheless, current practice is mentioned as an aside, while the halacha is listed according to the source-text.

The next halacha provides a good segue because it is concerned with food being collected for a particular day, but not being distributed that same day.

#### 4. On fast days food should be distributed to the poor.

Actually the statement below from Berachot refers to charity and not food, but the substitution is consistent with the exception permitted in the Gemara of Sanhedrin, below.

If immediately following [lit:on] any fast day the people eat and then go to bed without distributing alms to the poor, they are accounted the same as if they had shed blood, and it is they who are referred to in the verse in the Prophets, *Righteousness [tzedek] lodged in her, but now murderers* (Is. 1:21).

When does this apply?

[Only] when the poor are not given bread and such fruit as is eaten with bread, for example, dates and grapes.

If, however, the alms collectors merely delay the distribution of money or wheat, they are not accounted shedders of blood.

#### B. Berachot 6b

Mar Zutra says: The merit of a fast day lies in the charity dispensed.

#### B. Sanhedrin 35a

R. Eleazar quoted R. Isaac:

If on a fast day, the distribution of alms was postponed over night it is just as though blood were shed [i.e., starvation = blood shed] as it is written: "She that was full of justice, tzedek [lodged in her, but now murders] (Is. 1:21)

This applies only to bread and dates [break fast foods ?]

But does not matter in the case of money, wheat or barley.

The Gemara's relaxation on the restriction seems to obscure a basic problem with the text. When exactly were alms given out, on the fast day, before the fast day, or after the fast day? And what did the poor do with the food or money if they were actually distributed on the fast day? The answer given by Rambam, and my understanding of the permission, is that charity here has been reinterpreted as break-the-fast food which is immediately consumable. This of course is not the opinion of Mar Zutra in Berachot who is arguing that the merit of the fast day lies not in our mere abstention from food, but in our redirecting the money we would have spent on it to the poor.

#### Halacha 5

The alms fund must be collected jointly by two persons, because a demand for money may not be addressed to the community by less than two.

#### B. Baba Batra 8b

Baraita: A) The Alms-Fund collected by two people  
and is distributed by three people.

Why TWO? because any office giving authority over the community must be filled by at least two people. . .

A minimum of two people is required to fill offices conferring authority over the community.

How do we know this?

Ex. 28:5, They shall take the gold (free will offering)

"They" - implies a minimum of two.

Exception: This text shows not authority over the community,  
but that these people were trusted.

There is a confirmation of this [last opinion]: R. Hanina reported that Rebbi, Appointed two brothers to supervise the charity fund.  
[Proving the issue is trust and not authority, since two brothers count as a single legal person in monetary matters] [But, cf. Y. Peah 8:7 III. A-B]

[Then] what is the nature of the authority [of charity collectors] ?!  
They can take [exact] a pledge [to be paid] even on Friday  
[i.e. even when the householder is busy preparing for the Sabbath]



Is that true [correct]?

Isn't there a warning against such a practice [Jer. 30:20] ?

Does this [warning] not apply to the charity collectors as well ?

Harmonization: One speaks of a well-to-do man [who may be compelled]  
The other [Jeremiah] speaks of a man who is not well-to-do.

For example: Rava compelled R. Nathan b. Ammi to contribute  
four hundred zuz to charity.

Although Rambam never makes the connection explicitly, the halacha clearly agrees with the opinion that the nature of the authority is that the collectors can compel people even on the Sabbath.

The money collected, however, may be entrusted for safekeeping to one person.

#### B. Megillah 27a

An Incident:

R. Huna declared a fast day

Another sage and the members of that place came to visit him

They were called upon for charity contributions

And they gave it

When they were ready to leave they asked R. Huna to return their  
money so that they could assist the poor of their own town

27b R. Huna replied: That rule applies only when there is no  
town scholar <sup>61</sup> in authority there,

but if there is a town scholar in authority there,

the money is given to the town scholar [with out the  
expectation of it being returned]

This is even more applicable in this case where the poor of both  
my town and your town are dependent upon me.

This is most likely the source for this ruling, but see the obscure story below.

#### B. Qamma 93a

Mishna lemma : If the plaintiff said: Break my pitcher and tear my

<sup>12</sup> See note #8

garment, the defendant would still be liable.

[If the plaintiff said] do this to a third person..]

Gemara: A contradiction was pouched out:

To keep but not to break

To keep but not to tear

To keep but not to distribute to the poor<sup>62</sup>

An incident: A purse of charity money was brought to Pumbeditha.

R. Joseph deposited it there with a certain person who, however, was so negligent that thieves came along and stole the purse.

R. Joseph declared the man liable [for repayment]

Abaye: Was it not taught: "To Keep" (Ex 22:6), but not to distribute to the poor.

[i.e., the bailee is responsible for keeping, but not distributing (?)]

R. Joseph rejoined: The poor of Pumbeditha have a fixed charity allowance, and the charity money [I left with that fellow] could thus be considered as having been deposited 'to keep' [but not to distribute to the poor]

[The only understanding I can make of R. Joseph's reply is that he holds the man accountable for repayment based on his failure 'to keep', and not based on his inability, as a result of the robbery, to distribute.]

This point is an aside which breaks the flow of the Halachot in Chapter IX which follow the general pattern of B. Baba Batra 8b.

It must be distributed by three persons, because it is analogous to [judicial] monetary cases, in as much as they must give [i.e. determine] to each poor man enough for his needs over the week.

<sup>62</sup> I suspect that this entire last section (following the last mishnaic lemma) of Chapter Eight of B. Baba Qamma has been in some manner corrupted. Our story should be moved to the end of the section preceding the second to last mishnaic lemma of chapter eight. That section deals with explanations of all sorts of rabbinic and popular maxims. Perhaps there has been a synthesis of "Do that to a third person" and "not to distribute to the poor". Clearly the phrase "To keep but not to distribute to the poor" is intended to parallel something in the Mishnaic lemma just as "To keep but not to break", and "To keep but not to tear" obviously do. The confusion may have resulted from our seemingly misplaced story.

B. Baba Batra 8b

Baraita:

- A) The Alms-Fund is collected by TWO [people]  
and is distributed by THREE [people].

...

Why THREE? on analogy to monetary cases -- which require a court (3 people) -- since they must assess the merits of the claimants.

The baraita makes a point of assessing a poor person's merits, likewise in his Mishna commentary Rambam speaks of distribution based on a person's needs and social standing. Here however the sole issue is what the man's needs are for the week.

The charity-plate on the other hand, must be collected by three persons, since the contribution to it is not set, (Halacha 2, above) and it must be distributed likewise by three.

B. Baba Batra 8b (continued from above)

- Baraita: B) Food for the Charity-Plate is collected by THREE  
and distributed by THREE

Since it is distributed as soon as it is collected

[i.e., they cannot afford the delay of finding a third therefore they start out with the number they need to distribute].

Rambam ignores the opportunity to use this explanation, although he mentions it in his Commentary on the Mishna.

## Halacha 6

Contributions to the charity plate are to be collected every day those for the alms fund, every Friday.

The charity plate is to provide for the poor of the whole world, the alms fund is to provide for the poor of the town alone.

B. Baba Batra 8b (continued from above)

Baraita:

The Charity-Plate is collected every day

The Alms-Fund is collected every Friday

The Charity-Plate is for all comers

The Alms-Fund is for the poor of that locale only.

The version above follows Alfasi, but in Halachot 1 and 2 Rambam seems to be following our printed version which has "distribute."

### Halacha 7

The residents of the town may use alms fund moneys for the charity plate, or vice versa, or divert them to any other public need that they might choose, even if they had not so stipulated when they collected them.

### T. Megillah 2:12

A. R. Menahem b. R. Yose says:

If they sold the synagogue, they should not buy a street [M. Meg. 3:1]

B. R. Judah said, "Under what circumstances [do we apply this prohibition of not using the surplus of funds -- collected for a matter of higher sanctity -- for a matter of lesser sanctity [M. Meg. 3:1]?"

C. "When the charity collectors of that town did not make stipulation with them [that they may make use of the surplus funds for some other purpose]. [cf. M. Sheqalim 2:5]

D. "But if the charity collectors of that town did make such a stipulation, they may make use of the [surplus] funds for any other purpose which they choose." [cf. T. Sheqalim 1:12 T.]

### B. Baba Batra 8b

Abaye on the charity practices of Rabbah

1) Initially he would not use synagogue objects purchased with charity funds. [lit: sit on the mats]

But on hearing the baraita [1st baraita of 8b]

"The townspeople can apply it to any purpose they choose"  
[i.e. specify other uses for charity funds (at the outset)]

He would use them [lit: sit on them]

2) He kept two purses for the poor

a) one for the town's poor

b) one for outsiders [i.e. transients]

9a But he heard he could keep a single purse [for both groups]  
If he stipulated it with the townspeople

R. Ashi: Such a stipulation is unnecessary  
People who give me money [to distribute as charity]  
rely on my judgement

B. Baba Batra 8b

Baraita: The Soup Kitchen is for all comers  
 The Charity Fund is for the poor of that locale only.

The Town's People, however, are at liberty to use the Soup Kitchen [funds  
for] the Charity Fund and vice versa.  
They [also] are at liberty to use them [the funds] for whatever [other]  
purposes they choose.  
[The town's people have this last right], just as they have the right to set  
measures, prices, weights, and wages.

If there is in that city a great Sage, whose judgement determines all collections and who distributes them to the poor as he sees fit, he too is permitted to divert these funds to any other purpose that he may think preferable.

B. Megillah 27a

An Incident:

R. Huna declared a fast day

Another sage and the members of that place came to visit him

They were called upon for charity contributions

And they gave it

When they were ready to leave they asked R. Huna to return their money so that they could assist the poor of their own town

[This rule is found in the Baraita (on Meg. 27a) immediately preceding this incident: see MA VII:14]

27b R. Huna replied: That rule applies only when there is no town scholar in authority there,

but if there is a town scholar in authority there,  
the money is given to the town scholar

[with out the expectation of it being returned]

This is even more applicable in this case where the poor of both my town and your town are dependent upon me.

In MA VIII:1 it is clear that individuals do need to stipulate what should be done with their charitable contributions if changes are to be allowed. In VIII:4 we learn that even

charity collectors must have such a stipulation made, except if the change will ultimately and directly benefit the poor. A Sage or the leadership of the town has the additional right of determining priorities. Note the development throughout the source texts of reducing the constraint on these funds. Clearly, if there was a surplus of such funds it must have become intolerable to keep them in reserve while other pressing needs had to be ignored. This is why even as early as the Tosephta, the notion of reserved funds not applied to the charity collectors. [See MA VIII:5 - T. Sheqalim 1:12]

#### Halacha 8

Alms collectors are not permitted to separate one from the other in the market place, except as one turns to enter a gate while the other turns to enter a shop, in order to collect contributions.

#### Halacha 9

If an alms collector finds money in the market place, he may not put it in his own pocket, but should rather drop it in the alms purse.

After he has reached his own home, he may retrieve it out of the purse.

#### Halacha 10

If an alms collector had [previously] loaned a maneh to his fellow, and the latter [wanted to] repay him right there in the market place, he may not put the money in his own pocket, but should rather drop it in the alms purse, and after he arrives home he may retrieve it from the purse.

#### T. Peah 4:15

- A. Charity collectors are not permitted to separate from each other
- B. Not even if one of the collectors friends wants to repay him money that he owes him  
not even if [one of them] saw [lit: found] money in the road, he must not [leave his companion to] take it
- C. As it is written [in Scripture]. "You shall be free of obligation before the Lord and before Israel" (Num. 32:22)
- D. But they may separate from each other if they are collecting within a courtyard, or with in a shop.

B. Baba Batra 8b

Baraita:

Charity collectors are not permitted to separate from one another, though one may go collect at the gate while the other goes to collect at a shop [in the same courtyard]

If one of them finds money in the street, he should not put it in his purse, but in the alms purse, and he may reclaim it when he comes home.

In the same way,

if one of them has lent a man a maneh and he repays him in the street, he should not put the money in his own purse, but in the alms purse, and he may reclaim it when he comes home

Rambam relies on the formulation of the Baraita in the Bavli as opposed to the Tosephta. The Bavli's version seems to be concerned with the verb porais, which means to leave, but can also mean to separate items, such as coins. This is Lieberman's understanding of the Tosephta passage itself, but the text does not support his thesis. Brooks made a similar mistake in his study. The form of the verb in the Tosephta clearly means to leave or depart, and is always used in that sense with the preposition mem. Either as a confusion with the verb, or an attempt to give collectors greater leniency in protocol, the Bavli's version permits the behavior the Tosephta prohibited, but in a manner that makes it look, publicly, as if that money were going to charity. Sifre, in that regard, has a mention of using recovered money for just that purpose. But the reality is something else. Ultimately the Bavli rules that the collector can have one purse while collecting for charity and everything goes into it, and apparently nothing came out of it while on the job.

The reliance on the Bavli continues to fit the general pattern of this chapter which keeps pace with Baba Batra 8b-9a.

He should count the alms fund money not two coins at a time, but one by one,

B. Baba Batra 8b

Baraita:

When the charity overseers have no poor to whom to distribute, they may convert their coins with others, but not themselves.

When the charity-plate stewards have no poor to whom to distribute, they may sell [the food] to others, but not themselves, [see 11 below]

Money collected for charity should be counted out [as it is accepted], one coin at a time.

(Interlude) (9a)



R. Eleazar: No matter how reliable another person is, the person with final authority should secure and re-count all monies in his charge.

As is noticeable above, the source text for the last phrase of the halacha does not immediately follow the first baraita. Rather there is an entirely new discussion on what to do when there are no poor to distribute to. This does not seem to be a case of a variant text since Alfasi has the same order as our printed versions. Rambam performs surgery on the material for an apparently practical reason that both sections deal with how the charity collector should act when collecting.

as a precaution against suspicion, as it is said, *Then you will be guiltless before the Lord and before Israel* (Num. 32:22).

The proof-text serves as an explanation of the public protocol of charity collectors, i.e., they should be beyond reproach. Interestingly, the proof-text itself is absent in our version above of the baraita in the Bavli. Rather Rambam seems to have reinserted it from the Tosephta passage above [T. Peah 4:15 C]. But see the baraita in B. Pesahim 13a (in Halacha 11 below), where the proof-text is given, but the reference to counting out the coins is now missing. The verse is also used, in a comparable situation, as a proof-text in M. Sheqalim 3:2 in regard to the dress restrictions involved with entering the Temple Treasury.

#### Halacha 11

If the alms collectors have no poor people to distribute them to, they may convert the small coins into denars, but only for others, not for themselves.

If the charity-plate collectors have no poor people to distribute the food to, they may sell it to others, not to themselves.

#### M. Baba Metzia 3:6

If a man left produce with his fellow,  
even if it should [totally] perish,  
his fellow may not touch it.

R. Shimon b. Gamliel says:

He may sell it in court,  
for he is considered as one who thereby  
restores lost property to its rightful owner.

T. Baba Metzia 3:8

He who leaves produce with his fellow and it begins to rot;  
 or wine and it begins to sour;  
 or oil and it begins to putrify;  
 "even if it should [totally] perish  
 his fellow may not touch them" these are the words of R. Meir.  
 But the sages say, "he may sell it in court  
 [and thereby] he sells them to a third party,  
 but he may not buy it for himself."

T. Baba Metzia 3:9

Similarly, Charity supervisors  
 who did not find poor people to distribute the bread to,  
 sell it to others,  
 but they do not sell it to themselves.  
 Charity supervisors convert money with others,  
 but not with themselves [i.e., their own money]

B. Pesahim 13a

Baraita: When the charity overseers have no poor to whom to distribute,  
 they may convert their coins with others, but not themselves.  
 When the charity-plate overseers have no poor to whom to distribute,  
 they may sell [the food] to others, but not themselves,  
 as it is said, *And you will be guiltless before the Lord, and before Israel*  
 (Num. 32:22)  
 [the same as B. Baba Metzia 38a, minus the proof-text]  
 [cf. B. Baba Batra 8b (above), and Y. Pesahim 1:4]

T. Sheqalim 2:8

Public-supervisors of the poor  
 who had funds left over after making their distribution to the poor  
 should not purchase with them produce on consignment,  
 because of [the possibility] of loss to the poor [in its value].  
 They purchase [produce] with it from the highest to the lowest price.

Unlike the average individual, the charity collectors had no need to go to the court to perform the exchange. Although it is obvious that the food was exchanged for money lest it spoil, the explanation for converting the money is based on the premise that numerous small coins were more easily lost, and more inconvenient to carry around. The

Soncino edition makes the point, in its notes, that the smallest coins were made of copper and therefore were more likely to be damaged over time and lose their value. The original wording "bread" from the Tosephta has been lost in the baraita versions.

Alms collectors are not required to render an account of the alms moneys, neither are treasurers of consecrated property required to render an account of such property, as it is said, *Howbeit there was no reckoning made with them of the money that was delivered into their hand; for they dealt faithfully* (2 Kings 22:7).

B. Baba Batra 8b

Baraita: The charity collectors are not required to give an account of the moneys entrusted to them for charity, neither are the Temple treasurers in regard to moneys given for consecrated purposes. There is no actual proof [in Scripture], but hinted at in the words, *Howbeit there was no reckoning made with them of the money that was delivered into their hand; for they dealt faithfully* (2 Kings 22:7).  
[cf. Y. Peah 8:7 I. E]

The intent here is not that the charity supervisors do not have to keep records. As a matter of fact they must have had an extensive record system to keep track of collections and distributions. Rather the statement says they are not required to give an accounting, i.e., show the books to others. This probably served one or more of the following purposes. First it protected the identity of the givers and receivers; secondly, it protected the same people from those who wanted to know how much an individual had given or had received. It also was a way of protecting the distributors from having to justify every disbursement. Finally, it may serve as a statement that we do not publicly disclose the amount of funds with which we are dealing. People might stop giving, or give less, or want to allocate the money for another purpose. Nevertheless, just that did happen from time to time [Halacha 7, above].

Halacha 12

One who has resided in the city (?) for thirty days may be compelled to contribute to the alms fund, together with the residents of the city. If he has resided there for three months, he may be compelled to contribute to the charity plate. If he has resided there for six months, he may be compelled to contribute for the clothing given to the poor of the city. If he has resided

there for nine months, he may be compelled to contribute for the burial of the poor and for the other funeral requirements.

B. Baba Batra 7b

Mishna: A) Courtyard Residents:

can be compelled for an assessment to build;

1 - A Porter's Lodge (lit: gate-house)

2 - A Door for the Courtyard

B) Town Residents:

can be compelled for an assessment to build;

1 - Constructing/Repairing a (Town) Wall

2 - Folding Doors

3 - A Cross Bar

C) What length of time establishes residency?

- Normally, 12 months, but

- Purchase of a Home, established immediate residency.

(interlude) (8a)

Mishna lemma: "What length of time establishes residency?"

Gemara: We have evidence for both: A) 12 months and B) 30 days,

30 days establishes status as 'inhabitant'

12 months establishes on as 'full resident' (lit: son of the town)

[Based on a baraita which follows concerning a vow not to derive any benefit from an inhabitant versus a 'town's man']

(see also Deut 14:12)

What imposts come with what lengths of residency?<sup>63</sup>

<sup>63</sup> The baraita follows Alfasi's version, which is apparently the same source from which Rambam works.

The printed version differs in regard to the following: The Alms-Fund and Charity-Plate time periods are reversed. The last listing, for the impost after twelve months, speaks of town wall repair imposts. That ending of course returns the baraita to the original Mishna which mentions that town residents can be assessed for wall repairs.

Y. Peah 8:7 [very end] doesn't even mention the Alms-Fund in its version of this text, but it does agree with the printed version that thirty days establishes eligibility for the charity-plate. Y. Baba Batra 1:4 [1:6 in *editio princeps*, agrees with Alfasi's version; Alms-Fund after thirty days, but that version is missing any mention of the Charity-Plate. In general the last impost, after twelve months, is different in each text.

Baraita: 30 days for the Alms-Fund impost  
 3 months for the Charity-Plate impost  
 6 months for the Clothing impost  
 9 months for the Burial Fund impost  
 12 months for Town-Taxes

We already saw in the Tosephta that there is an abbreviated form of this baraita that seems to address the residency requirements of the poor before their eligibility for the Alms-Fund. This baraita is clearly concerned with the householder's tax obligations and how early people may be assessed for them. Note that even though we have been told the Charity-Plate is essentially optional, this baraita seems to mention it as an impost. Perhaps the point was that the collectors may not even approach a new town's person until that time period has elapsed, but I am unconvinced.

There were apparently two or more tannaitic traditions that has been confused and mixed together. For other formulations see Y. Peah 8:7 at the end, and Y. Baba Batra 1:4 [1:5 in edition princeps].

Structurally, this halacha serves as a segue between Halachot 1-11 which deal with the institutions, and between halachot 13-19, which deal with those who receive. Halacha 12 mentions that key group, the householder who must give so that the other two groups can function.

### Halacha 13

He who has means for two meals is forbidden to take from the charity-plate. If he has means sufficient for fourteen meals, he may not take from the alms fund.

He who has two hundred zuz, even if he does not use them to engage in business, or he who has fifty zuz and uses them in business, may not take of the gleanings, the forgotten sheaf, peah, or the poor-tithe.

If he has two hundred denars less one, he may partake of all of these, even if a thousand persons give to him at one time.

If he has money in his hand, but owes it as a debt or it is the security for his wife's ketubah, he is still permitted to take of these poor provisions.

### M. Peah 8:7-9

7. Whoever has means for two meals, he may not take from the charity-plate:  
 For fourteen meals, he may not take from the alms-fund.  
 (The alms-fund is collected by two, and distributed by three.)

8. Whoever has two hundred zuz.

he may not take from the gleanings, the forgotten sheaf, peah, or poor-tithe.

Even if a thousand give him at one time<sup>64</sup>, he may take.

If they [the 200 zuz] were pledged as security for his creditor,

or for his wife's ketubah, he may take.

(They do not force him to sell his house or the tools of his trade.)

9. Whoever has fifty zuz, and he uses them in business [to support himself],  
he may not take.

Even the Mishna can be re-edited. Rambam has rearranged the Mishna material, added a repetition here and there, removed two topically extraneous statements, and spelled out the idea behind the wife and creditor more clearly (i.e., money in hand). His major effort has been to present the two hundred zuz limit, its exceptions, and its consequences, in a more systematic formulation. His main technique was to move the fifty "active" zuz phrase back into the text as a partner with the two hundred zuz definition.

The edited version is in fact quite clearer, and the missing statements have been covered elsewhere in fuller detail. The first one: "The alms-fund is collected by two, and distributed by three." has, with its baraita expansions, served as the topic of halachot 1-11. The second phrase: "They do not force him to sell his house or the tools of his trade," with its expansions and borrowings is the basis of halachot 13-19.

Halacha 13 states the dividing line between eligibility and ineligibility. The remainder of the halachot will address the issue of what the poor person might still possess and what he can or cannot be compelled to sell.

#### Halacha 14

A poor man who [still] has his own courtyard and home-furnishings,

even if these include utensils of silver and gold,

he may not be compelled to sell either his house or his furnishings;

rather he is permitted to accept [private] alms,

and it is a religious duty to give him alms.

To what furnishings does this apply?

To eating and drinking vessels, clothes, mattresses, and the like.

If, however, he has other silver and gold utensils,

such as a strigil, a pestle, and the like,

he should first sell them and buy less expensive ones.

<sup>64</sup> This phrase remains obscure, Rambam stays on the safe side by quoting it verbatim, although the Mishna gives the word one in the feminine ahat, and has the masculine ehad.



When does this apply? Before he comes to ask for public assistance. If he has already asked for it, he must be compelled to sell his vessels and buy less expensive ones, and only then may he take from public funds.

These two halachot were discussed earlier in Chapter 3 in regard to Rambam's Commentary on the Mishna.

#### Halacha 15

If a householder traveling from town to town runs out of funds while still on the road and finds himself with nothing to eat, he is allowed to partake of the gleanings, the forgotten sheaf, peah, and the poor man's tithe, as well as to benefit from alms, and when he reaches his home he is not obligated to repay, since at that particular time he was in fact a poor man. To what can this be compared? To a poor man who has become wealthy, and who is not obligated to repay past assistance.

#### M. Peah 5:4

If a householder traveling from one place to another and he needed to take from the gleanings, the forgotten sheaf, peah, and the poor man's tithe, he may take them and when he reaches his home he repays, R. Eliezer. But the sages say, at that particular time he was in fact a poor man [and therefore does not need to repay]. [cf. B. Hullin 130b]

Rambam has applied the principle to one more step, namely he may take charity. It is unclear what exactly Rambam had in mind. Did he mean that the man could go begging, or more likely, that the man was eligible to go to the soup-kitchen, perhaps even the alms fund. Note that the householder must reach a desperate point of not having anything to eat. To reach such a point would mean he had already sold off any thing of value he had with him that he could spare. Notice also that Rambam avoids the issue that immediately pops up into our minds. Namely, what about his need to return home? How does he get there? Does he have a means of transportation? Rambam's application of the principle here is an exercise in theory and does not attempt to expand into practical concerns.

His last comment in the halacha -- that the poor are not expected to repay charity when they have been restored to means -- is informative, although he clearly took it for



granted that his reader was aware of the point. By his adding this personal comment, the halacha continues the topic of what, and when, the poor can be compelled to sell their possessions. The temporarily impoverished householder provides a nice illustration of one point in this regard: the poor cannot be compelled to repay what they received after they regain their economic means. Nevertheless we already saw that the Tosephta appears to be debating just this issue.

#### Halacha 16

A person who owns houses, fields, and vineyards, which, if sold during the rainy season would bring a low price, but if held back until the dry season would bring a fair price, may not be compelled to sell them, and should be maintained out of the poor man's tithe up to half the worth of these properties. He should not feel pressed to sell at the wrong time.

#### Halacha 17

If at the time when other people are buying such properties at a high price, he cannot find anyone to buy his property except at a low price, seeing that he is hard pressed to sell, he may not be compelled to sell, but is rather allowed to continue eating out of the poor man's tithe until he can sell at a fair price, with everyone aware that he is not pressed to sell.

#### M. Baba Qamma 1:1

The four primary categories of injury are . . .  
 their common feature is that they do damage  
 and that they are supposed to be under your control,  
 and whenever any one of them does damage,  
the offender is liable to make restitution with the best of his estate.<sup>65</sup>

#### B. Baba Qamma 7a

Baraita: An owner of houses, fields and vineyards who cannot find a purchaser (is considered poor) and may be given from the poor tithe up to half the value of his estate.

When does this permission apply? . . . [see below]

This rule is applicable to cases where in the month of Nisan property has a higher value,

whereas in Tishri it has a lower value .

People in general wait until Nisan and then sell.

<sup>65</sup> Ex. 22:4 "Out of the best of his field and vineyard he shall make restitution."

whereas this particular householder, being in great need of ready money,  
finds himself compelled to sell [to make restitution] in Tishri  
at the existing lower price;  
he is therefore granted half.

[According to Alfasi: relocated from above]

If land in general slumps in value  
and that of the hard pressed owner slumps along with it,  
\*not even a small amount of poor tithe is granted him.  
But, if land in general rises in value while, due to his need for funds,  
the land of the hard pressed land owner slumps in value,  
\*poor tithe is granted him beyond one half.<sup>66</sup>

We continue the topic of the poor man and his house. This text is actually borrowed from a different circumstance altogether. In this case the man must make restitution from his property, but he cannot get a fair price for it, therefore he is permitted to wait until he gets a fair price and is deemed a poor man because he has no liquid assets (over 200 zuz). The implication of the actual passage is that he will be asked to return the amount given him in poor tithe once he makes the sale.

Rambam has refashioned the text. It still applies to one who is poor due to his need to make restitution, but the category, by virtue of being located here, has been expanded to include others who could be in a similar circumstance. Furthermore, such a person can continue to rely on the poor provisions indefinitely until he receives a fair price. For example, a member of the gentry who has just become impoverished, but still possesses real estate in excess of the one house he need not sell, may not be forced to sell his additional houses and properties at a bad price. This is reminiscent of the discussion in Halacha 14 regarding when a poor man can be compelled to sell his precious metal utensils - only when he applies publicly for assistance, and only those items that are not in the category of kitchenware, furniture, or clothing.

#### Halacha 18

If the funds collected for a particular poor man, to fulfill his need,  
surpasses what he needs, the surplus belongs to him.

Likewise;

The surplus of what was collected for the poor must be used for the

<sup>66</sup> In our printed version, the two phrases indicated by the asterisks are switched with each other.

poor;  
 the surplus of what was collected for the ransoming of captives  
 must be used to ransom captives;  
 the surplus of what was collected for the ransoming of a particular  
 captive belongs to that captive;  
 the surplus of what was collected for the burial of the dead must be  
 used to bury the dead;  
 the surplus of what was collected to pay for the burial of a particular  
 person belongs to his heirs.

M. Sheqalim 2:5

the surplus [funds]<sup>67</sup> for poor people must be used for poor people  
 but the surplus [funds] for a particular poor person  
 must be used for that particular poor person  
 the surplus [funds] for captives must be used for captives  
 but the surplus [funds] for a particular captive  
 must be used for that particular captive  
 the surplus [funds] for the dead must be used for the dead  
 but the surplus [funds] for a particular dead person  
 must be used for his heirs.

R. Meir says: The surplus for a particular dead person must be put aside  
 until Elijah comes,

R. Nathan says: The surplus for a particular dead person must be used for  
 erecting a monument (i.e., tombstone) over his grave

T. Sheqalim 1:12

[The Tosephta's arrangement of the above material is slightly different but  
 the meaning is exactly the same. Here is the additional material:]

R. They do not collect a given garment

[and give the poor man some other] garment,

S. They do not collect funds for this particular captive and use them for  
 some other captive

T. But they do not interfere with charity collectors on that account

Even though the Mishna is quoted verbatim, Rambam's introductory phrase serves to  
 define surplus in this instance. Whereas the Mishna is addressing funds collected and  
 distributed at the Temple, Rambam relocates the principle to any town. Also interesting  
 is the phrasing, "If the funds collected for a particular poor man, to fulfill his need,  
 surpasses what he needs ..." In other words, money is collected to fulfil his biblically

<sup>67</sup> See Num. 6:10

prescribed "want", but our efforts are to provide for his "need." Nevertheless, the poor man is guaranteed the surplus, based on the Mishna, but also on the principle of dei mahsoro - "sufficient for his want". Want of course can be need or desire.

This follows the topic of this unit of halachot. The poor man can not be compelled to give up charity he has collected in excess of his needs. Neither can those who collected for him deny him that surplus.

#### Halacha 19

If a poor man contributes a perutah to the charity plate or the alms fund it should be accepted. If he does not, he may not be constrained to do so.

If when given new garments he returns to his distributors his worn-out ones, they too should be accepted, but if he does not return them, he may not be constrained to do so.

#### T. Peah 4:10

- I. A. [As regards] a poor person, who [like any other person,] gave a perutah to [support] the communal fund or a piece of bread to [support] the soup kitchen --
- B. They [the collectors] may take [food or money] from him.
- C. But if he did not contribute, they do not force him to give.
- II. D. If they [the distributors] gave [to a poor person] new clothes, and he exchanged [his] worn out clothes [in partial payment] --
- E. They may take [the clothes] from him.
- F. But if he did not exchange, they do not force him to do so.

Topically, this concludes the unit on what and when the poor can be compelled to sell their possessions.

This is the only direct borrowing from Tosephta Peah. It proves my analysis of Rambam's methodology of codification. Namely, Rambam starts from the Mishna and works forward until he finds the latest formulation of a rule on a given topic. Since the later texts never mentioned or revised this decision it is still the latest and therefore decisive word.

## Chapter 8

Hilchot Mattenot Aniyvim: Chapter X

This chapter contains a vast quantity of homiletic material which I have not included. The chapter is halachic to the extent that it offers decisions, but is advisory rather than binding since none of the halachot can be enforced by a court. I have presented that material which is of a more practical than ideological nature.

## Halacha 1

It is our duty to be more careful in the performance of the commandment of almsgiving than in any other positive commandment...

B. Baba Batra 9a

R. Ashi further said: Charity is equivalent to all other religious precepts combined; as it says, *Also we made ordinances*: it is not written, *an ordinance*, but *ordinances*. [completing a statement in the text by R. Ashi's establishing an annual alms minimum of a third of a sheqel using the same proof-text - Neh. 10:33]

The plain meaning of Neh. 10:33 is that the Israelites set up a third of a sheqel tax for all of the offerings and services of the Temple operation, which are listed in detail in the verse. Since the plural "ordinances" is used, R. Ashi expounds the verse as a comparative to be read: we made ordinances: the third of the sheqel, and all of the various offerings and services of the Temple operation. The offerings are equated with all other religious precepts, while the third of a sheqel is equated with charity.

Since the precept of giving charity is equal to the performance of all the other precepts combined, it follows that its observance must be more punctilious than the observance for any other single precept.

## Halacha 4

He who gives alms to a poor man with a hostile countenance and with his face averted to the ground, loses his merit and forfeits it, even if he gives as much as a thousand gold coins.

This notion seems to be original to Rambam, or at least he is the first to mention it. There was no precedent that I could find for the statement that one loses his merit for giving in such a manner. Nevertheless, the notion is easily predicated on two concepts we have already seen. First, the mitzvah itself is "When there will be with you a needy

man. . . do not harden your heart, nor shut your hand from your needy brother." The wording of the commandment clearly implies two actions are prohibited, "hardening one's heart" as well as "closing one's hand." Closing one's hand is simply refusing to give. "Hardening one's heart" must be the source for Rambam's warning not to give alms with a hostile countenance. The hardened heart externalized is a hostile countenance. By analogy a person who gives with his face turned to the ground, is not trying to preserve the poor person's dignity, but is denigrating the very action he is performing, by shrinking away from it. The hardened heart is portrayed in the Code as being externalized in three ways: by deed, by word, by body language.

He should rather give with a friendly countenance and joyfully.

M. Avot 1:15 (and Rambam's Commentary)

Shammai said: Set a time for yourself to study Torah,  
say little and do much,  
and greet all people with a friendly countenance.

Rambam: "With a friendly countenance", means that one should deal with people calmly and use pleasant and agreeable language.

By analogy, if one is forbidden to give with a hostile countenance, he should give with a joyful one, although this is not a requirement. Not everyone can always manage putting on a friendly and joyful face. Nevertheless, one can be expected to remove or prevent a hostile visage.

He should commiserate with the recipient in his distress ...

He should also speak to him prayerful and comforting words ...

Halacha 5

If a poor man asks you for alms and you have nothing to give him,  
comfort him with words.

Leviticus Rabbah 34:15

*And if you extend yourself to the hungry, (Is. 58:10)*

R. Levi explained this to mean that if you have nothing to give him, comfort him with kind words. Say to him: 'My soul goes out to you, for I have nothing to give to you.'



B. Baba Batra 9b

R. Isaac: One who gives a small coin to the poor receives 6 blessings

One who gives words of comfort to the poor receives 11 blessings

[cf. T. Peah 4:17 K-N]

The concept must be fairly old and wide spread, but it is surprising to find it mentioned only once in the Bavli. Its source is clearly the discussion found in Tosephta Peah. There are some opinions in the sources that tzedakah can only be done with money, and that here we are bordering on, if not crossing into, the performance of deeds of kindness. The boundary between the two is extremely unclear, if not undefined all together.

This seems to be an instance of Rambam relying on a Midrashic text he has not mentioned as a source, namely Leviticus Rabbah, but it is also possible that Rambam's edition of Sifra VaYigra had this addition. The notion also has a practical psychological concern. When one has no money one would be tempted to either turn away from giving, or rebuking the poor man for asking, or simply yelling at him to leave you alone.

It is forbidden to rebuke a poor man or to raise one's voice in a shout at him, seeing that his heart is broken and crushed ...

Apparently based on Proverbs 13:8 - *The ransom of a man's life is his wealth, but the poor hears no rebuke.* It is not that surprising to see such a halachic statement in Chapter X, which is advisory in nature. Nevertheless, the formulation, "It is forbidden..." is apparently based on Rambam's own decision to apply the verse and not on any rabbinic precedent.

## Halacha 6

He who presses others to give alms and moves them to act thus, his reward is greater than the reward of him who gives alms himself, as it is said, *And the work of righteousness shall be peace* (Is. 32:17). Concerning alms collectors and their like Scripture says, *And they that turn the many to righteousness (shall shine) as the stars* (Dan. 12:3).

B. Baba Batra 9a

R. Eleazar said:

One who causes others to do [acts of] good[ness]  
is greater than one who [merely] does [acts of goodness]  
As it says, *And the work of righteousness shall be peace.*



*and the effect of righteousness shall be quiet and confidence  
for ever, (Is. 32:17)*  
[cf. T. Peah 4:17 G-J]

B. Baba Batra 8b

*And they that turn the many to righteousness (shall shine) as the stars,  
these are the charity collectors.*

I have given these two in an order corresponding to the halacha above, but note that the order of the source text has been reversed.

M. Avot 5:13 (and Rambam's commentary)

There are four types among almsgivers:

One who desires that he [himself] gives, but not that others should give  
he is ill spirited regarding other people[']s giving]

One who wants others to give, but he will not give,  
he is ill spirited toward himself

One who would himself give, and have others give,  
he is a saintly man.

One who does not want to give, nor wants others to give,  
he is a wicked man.

Rambam: Note that the one with so much mercy -- so much that he is not  
satisfied with his own mercy and wants others to show mercy as well -- is called  
saintly. The unsympathetic one is called wicked.

Although Rambam introduces the Ladder of Giving below in Halacha 7, Halacha 6 is a preface to that topic. There are eight degrees of personal giving. This halacha speaks not of personal giving, but of getting others to give. This is the most saintly action a man can take. As Rambam points out in the Guide, society functions only because there are enough people who care about the welfare of others. Unfortunately, schnorring has fallen on hard and derisive times.

Although it is not discussed, Rambam clearly has not said, nor meant to say, that urging others is a substitute for one's own obligation to give. One does not fulfill one's personal obligation to give unless he gives of his own wealth (MA VII:5). The key is that Rambam is differentiating merit from fulfillment. One can fulfill the mitzvah, but lose his merit-points, as in Halacha 4 above. Here, one can gain merit points without actually giving, yet without fulfilling the commandment itself. This is why Chapter X is advisory, most of its messages, even the practical ones, are sermonic and speak

specifically to 'the converted'.

### Halacha 7

There are eight degrees of almsgiving, each one superior to the other.

The degrees and even their order are all explicitly or implicitly derived from the source texts. Rambam's originality is in numbering them and writing them down. This was by no means a small accomplishment.

The highest degree, than which there is none higher, is one who upholds the hand of an Israelite reduced to poverty by handing him a gift or a loan, or entering into a partnership with him, or finding work for him in order to strengthen his hand, so that he would have no need to beg from other people.

Concerning such a one Scripture says, *Thou shalt uphold him; as a stranger and a settler shall he live with thee* (Lev. 25:35), meaning uphold him, so that he would not lapse into want.

### B. Shabbat 63a

R. Abba also said in the name of R. Shimon b. Lakish:  
One who lends money is greater than one who performs charity.  
And one who forms a partnership is greater than both.  
[cf. ARN I, Chapter 41]

### B. Pesachim 112a

Baraita: R. Aqiva charged his son R. Joshua with seven things ...  
[#6] treat your sabbath like a weekday rather than be  
dependent on men, and [#7] strive to be on good terms with  
the man upon whom the hour smiles  
R. Papa: [#7] does not mean to buy from or sell to him,  
but to enter into a partnership with him

The quote from Leviticus is the key to understanding how Rambam has refashioned the emphasis of the rabbinic material. The Shabbat 63a text clearly would have these all be at different rungs on the ladder, forming a partnership being the highest. Rambam places them side by side at the top rung. And these three methods only bring a person to the top rung if "they strengthen the poor man's hand, so that he would have no need to beg from other people". In other words, the top category is to prevent people from falling

into the position of poverty, because it is more embarrassing for a person to ask for charity who has not been poor before, than for one who has always known poverty, or known it for a great period of time. Practically, Rambam is saying there is nothing more meritorious than enabling a person, by whichever method, to keep himself off the poor rolls.

#### Halacha 8

Below this is he who gives alms to the poor in such a way that he does not know to whom he has given, nor does the poor man know from whom he has received.

The remainder of the ladder rungs are all lesser because they do not remove the poor person from being dependent. The top level of giving at this level has an fanciful and a practical description.

This constitutes the fulfilling of a religious duty for its own sake, and for such there was a Chamber of Secrets in the Temple, whereunto the righteous would contribute secretly, and wherefrom the poor of good families would draw their sustenance in equal secrecy.

#### M. Sheqalim 5:6

There were two Treasury-Chambers in the Temple,  
One the Chamber of Secrets,  
the other, the Chamber of Vessels.

The Chamber of Secrets [that was where]

The pious [lit: sin fearers] would give [their money] in secret,  
and the poor of good family were supported there from in secret.

This method was a superior form because it did not involve the charity collector as a middle man. M. Sheqalim 3:2 implies that those entering the Treasury Chambers had to be dressed in a simple fashion. No one knew who was poor and who was wealthy, who was taking funds, and who was giving. But this method became defunct with the destruction of the Temple. However, a similar practice still exists among the traditional Hevra Kadisha, who leave their charity box with the immediately bereaved. The box is not supervised. The family may put money in, or take as much out as they choose. The only limit is their conscience. They may even take for other needs beyond the burial if they are very poor.

Close to such a person is he who contributes directly to the alms fund.

One should not, however, contribute directly to the alms fund unless he knows that the person in charge of it is trustworthy, is a Sage, and knows how to manage it properly, as was the case of Rabbi Haninah b. Teradion.

#### B. Baba Batra 10a-b

Based on an exposition of Proverbs 11:4 and 10:2

Charity delivers from two types of death;

unnatural death and the punishments of Gehinnom

Q. Which kind of charity delivers from which kind of death?

10b A. No knowledge by giver of receiver, nor by receiver of giver.

The practices of R. Abba [B. Ket. 67a] and Mar Uqba [B. Ket 67b] are discussed ;

Each fulfills only half of the requirements respectively

So how does one accomplish this method [A.]?

One should put his money in the charity box

Objection: The charity boxes are not well supervised

One should give only to those charity boxes that are supervised by people [as reliable] as R. Hanina b. Teradion

This text connects us with the next two halachot which are based on the practices of R. Abba and Mar Uqba, although in reverse of the order given above.

#### B. Megillah 17b

Baraita: R. Eleazar b. Perata and R. Hanina b. Teradion were arrested

R. Hanina predicts he will not be rescued because while

R. Eleazar studied Torah and practiced acts of benevolence

R. Hanina claims he only studied Torah

But didn't R. Hanina practice acts of benevolence ?

Don't we have a baraita to that effect ?

Baraita: R. Eliezer b. Jacob says: One should not put one's money into a charity-bag unless it is supervised by a learned man such as R. Hanina b. Teradion. [B. Baba Batra 10a]

This proves only that he was trustworthy, but not that he practiced acts of benevolence.

Don't we have a baraita proving this point [that he did practice acts of benevolence] ?

Baraita: [R. Hanina b. Teradion] said to [R. Jose b. Kisma]:

I mistook Purim money for ordinary charity money  
[and distributed it as ordinary charity money]  
So I distributed [my own] money to the poor [as Purim money]

This proves he practiced charity, but not as much as he might have.

The alms fund functions in the same manner as the Chamber of Secrets, with the one exception that there is a middle man who knows who is giving and taking, and who is also in possession of the funds. The funds from the Chamber of Secrets were harder to walk away with. The alms fund, is the only practical way remaining of fulfilling the mitzvah in present time. Rambam's mention of the Chamber of Secrets clearly fits with the assertion that the Code is forward looking, intended both for now and for when the Temple is rebuilt.

The issue in Megillah 17b is important. Charity collectors must be both trustworthy (already mentioned in Chapter IX), but should ideally also be personally benevolent. For example, many Sages -- who were also charity supervisors -- gave out of their own pockets. Even with the claim that R. Hanina b. Teradion might not have practiced enough charity, he holds the singular honor of being the only tradent mentioned by name in these four chapters. His name must have been a by-word for trustworthiness in Rambam's world (similar to 'honest Abe'). Clearly there were problems with the alms fund collections and people claiming to be collectors.

## Halacha 9

Below this is he who knows to whom he is giving, while the poor man does not know from whom he is receiving.

He is thus like the great among the Sages who were wont to set out secretly and throw money down at the doors of the poor.

### B. Ketubot 67b

[From a series of Mar Uqba stories: Story 1]

Mar Uqba would put 4 ~~zuz~~ every day into the door socket of a poor man.

The poor man decided to find out who his benefactor was

Mar Uqba - with his wife - returned late from synagogue

The Poor man spotted him ( putting the money there)

Mar Uqba and his wife fled into a furnace that was empty but still hot,

Mar Uqba's feet burned, but not his wife's feet (what was her merit?)  
 Because she was usually at home and her benefactions were direct.<sup>68</sup>  
 The Mar Uqba story above is explained in connection a rabbinic maxim  
 based on the exposition of Gen. 38:24

This is a proper way of doing it, a preferable one [to those below] if  
 those in charge of alms are not conducting themselves as they  
 should.

This is a good harmonization to explain why these Sages would not have performed  
 the mitzvah properly. It also introduces the idea that one is responsible for assessing the  
 likelihood of one's charity money reaching the poor if giving through a third party.

Below this is the case where the poor man knows from whom he  
 is receiving, but himself remains unknown to the giver.  
 He is thus like the great among the Sages, who used to place the  
 money in the fold of a linen sheet which they would throw over  
 their shoulder, whereupon the poor would come behind them and  
 take the money without being exposed to humiliation.

T. Demai 3:16

Collectors for the public assistance fund --  
 do not collect and call out [publicly] on a festival  
 in the manner in which they collect and call out on a weekday.  
 rather, without ostentation they collect in the folds of their garments  
and they distribute in each neighborhood.

B. Ketubot 67b

R. Abba used to attach money to [the folds of] his turban,  
 [slung on his back] for the poor to take,  
 But he would glance sideways - as a precaution against rogues

B. Hagigah 5a

"God shall bring every deed into judgement, concerning every hidden

<sup>68</sup> Cf. B. Taanit 23b concerning Abba Hilkiyah's wife and B. Shabbat 151b referring  
 to R. Hiyya's wife, both deal with the merit of immediate dispensation.



thing, whether it be good or evil" (Ecc. 12:14)

What is the meaning of "whether it be good or evil" ?

The School of R. Jannai: This refers to one who gives alms publicly

Incident: R. Jannai saw a man give a zuz in alms publicly

He said to the man: Better that you had not given him, than having done so and put him to shame

The School of R. Shila: This (phrase) refers to one who gives alms to a woman secretly, for he brings her into suspicion

The Hagigah text is informative, as far as informing us to minimize shame to the poor, but as halacha it is ignored by Rambam as being too extreme. we might never fulfill the command of giving if any amount of shame to the poor person precluded it. Notice also that the very issue of giving charity to women specifically has been avoided through out the Code except as regards female orphans. In part this reflects the notion that poor women stayed or should stay 'home' and let men collect for them. Likewise, we should note a passing reference to a female charity collector in the Talmud. Rambam is clearly describing a system operated by men, especially since much of the assigning is apparently done in the synagogue (cf T. BB 8:14 G and T. Ter. 1:10 G).

R. Abba's method, above, is inferior to Mar Uqba's for two reasons. First, the poor man has to be on the look out for R. Abba in order to receive alms, since R. Abba has no idea who receives them. In Mar Uqba's method, the poor man does not need to be on the look out to know he will receive alms. Secondly, R. Abba's method requires that the poor come out into the street and pick up the charity publicly, whereas Mar Uqba's method allows for privacy. Psychologically, the secret gift of Mar Uqba puts less burden on the receiver -- who does not need to worry about knowing the giver's identity -- and greater burden on the giver who does need to know the receiver's identity. But in knowing it, the giver is better capable of giving an appropriate amount of assistance.

There is an interesting textual variant. The R. Abba story speak of him putting the money in his turban (sudarin) while Rambam mentions putting the money into linen sheets (sedinaihem) which might also be translated as cloaks or perhaps scarves. Did Rambam have a variant text? Perhaps in the unvocalized text, the letter reish was confused with the letter nun.

#### Halacha 11

Below this is he who hands the alms to a poor man before being asked for them.



The poor man is not obligated to ask. True, he must state how much his 'need' is, but it is the givers obligation to offer alms when he becomes aware. At its most basic level, this is whenever we see someone begging. This halacha and all below it are of a lower rung on the ladder because they all require face to face contact.

#### Halacha 12

Below this is he who hands the alms to a poor man after the latter has asked for them.

Not only must both see each other, but here the poor man has been put in the position of having to ask when it is already apparent he needs assistance. As we have been told by Rambam, the commandment is effect by our knowledge and sight, and there is no requirement that the poor man request the alms, except as far as informing the giver what constitutes his need and desire.

#### Halacha 13

Below this is he who gives the poor man less than what is proper,

This level is even lower than the previous one, because contact has been made and a request made by the poor person. This is why Rambam states that the giver gives "less than what is proper." How does one know what is proper? by the request that has been forced from the poor man.

but with a friendly countenance.

#### Halacha 14

Below this is he who gives alms with a frowning countenance.

All of the above rungs assumed a friendly visage, any one of them is invalidated by virtue of giving in this manner. Therefore, the bottom rung is not merely the lowest level of the ladder, it is really a warning about pulling off a side bar of the ladder; the rungs then become ineffective.

On a practical level there were probably people who did give charity in a grudging manner with a hostile visage only because it was part of the mitzvah system. Such a person would have violated all of the above rules, making contact, waiting until asked, giving less than was appropriate, and finally sneering. (Such people might even practice sneering in the mirror at home.)

#### Halacha 15

The great among the sages used to hand a perutah to a poor man

before praying, and then proceeded to pray, as it is said, *As for me, I shall behold Thy face in righteousness* (Ps. 17:15).

B. Baba Batra 10a

R. Dostai b. R. Jannai preached: God's ways are unlike the ways of mortals: If a mortal brings a king a gift, it may or may not be accepted; and even if it is accepted, it is still uncertain if the giver will be admitted to see the king. Not so with God.

If a man gives a mere perutah to a beggar, he is deemed worthy to receive the Divine Presence (i.e., be admitted to see God), as it is written *I shall behold your face in righteousness, I shall be satisfied when I awake with beholding your likeness* (Ps. 17:15)

R. Eleazar used to give a coin to a poor man and immediately say a prayer, because he said it is written, *I in righteousness shall behold your face.*  
[a word play on tzedek and tzedakah is being made here]

Halacha 15 is a good segue from how not to give, to when to give. Note how the perutah mentioned by R. Dostai has replaced the word coin in the story of R. Eleazar. Rambam has also refashioned the meaning of the text. The source means clearly that R. Eleazar offered up a prayer after giving tzedakah. Such a prayer might be seen as the equivalent of a benediction over performing a mitzvah. There is no benediction recited before or after giving charity. Rambam's phrase "before praying" is in Hebrew "kodem l'chal tefillah" which can be taken several ways: "before any prayer", "before any time they prayed", or "before the [three] daily Prayer-Services."

Rambam hereby introduces a suggested time and opportunity for giving alms. The practice still exists within the synagogue of pledging or giving alms before or during the service.

He who provides maintenance for his grown sons and daughters -- whom he is not obligated to maintain -- in order that the sons might study Torah, and that the daughters might learn to follow the right path and not expose themselves to contempt, and likewise he who provides maintenance for his father and his mother, is accounted as performing an act of charity,

B. Ketubot 48a (same as 107a)

The topic is in regard to a court administering a person's estate  
 if (1) he has been lost at sea, i.e. no body found, or  
 if (2) a man loses his faculties.  
 How are they different ?

Does the court provide for the wife alone, or also the children ?

In the case of one who loses his faculties unexpectedly, the court may  
 provide the entire family with the following: food, clothing,  
 and anything else

Baraita - [Unlike the man who loses his faculties unexpectedly],  
 a man who goes off to sea could have chosen to leave behind a  
 will, but did not.  
 Therefore we assume it was his intent not to leave behind a will  
 to provide for his family.  
 We provide his wife with food and clothing, but not his  
 children, and not for anything else.

What is meant by 'anything else'? (1) Cosmetics, or  
 (2) Charity.

Certainly not charity: the court has no power to dispense charity from a  
 man's estate if he is lost at sea [i.e. without proof of his death, nor a will  
 instructing charity to be distributed.]

49a Mishna: A father is under no obligation to maintain his daughter. ...

Gemara: [Since it states that ] he is under no [legal] obligation  
 to maintain his daughter,  
 it follows he is obligated to maintain his son.  
 [But it also follows he should maintain] his daughter  
 since although he is exempt from the legal obligation,  
 there is still his moral duty...

Baraita: It is a moral duty [mitzvah] to feed one's daughters,  
 and much more so one's sons  
 (since the latter are engaged in the study of Torah); so R. Meir.  
 R. Judah ruled: It is a moral duty to feed one's sons,  
 and much more so one's daughters,  
 (in order [to prevent] their degradation)...

- 49b At Usha it was ordained that a man must maintain his sons and daughters while they are small...

A court cannot compel a father to maintain his children

exception: A wealthy man can be compelled to maintain his children.

tangent: A wealthy man can be compelled to give to charity.

50a

*Happy are they that keep justice and do righteousness at all times.* Ps. 106:3

Is it possible to do righteousness [i.e., acts of charity] at all times?

According to the Rabbis of Yavneh (others: R. Eliezer): this refers to a man who supports his sons and daughters while they are young [when they are always dependent upon him]. [This opinion is rejected]

R. Samuel b. Hahmani said: This refers to a man who adopts (lit: raises) an orphan boy or girl and enables them to marry.

### Hilchot Mamrim VI:3

...What constitutes honoring [one's father and mother]?

Feeding, giving drink, dressing, and covering from what the father has.

[B. Qiddushin 32a and the decision of Alfasi there]

If the father has no money, and the son does have money, the court compels the son, and he provides for his father and mother according to his [financial] ability.

[cf. Y. Peah 1:1, and especially the statement by R. Yosi b. Bun]

The reason for the long selection from the sugya is to allow the reader to follow the argument behind the language of Rambam's decision. Since charity can be compelled, the question is what is the difference in application, between charity and family support? Family support applies to minor children. Further there is an obligation to care for our parents, if they are in need of care, out of their own funds. Neither of these varieties of family support constitute charity. Not every penny given to support our family and relatives can be counted as charity because people would then never give to others, always claiming to have given the amount to their own. Charity apparently applies when we use our own funds and there is no obligation, as in the case of non-minor children and parents lacking any funds to care for themselves.

There is general agreement that children can be compelled by the court to support their indigent parents. Although it appears from the Bavli text above that there is no comparable rule in regard to supporting adult children (Rambam, as a matter of fact says that one is not obligated), there are two hints in the Bavli to the opposite. The Tosephta source [T. Ket. 6:10] to the Bavli text above says, "[R. Meir says, When one has restricted funds to his family to below their needs] the rest of their needs are supplied for from the public assistance fund. But the Sages say, They continue to derive support

from his estate until the property is all gone. Only afterward are they supported from the public assistance fund." Also in B. Nedarim 65b "[Regarding one who has taken a vow that unintentionally precludes his supporting his needy relatives] he can reply... I [am not in violation of the commandment to give charity] for can I not still provide for them, along with everyone else indirectly through my contributions to the public assistance fund? Rabbah replied: I maintain, one who falls [into poverty] does not fall at the beginning into the hands of the charity overseers. [i.e., his family should be compelled to support him].

Note how Rambam's formulation is clearly based once again on a baraita formulation. However, Rambam has clearly made an equation not present in the text, namely that this "mitzvah" equals charity. Rambam has in fact avoided the problematic Rabbinic usage of the word mitzvah and simply declared it an act of charity.

and a great act of charity since ones relatives have precedence over other people ... [MA VII:13]

#### Halacha 17

The Sages have commanded that one should have poor men and orphans as members of his household rather than [Gentile] bondsmen, for it is better for him to employ the former, so that the children of Abraham, Isaac, and Jacob can benefit from his possessions rather than the children of Ham [i.e., Canaanites], seeing that he who multiplies bondsmen multiplies sin and iniquity every day in the world, whereas if the poor are members of his household, he adds to merits and fulfillment of commandments every hour.

#### B. Ketubot 50a

*Happy are they that keep justice and do righteousness at all times.* Ps. 106:3

R. Samuel b. Hahmani said: This refers to a man who adopts (lit: raises) an orphan boy or girl and enables them to marry.

#### M. Avot 1:5 (and Rambam's commentary)

Jose b. Johanan of Jerusalem said:

Let your house be accessible [to those in need],  
and let the poor be members of your household.

Rambam: "and let the poor be members of your household" means that you should

hire poor and needy people rather than buy slaves. Thus the Sages disparaged the acquisition of slaves, praising those who gave employment to the poor for they are of the tribe of the householder and his family.

M. Avot 4:7(8)

One who increases female slaves increases licentiousness,  
One who increases male slaves increases thievery.

Although formulated in derogatory language, the notion here is two sided; providing other Jews with the opportunity to work and be taken care of, but also doing away with the institution of Gentile-slavery. In Rambam's time, Gentile slaves were purchased and then emancipated to encourage them to stay with the Jewish people. An emancipated slave is close to a convert in status.

Halacha 18

One should always restrain himself and submit to privation rather than be dependent upon other people or cast himself upon public charity,

The order here: "upon other people or ... upon public charity" is in accord with the my discussion at the end of Halacha 16.

for thus have the Sages commanded us, saying, "Treat your Sabbath like a weekday, rather than be dependent upon people"

B. Pesahim 112a

Baraita: R. Aqiva charged his son R. Joshua with seven things ...

[#6] treat your Sabbath like a weekday rather than be dependent on people, and [#7] strive to be on good terms with him upon whom the hour smiles

B. Pesahim 113a

R. Johanan said three things in the name of the men of Jerusalem:

- when you go out to war be among the last that you may return first;
- treat your Sabbath like a weekday rather than be dependent on people;
- and strive to be on good terms with him upon whom the hour smiles.

The confusion in attribution above provides a good demonstration of why Rambam omits tradents. Rambam broadens the basic meaning of the text. In the Bavli itself, the



dictum is generally taken to mean eat two meals on the Sabbath rather than the prescribed three if it would mean taking charity. Rambam reads it as a general principle -- go without finer things rather than take charity.

Even if one is a Sage held in honor, once he becomes impoverished, he should engage in a trade, be it even a loathsome trade, rather than be dependent upon other people. It is better to strip hides off of animal carcasses than to say to other people "I am a great Sage,[or] I am a priest, provide me therefore with maintenance".

#### B. Pesahim 113a

Rav said to Rav Kahana: Deal in carcasses rather than deal in words. strip animal carcasses in the market and earn a wage, and do not say "I am a priest, I am a great man, and employment degrades me."  
[For a more aggadic variation see B. Baba Batra 110a, also Y. Berachot 9:2 and Y. Sanhedrin 11:7 where there is this parallel (of sorts) to Aqiva's dictum: Better to take avodah zarah, than be dependent on people]

#### M. Avot 4:7 (and Rambam's commentary)

Rabbi Zadok stressed: Do not make the Torah a crown to make yourself great, nor a spade with which to dig.  
Hillel used to say: He who uses the crown for his own purposes vanishes. From this you learn that whoever uses the words of the Torah for his own benefit brings about his own destruction.

Rambam: After I had decided I would not comment on this rule -- since it is quite clear, and because I also know that what I have to say about it does not please the majority of great Torah scholars, or possibly all of them -- I subsequently changed my mind in this regard, and I shall comment on it without reference to earlier or contemporary works. "Do not make the Torah ... a spade to dig" means do not consider utilizing the Torah as a means of earning a living. . . Certainly if such a poor man [a poor Sage] had held his hands open they would have filled his house with gold and jewels. But he did not want to do that, but rather, wanted to live on the income of his occupation, whether ample or slim. He despised accepting gifts from men, as the Torah had prohibited him from that ... He who would do so falls under "the word of God he has put to shame" . . .

The full passage is much, much longer. It goes into great detail in regards to how



the Sages avoided taking charity. Rambam then proceeds to systematically analyze and invalidate all of the 'mis-interpretations' of Rabbinic texts that people have claimed support such a practice.

Such a rule would be of special importance since the Sage or priest would have first priority according to MA VIII:17-18.

So did the great Sages command us. ...

By virtue of the mitzvah to listen to the judges of our own day, who are of course the sages. By following their rulings, we perform the mitzvah of listening to the judge in our own day.

## Conclusion

If we have learned nothing else, it is that the Rabbis and Maimonides never knew a Jewish charitable system that was solely based on people's charitable nature, even if Rambam preaches greatly to the individual throughout chapters seven through ten. Tzedakah was a part of the social fabric and structure of the community. While Rambam spends much of Chapters VII, VIII, and X exhorting our personal and voluntary giving, the system of public poor relief was a tax and part of the general Jewish economic system.

Isaac Klein wrote in the introduction to his translation of Sefer Zeraim that one would expect in a code of law that economic and social forces of the time and place of composition would become apparent, and yet, with one small exception, the exact opposite is the case. That expectation is even stronger as regards the laws of almsgiving. Perhaps our problem is that we have failed to understand Maimonides and his Code. Unlike the modern poseq, or even ones more contemporary to him, Rambam studiously avoid tainting his halachot with qualifying statements such as: "in this day that measure is equivalent to" or "we now rely upon the court to...", or even "...such was the practice of our predecessors." Rather the material presented by Maimonides is singularly unconnected or unadjusted to the exigencies of his day to day world. Maimonides was not attempting to write a Guide to Jewish Practice for the laymen. What he was doing was collecting, organizing and even resolving the final decision in each and every nook and cranny that rabbinic literature had sought to address. The fact that the situation was centuries old and no longer applicable made no

difference to Rambam. This applies not only in regard to his inclusion of laws of the Temple or agricultural offerings there, but also in his decision not to update or apply legal principle to present day situations. Many have argued that Rambam wrote a Messianic Code, that looked forward to the day when all of it could be put into practice again. Whatever his beliefs regarding the coming of the Messiah, Rambam certainly did not expect to return to exactly the same condition of the rabbis of turn of the millennium Palestine.

It seems to be that Rambam set out to compile a source book, the ultimate anthology of rabbinic legal thought. The scholar or judge could turn to it for review, study or legal consultation. Yet clearly the code requires a human hand to apply the laws. As we have seen in the last four chapters of Hilchot Mattenot Aniyyim, all of the legal questions asked throughout the literature have been addressed and answered. But missing from these chapters is a description of the system itself. When were funds assessed, by whom, where? Were lists kept of the poor? Who registered people for the kuppah, where was the tamhui distributed from? Did they still distribute bread worth a dupondion?

We cannot answer these questions by consulting Rambam's Code. We have already seen the intricacies of the rabbinic system. Now we must ask what else does this section of the Mishneh Torah tell us. First, we can learn something about Rambam's methodology in codifying his material. Secondly, we have been given some small insights into Rambam himself. These may be small accomplishments but they are hard won. To write a guide for today's religious liberal Jew without make such a prior investigation into the sources and their codifiers would be to speak off the cuff and not responsibly in our roles as teachers, guardians, and sculptors

of the tradition.

As far as the four chapters of our study we can make several guarded observations about Maimonides' methodology.

Rambam's Mishna Commentary is clearly a precursory code to the Mishneh Torah and it is a prerequisite to understanding both his rulings and the formulation of language in the code. Like the Commentary, the Code displays the same tendency to define terms and their origins, as is the case with the Tamhui and Kuppah. Unlike the Commentary, Rambam clearly preferred to use the language of the source texts whenever possible. Nevertheless he did not feel bound to the particular order of material on the page of the source texts, especially the Bavli, but even the Mishna itself as we have seen. His halachot are more like cut and past pastiches with an editorial word or phrase added as an introduction, connection, or conclusion. Clearly he departs most radically from the source text when it is an Aramaic passage from the Bavli. In such situations Rambam exercises greater freedom of interpretation and translation. This also demonstrates how much he relied on the opinions of Alfasi. Where there are different versions or interpretations of a Talmudic text Rambam has inevitably sided with Alfasi's version or opinion.

After Alfasi, the Bavli is the final arbiter of decisions, but only as far as it comments on the topic. When the Bavli is silent the next latest text becomes authoritative. Rambam has included the vast majority of halachic decisions from the source texts. Of the few cases where something has been omitted, it can be argued that it has been disregarded because charity was a tangential issue.<sup>69</sup>

<sup>69</sup> For example, the permission to discuss (calculate) charity accounts on the Sabbath

One interesting observation has been how much Chapter IX follows the pattern of Baba Batra 8b through 9a: On a certain level it appears as if this was the core text around which was built the remainder of the chapters and their topics. But even he Rambam's surgical hand was at work, relocating material into a more topical arrangement.

Two distinct aspects of Rambam's method are his willingness to create an expansion of a previous rabbinic practice by an analogous recasting of the laws and/or situations. Likewise he tends to borrow phrasing internally in these chapters. Early in each chapter we tend to find one or two halachot that summarize a number of more detailed ones that will follow. Here we can most clearly see his tendency to transport terminology around. This is important in further research since scholars have spoken of this phenomenon as either confusion of sources, or as a problem. In fact it demonstrates Rambam's editorial hand smoothing away seams in the Code.

We can also comment on the fact that this study has clearly shown that Rambam's halachic opinions changed over time. From the Siraj to Sefer HaMitzvot, then to the Code, Rambam revised his understanding and decisions.

As a researcher and philosopher Rambam demonstrated a more critical approach to the development of Jewish law than he does as codifier. In this role he is almost scholastic in his effort to avoid the internal problems and contradictions of his source texts.

His true greatness was his decision to gather this material together in one place. No longer strewn throughout numerous texts and tractates, the laws of charity have ever since had a visible impact on the literature and

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or the difference in how the collectors made collections on holy days and regular days.

practice of the Jewish people.

And what of Rambam the person. We know that he was rabbi, local judge, appellate judge, the administrative supervisor of communal officials, and the overseer of charitable organizations. His experience with this topic was more than theoretical. Surely his practical experience with the administration of charity could have filled many pages. Indeed some of that experience must have impacted on his view that we instruct converts in the poor provisions, not because they are greater or lesser commandments, but because of their sui generis nature. They are a test of a convert's compassion.

Yet in his role as scholar, researcher and decisor, Rambam chose collection and conservation over drastic renovation or innovation. Nevertheless the Code, and the last four chapters of Hilchot Mattenot Aniyyim bear the unmistakably unique imprint that Rambam left upon them. The rigidity and self confidence in the correctness of his decisions is reflected in his addition to the rabbinic source texts of phrases such as "It is forbidden" or "it is an obligation." Then there is his unprecedentedly harsh ruling against those who failed to pay their assessment, stating that they must be flogged, rather than leaving it up to the discretion of the court. There is the distinctly moralizing tone throughout the four chapters. Value judgements in gaps where no actual requirement or prohibition exist. Something may be blameworthy but not prohibited. One unique halacha in the unit is MA X:18 where Rambam's opposition to an institutionalized rabbinate, dependent on patrons or charitable contributions, goes from a simple ruling into a long homiletic discourse supported by numerous

aggadot of questionable interpretation. Here we see Rambam the person for a brief glimpse. Rambam's ruling is unique, and many in the Jewish world disagreed quite publicly with him.<sup>70</sup> Likewise in regard to Gentiles we see that Rambam was influenced by his world, preferring the xenophobic aggadah of the Bavli to the fraternal ruling in the Tosephta.

Rambam's tendency for homily is not tangential. He does not quote aggadot for their story value, but as historical precedents for his decisions. Yet often the dividing line between homily, aggadah, and halacha is unclear. As Twersky noted concerning Sefer Zeraim, Maimonides constant juxtaposition of juridical and philosophical motifs is striking. Ultimately one is reminded that Rambam's legalism was informed by the belief that the very nature of law is to imbue us, through our actions, with that very same quality of God - Compassion.

*Open thy mouth, judge righteously,  
and plead the cause of the poor and the needy*

Proverbs 31:9

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<sup>70</sup> See the responsa of Joseph ibn Aknin, translated in Milgram's Anthology.



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