

The Intersection of Judaism and Distributive Justice

As seen through the lens of *shemita*

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Digest

Sadly, the world is not perfect. Suffering is an inseparable part of the human condition. Some people have an abundance of wealth due to their hard work, chance, and the privileges of their society. On the other hand, there are those in the world who are in need, some due to forces beyond their control. One's lot in life may not always be improved through individual work; sometimes the neediest require the aid of the community or those with the means to assist. Today, one of the answers to suffering and inequality is distributive justice, a term which is defined differently according to each political-ideological trend. In some sense, all theories of distributive justice seek to account for the apparent inequality of the present day. In particular, one of the most influential theories of distributive justice has been John Rawls' Difference Principle: that all individuals should have equal access to education and economic opportunity, and that the most advantaged socioeconomic class cannot gain wealth at the expense of the least advantaged.

This thesis is an examination into the intersection of Judaism (via the idea of Shmitah and some aspects of the imperative to do Tzedakah) and distributive justice, particularly the Difference Principle, through the lens of the *halakhic* practice of *shemita*. *Shemita* is the act of remitting loans and letting lands lie fallow every seven years. While *shemita* is traditionally applicable only in the land of Israel, the economic and sociological concepts of cyclical debt remission and the lowering of barriers to sustenance are radical approaches to achieving a just society. The question at hand is whether Judaism, through these and other mechanisms, can be mapped onto notions of distributive justice. The research below will briefly delve into the history of *shemita* through classic Jewish texts and explore some of the other applicable methods of achieving a just society by Jewish means. The aim of this work is to provide the reader with a lens through which one could support social justice work from the Jewish perspective

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###

This thesis is written in honor of all those fighting for a better and more equitable world. May we see the fruits of their labors quickly and in our days.

Why write this paper?

“Why is there suffering in the world?” It is a classic religious question. Sometimes we wonder, “Why do bad things happen to good people?” These two questions are foundational to Jewish thought, but I believe there is a missing element to these questions, a second part of the prompt. Those who question the source of suffering in the world must also ask the essential follow-up: “What can I/we do to fix it?” This question is one of social justice; in the modern popular parlance, *tikkun olam*. Reform Judaism has established *tikkun olam* as one of the definitive characteristics of Jewishness in the 21st century. What was once an abstract concept of mysticism and *halakha* has become the cornerstone of a Jewish movement. What I seek for myself and for others is a justification of the Jewish imperative to help others that lives in the tension between modernity and classical Jewish thought. This thesis will examine the intersection of Judaism and distributive justice, the method by which a society ethically apportions resources. However, suffering does not only occur due to the poor distribution of a society’s resources. Certainly there is suffering as a result of health and poor healthcare, as well as interpersonal pain that many people endure. The thorough study of the intersection of classic Jewish thought and distributive justice will show further commonalities between modern social justice work and the deuteronomic dictum, “you must surely open your hand to your family, to the poor and to the needy amongst you in your land.”¹

I began thinking about this topic in earnest amidst the 2016 United States Presidential Election. During the Democratic Primary, Senator Bernie Sanders often spoke about the

¹ Deut 15:11 כִּי לֹא־יִחַדֵּל אֲבִיוֹן מִקְרֵב הָאָרֶץ עַל־כֵּן אֲנֹכִי מְצֻוֶּה לֵאמֹר פָּתַח תִּפְתָּח אֶת־יָדְךָ לְאֶחֱיךָ לְעֹנִיךָ וּלְאֶבְיֹנְךָ בְּאַרְצְךָ:

imperative to help the least advantaged among us. Senator Sanders' ideas were essentially the civic version of *tikkun olam*. As I delved more deeply into Senator Sanders' campaign, I pieced together a set of principles that I later identified as distributive justice. The question arose: "Where is the intersection of Judaism and distributive justice?" Though I have studied ethics in Jewish sources, and I am familiar with the overall commitment to helping the poor, I was left wondering if there is a Jewish ideology and set of norms for the distribution of resources within society.

This thesis will provide a brief explanation of *shemita*, its meaning, its relevance, and limits in a discussion of distributive justice, expanding into a review of *halakhic* discourse that provides compelling evidence to a theory of Jewish distributive justice. Throughout, I will use a working definition of distributive justice (described in the following section) as a rubric with which to compare *halakhic* distributive justice with 21st-century notions of justice. I will conclude with the potential impact such research could have on individuals and communities.

What is distributive justice?

The notion of the just distribution of resources is the result of a worldview which notes that: (1) people do not have equal access to natural resources from birth, (2) some people are disproportionately rewarded for their labors, (3) some people are simply luckier than others.² In a religiously-influenced system, one might rely on God through prayer or sacrifice for the yield of their harvest; this is the dominant interpretation of the laws of *shemita*.³ In such a system, the order of the world is divinely determined and theoretically just. Even in biblical literature, just-deserts are not the actual reality. Often, the appearance of divine justice is explained by the reward of agricultural success or the punishment of a poor harvest. However, there is a tension in biblical literature over the theological principle of vicarious punishment versus deferred guilt: is each person punished (or rewarded) for their own deeds or is a person punished (or rewarded) for the deeds of their ancestors? A model of biblical just-deserts would favor vicarious punishment, as seen in Deuteronomy 34:16, Jeremiah 31:27–30, or Ezekiel 18:1–4. However, deferred guilt is a strong part of biblical theology and criminal justice, as seen in Exodus 34:6–7 and Numbers 14:17–18.⁴ Therefore, a theological system which defers punishment on to subsequent generations needs a mechanism of just distribution to correct what the natural, divinely ordained,

² This description is a succinct summary of the Stanford Encyclopedia of Philosophy on Distributive Justice

(Lamont, Julian and Favor, Christi, "Distributive Justice", The Stanford Encyclopedia of Philosophy (Winter 2016 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/win2016/entries/justice-distributive/>>.)

³ The laws of *shemita* in Lev 26:34 specify that the yield of a harvest is in direct relationship to one's obedience to divine law.

⁴ Michael Fishbane, *Biblical Interpretation in Ancient Israel*, Reprinted (Oxford: Clarendon, 1991) 337.

order fails to do. Both versions of *shemita*, the remission of debt and allowing the land to lie fallow, attempt to raise up the needy who suffer as a result of deferred guilt or their own poor economic decisions. The method by which a system achieves just distribution is an ongoing and recently reenergized debate. Methods of distributive justice seek to allocate the economic resources and challenges within a community ethically. The question for each distinct society then becomes: “By which method will those in charge attempt to correct the natural order?”

Rather than defining each theory of distributive justice, this section will summarize and compare selected principles so as to provide a working definition that may be applied to further research regarding the intersection of Judaism and distributive justice.

The first approach to distributive justice is foundational to the field: the Difference Principle, as proposed by John Rawls. The Difference Principle relies on two basic notions: 1) each person, regardless of economic or social class, has equal rights and liberties under the law; 2a) each person, regardless of economic or social standing, is given the same educational and economic opportunities; 2b) economic inequality is allowable insofar as it provides the greatest proportional material benefit to the least advantaged.⁵ The Difference Principle accounts for the arbitrary natural endowments of humans (luck) by ensuring equal opportunity regardless of physical advantages. Furthermore, Rawls allows for those who are economically or socially advanced to pursue material wealth; however, one cannot become wealthier if it negatively impacts the least advantaged.

⁵ John Rawls, *A Theory of Justice*, 1971.

Responses to Rawls' theory of distributive justice have sought to correct for a perceived lack of consideration of individual ambition (luck egalitarianism)⁶ and what one person has rightfully earned through labor (desert-based justice). The latter theory of justice relies upon rewarding people according to the value of their contribution, their effort, and compensation towards the cost of their labor.⁷ Both theories, luck egalitarianism and desert-based justice, add further weight to the distribution of material goods as a result of the efforts and ambitions of the individual.

The rubric of distributive justice in this thesis also incorporates both the feminist critique and libertarian-based justice. The former critique⁸ asserts that theories of distributive justice have not properly accounted for the circumstances of women in an economic and cultural system due to institutionalized sexism. The latter critique is heavily influenced by the libertarian notion that the government should not infringe upon the liberty or self-determination of the citizens in any way.

Distributive justice recognizes that the world is not yet a perfect place for all people. Given that fact, natural resources and material goods must be allocated in such a way as to provide all human beings with necessities. The basic tenets of Rawl's Difference Principle

⁶ One of the earliest theorists to consider personal ambition is Ronald Dworkin, who termed his form of distributive justice as Resource Egalitarianism.

⁷ An example of compensation for the cost of labor would be paying an precious metals artisan an appropriate price for the time and effort that goes into a particular creation.

⁸ This section of the thesis is a summary and, in many ways, an oversimplification of decades of writing on distributive justice. I feel that here it is particularly pertinent to note that there are a plurality of feminist-based theories of distributive justice. Due to the constraints of this assignment I do not have the luxury to delve further into any one of these theories. The manner by which I describe the feminist critique of distributive justice does not properly represent the contributions of feminist social contract philosophers to the field.

provide the sturdiest foundation for resource allocation. Regardless of social or economic class, all humans should be given equal treatment under the law. Furthermore, all should have access equal educational and economic opportunities. Additionally, inequality is permissible insofar as it does not take away from the earning potential of the least advantaged economic class, as an economic system must proportionately reward all workers according to their efforts and their contribution to the social good. In this rubric, the system must allow for self-determination. However, the welfare of a society is only improved when individuals relinquish some property for the benefit of those who have less. These rules provide for the greatest quality of life for all with as little interference as possible in the life of the individual.

This rubric of distributive justice will be used throughout this thesis to determine how Jewish approaches to property and justice meet or diverge from these principles.

What are Jewish notions of a just society?

Shemita and distributive justice theories present particular methods to achieve a just society. This thesis will enumerate a possible rubric for a just society through a Jewish lens using the notions of *shemita* and *tzedakah*. However, specifying or recommending only one form of justice in the Jewish tradition is impossible. The vast diaspora experience of the Jewish people has created a plurality of concepts of justice.⁹ As there is no space for such an overview of the many forms of justice in the Jewish world, this thesis will endeavor to include the highlights of several aspects of justice in the Jewish lens over the centuries.

Rabbi Jill Jacobs, a leading contemporary scholar on the connection of justice and Judaism in the 21st century, delineated a set of principles of Jewish economic justice, drawing from Deuteronomy 15.¹⁰ Rabbi Jacob's list is as follows:

1. The world, and everything in it, belongs to God; human beings come upon wealth only by chance and do not necessarily "deserve" the wealth in their possession.
2. The fates of the wealthy and the poor are inextricably linked
3. Corrective measures are necessary to prevent some people from becoming exceedingly rich at the expense of others. Jewish law does not propose a full redistribution of wealth, but rather, institutes controls against the gap between the rich and the poor becoming too wide.
4. Even the poorest member of society possesses inherent dignity of others.
5. The responsibility for poverty relief is an obligation, not a choice.
6. Strategies for poverty relief must balance short-term and long-term needs.
7. The eradication of poverty is an essential part of bringing about a perfected world and each person has an obligation to work toward the creation of this world.¹¹

⁹ David Novak's *The Jewish Social Contract* provides evidence of the multiplicity of versions of justice which exist in the Jewish world.

¹⁰ Deut 15:4–11

¹¹ Rabbi Jill Jacobs, *There Shall Be No Needy, A Vision of Economic Justice* 2009 ,22

These principles lean heavily on three theological assumptions: God as principle owner of the world, the inherent obligation of the Jews to follow *mitzvot*, and the communal nature of justice. God's status as "ultimate landlord" is necessary to the concept of blessings and acts of *tzedakah*. God created the world and the conditions for humanity to flourish, and human beings are charged with care for the world and God's creations. A person takes from God and gives to humanity through formulaic blessings. The ritual act of blessing enables a human to claim their labor rightfully; however, the laws of *shemita* poses an upper limit on human control. This principle of divine ownership is reintroduced every seven years.

The *mitzvah* of *shemita* is made manifest in two ways: the remission of debt and allowing the land to go fallow for an entire year. The obligation towards *mitzvot* is, on the one hand, a nod to God's power; however, Hillel's *prozbol*, the ability to carry a loan into the next seven-year *shemita* cycle, is a remarkable statement on the compulsory nature of Jewish action towards justice. Hillel's *prozbol*, which is an explicit exception to Torah-itic law, enables us to see one example of the value Jews place on just ends. Such change is not executed lightly in rabbinic tradition; therefore, one should note that where it does occur, it seeks to benefit the needy and avoid humanity's natural tendency to overlook the poor. The notion of commanded-ness also applies to the believed moral agency of humanity. One could reason that if human beings were naturally predisposed to support the "other," then there would be no need for a commandment. Instead, Judaism takes the approach that justice is an external obligation, one that is prescribed from the outside, not something which is left to one's personal proclivities.

The commandment of *tzedakah* does not fall on just one individual; rather, it is a communal obligation. Rabbi Jacobs explains that one person cannot successfully pursue justice.

Despite the biblical paradox, that the poor and needy will not ever be entirely free from the bondage of poverty, Rabbi Jacobs determines that a group's collective power is best suited to make the attempt. This is the curx of the argument, that a culture or a society is needed to help those who are not able to help themselves. The collective group acts as a "force multiplier" when it comes to achieving justice within a community. Rabbi Jacobs understands *tzedakah* as a matter of obligatory relationships. Beyond the pressing and basic needs of the impoverished, the goal of *tzedakah* is to create a more equitable system to pursue the deuteronomic vision of a world without poverty.¹² This biblical charge was primarily under the purview of the human sovereign (sometimes the priestly class or the monarch), but the mantle of establishing *tzedek u'mishpat*, justice and legal equity, falls on the local communities in the aftermath of the destruction of the Temple.

David Novak devotes a chapter of *The Jewish Social Contract* - "Economics and Justice: A Jewish Example" - to methods of justice within Jewish communities. Novak is quick to note that the Hebrew Bible offers no singular nor complete model of economic justice.¹³ Nevertheless, there are indications on particular viewpoints towards economic justice in the text. Drawing upon Aristotle's principles of justice in *Nichomean Ethics*, Novak enumerates three spheres of obligation that encompass human activity: "the just economics of production, the just economics of distribution, and the just economics of rectification."¹⁴ These three principles are not explicitly referenced in the biblical texts Novak discusses; however, these terms yield compelling

¹² *ibid*, 43.

¹³ David Novak, *Jewish Social Ethics* (New York: Oxford Univ. Press, 1992) 208.

¹⁴ *ibid.*, 206.

implications for just distribution. Human beings are made responsible for their wellbeing, the wellbeing of their community, and toward the future (rectification).

Novak emphasizes the biblical message that produce is the result of divine grace rather than justice. One theme persists throughout biblical literature: God is responsible for the production of the natural world, and therefore its owner; however, that does not negate humanity's duty to care for the just distribution of divine produce. Beginning at the second account of Creation,¹⁵ the narrative notes the human obligation to the God-created land: וַיִּקַּח יְהוָה אֱלֹהִים אֶת־הָאָדָם וַיְנַחֲהוּ בְּגֶן־עֵדֶן לְעֲבָדָהּ וּלְשָׁמְרָהּ *God took man and set him in the Garden of Eden to work it and preserve it.*¹⁶ Though the earth is God's, humanity is bound by divine decree to expend effort to retrieve the harvest. This aspect of ownership and roles is clarified elsewhere in the text.¹⁷ Perhaps the most poignant emphasis of the divine-human relationship towards the land is exemplified in the section of the priestly holiness code: וְהָאָרֶץ לֹא תִמְכַּר לְצִמְתָּהּ כִּי־לִי הָאָרֶץ כִּי־גֵרִים יְהִי־שָׁבִיבִים אִתָּם עִמָּדִי: *You shall not sell the land in perpetuity, for the earth is mine. You are only temporary residents with Me.* Human beings have a tenuous claim to the land. Even with an ancestral claim to the land, as in the case of land of Israel and the tribal lands, human beings cannot expect to have an irrevocable claim to any land.

From the biblical perspective, human beings come to settle the land through divine benevolence; however, the Bible does not delegate the just distribution or rectification of produce to a kind of divine grace. While Novak would insist that divine grace is the key to

¹⁵ Gen 2:4b–24

¹⁶ *ibid.* 2:15

¹⁷ Lev 25:2–4, 6; Deut 8:3, 8:17–18

shemita, the human responsibility for one another in the present and the future is a matter of the biblical social contract—the covenantal relationship. In other words, the yield of one's harvest and the distribution of goods is dependent on divine interaction and human responsibility. One's earnings as a result of labor is not solely meant to enrich the individual; rather, the earner is obligated to support others without. Those who have money could profit off of their lending; however, such an action is expressly prohibited by the text: אִם-כֶּסֶף | תַּלְוֶה אֶת-עַמִּי אֶת-הָעֲנִי עִמָּךְ: *If you lend money to My people, the impoverished with you, do not act like a moneylender toward this person. Do not set interest on [the recipient].*¹⁸ The consequence of exacting interest on God's people is divine retribution.

Though the product of a human being's labor is their own, the worker is not only obligated to give to support the rectification of unjust distribution for others, he also cannot set terms by which the lender would derive any additional profit. This demand is repeated at least two additional times in the Torah.¹⁹ David Novak poignantly states that the command to give is not the most efficient, nor is it the best way to rectify the poor distribution of profit:

The maldistribution of wealth, whatever the cause might be is a threat to the covenant because it entails too great a disparity between rich and the poor members of the community. The disparity is ineffectively relieved by human charity inasmuch as the recipients of that charity thereby become the dependents of those giving it to them. And even though their bodily needs might be temporarily satisfied by the charity they have received, the subsequent result more often than not is that they become more passive, thereby losing a much if not more of their covenantal dignity through their being the objects of charity than through their being the subjects of poverty. This does not mean that there are not times when charity is mandated; however, it is not meant to be the primary means for the proper redistribution of wealth in the context of the covenant.²⁰

¹⁸ Ex 22:24–26

¹⁹ Lev 25:35–37; Deut 15:7–10

²⁰ Novak, *Jewish Social Ethics*, 211.

Biblical rectification, according to Novak, cannot only come from the sabbatical year or the personal charity of the individual; unfortunately, the inequality and disparity between rich and poor are not solved by human largesse. Furthermore, Novak insists, a modern state-run redistribution can also prove problematic. Corrupt and/or inefficient bureaucracies plague welfare systems throughout the western world. Even from the perspective of the Bible, the government may not be the most effective way to achieve justice for the poor.²¹ Instead, Novak proposes that the most just redistribution of wealth in the biblical model is through obligatory loans, as in Deuteronomy 15:7–10:

(ז) כִּי יִהְיֶה בְּךָ אֶבְיֹן מֵאַחַד אַחֶיךָ בְּאַרְצְךָ אֲשֶׁר יְהוָה אֱלֹהֶיךָ נָתַן לְךָ לֹא תִאָּמֵץ אֶת לִבְּךָ וְלֹא תִקְפֹּץ אֶת יָדְךָ מֵאֶחֶיךָ הָאֶבְיֹן: (ח) כִּי פָתַח תִּפְתָּח אֶת יָדְךָ לוֹ וְהַעֲבַט תַּעֲבִיטֵנּוּ דֵּי מַחֲסָרוֹ אֲשֶׁר יִחְסֹר לוֹ: (ט) הַשְׁמֹר לְךָ פֶּן יִהְיֶה דְּבָר עִם לִבְּךָ בְּלִיעַל לֵאמֹר קָרְבָה שְׁנַת הַשְׁבַּע שְׁנַת הַשְּׁמִטָּה וְרָעָה עֵינֶיךָ בְּאַחֶיךָ הָאֶבְיֹן וְלֹא תִתֵּן לוֹ וְקָרָא עָלֶיךָ אֵל יְהוָה וְהָיָה בְּךָ חָטָא: (י) נָתַן תִּתֵּן לוֹ וְלֹא יָרַע לִבְּךָ בְּתַתָּהּ לוֹ כִּי בְּגִלְלֵי הַדְּבָר הַזֶּה יִבְרַכְךָ יְהוָה אֱלֹהֶיךָ בְּכָל מַעֲשֶׂיךָ וּבְכָל מַשְׁלַח יָדְךָ:

(7) If there is a poor person from amongst your family, within your gates, or in your land which the Eternal God is giving to you, then you shall not harden your heart or close your hand to the needy amongst you. (8) Instead, you will surely open your hand to this person and make this person a loan based on their needs. (9) Be self-aware, lest you begin to think something wicked, like, “the sabbatical year, the year of remission, is near.” Then, you will be mean to your needy kin, and you won’t give this person anything. Then this person will cry out to God against you, and you will have sinned. (10) You will surely give to this person, and you will not think anything wicked as you give. As a result, the Eternal god will bless you in all your deeds and actions.

This option does not rely on government-run redistribution or on the will of individuals to give *tzedakah*.

²¹ 1Sam 8:11, 14, 17

What is *Shemita* According to the Torah?

The foundational strata of *shemita* are the several passages from Torah that outline regulations and effects of allowing the land to lay fallow. *Shemita* is the practice of forgiving debts in the seventh year (of a fifty year cycle); during this year, agricultural activity is forbidden. The Torah mentions *shemita* four separate occasions, either as an agricultural or financial sabbatical year. The order of sources examined makes no claim as to the directionality of the production of Torah.²² In the Book of Exodus (23:10–11) *shemita* is commanded along with the weekly Sabbath and the prohibition of oppressing the stranger as a reward for the land due to the Israelites' obedience of God's commandments:

9 וגר לא תלחץ ואתם ידעתם את־נפש הגר כִּי־גרים הייתם בארץ מצרים: 10 ושש שנים תזרע את־אדך ואספת את־תבואתה: 11 והשביעית תשמיטנה ונטשתה ואכלו אביני עמך ויתרם תאכל חית השדה כִּוְתַעֲשֶׂה לְכַרְמְךָ לְזִיתְךָ: 12 שש שנים ימים תעשה מעשריך וביום השביעי תשבת למען ינוח שורך וחמורך וינפש בִּוְאֵמֶתְךָ וְהַגֵּר:

(10) Six years you shall plant your land and gather its harvest, (11) but the seventh [year] **you will detract your claim** and let it lie fallow. The poor among you will eat [of it], and you will feed their leftovers to field animals. You will do the same in regards to your vineyard and your olive grove.²³

The context of this commandment to detract one's claim on the land comes between two common tropes in Torah: (1) to care for the needy (in this case, the stranger) and (2) to observe a weekly Sabbath, a cessation of work. However, the representation of *shemita* in the Book of Leviticus differs slightly.

²² While the proceeding text examination will take into account some intertextuality, the presentation of sources is not intended to claim a directionality of the text. Rather the texts are presented in such a way as a result of the accepted canonization of the Five Books of Moses.

²³ Unless otherwise noted, all translations are my own production.

The first appearance of *shemita* in the Book of Leviticus occurs in 25:1-7. The passage further defines the practice of *shemita* and explicitly equates it to Shabbat.

1 וידבר יהוה אל־מֹשֶׁה בְּהַר סִינַי לֵאמֹר: 2 דִּבֹּר אֶל־בְּנֵי יִשְׂרָאֵל וְאָמַרְתָּ אֲלֵהֶם כִּי תְבֹאוּ אֶל־הָאָרֶץ אֲשֶׁר
אֲנִי נֹתֵן לָכֶם וְשָׁבְתָה הָאָרֶץ שְׁבַת לַיהוָה: 3 שֵׁשׁ שָׁנִים תִּזְרַע שְׂדֶךְ וְשֵׁשׁ שָׁנִים תִּזְמָר כֶּרְמְךָ וְאָסַפְתָּ
אֶת־תְּבוּאָתָהּ: 4 וּבַשְּׁנָה הַשְּׁבִיעִית שְׁבַת שְׁבַתוֹן יִהְיֶה לָאָרֶץ שְׁבַת לַיהוָה שְׂדֶךְ לֹא תִזְרַע וְכֶרֶם לֹא תִזְמָר:
5 אֶת סְפִיחַ קִצְירָךְ לֹא תִקְצֹר וְאֶת־עֵנְבֶיךָ גְּזִירָךְ לֹא תִבְצֹר שְׁנַת שְׁבַתוֹן יִהְיֶה לָאָרֶץ: 6 וְהָיְתָה שְׁבַת הָאָרֶץ
לָכֶם לֶאֱכֹלָה לָךְ וּלְעַבְדְּךָ וּלְאִמְתְּךָ וּלְשִׁכְרֶךָ וּלְחוֹשְׁבֶיךָ הַגֵּרִים עִמָּךְ: 7 וּלְבְהֵמָתְךָ וּלְחֵמָה אֲשֶׁר בְּאַרְצְךָ תִּהְיֶה
כָּל־תְּבוּאָתָהּ לְאָכְלָה:

(1) God spoke to Moses on Mt. Sinai, (2) “Speak to the Israelites. Tell them, “when you arrive to the land which I give you the land will rest, it will be a Sabbath to God. (3) **Six years you will plant your field, six years you will prune your vineyard and gather your its harvest.** (4) **But in the seventh year the land will have a sabbatical rest, a sabbath for God: you shall not plant in your field nor prune your vineyard.** (5) The overgrowth of your yield you shall not harvest, nor shall you gather the grapes from the unpruned vines. It will be a complete rest for the land. (6) You may eat from the land during its rest, you, your male slave, your female slave, your hired worker, your resident aliens with you. (7) Meanwhile, all of the harvest will also be for your animals and cattle which are on your land.

Whereas the definition of *shemita* found in Exodus 23:10–11 paints a thematic picture of the rest that occurs every seven years, the description in Leviticus 25:1–7 is more definitive and specific. This is the beginning of an broadened understanding of *shemita*, one which will become clearer in the following chapter of Leviticus.

Shemita through the lens of Leviticus 26:34 is about reward and punishment. *Shemita* is the right of the land, which will be given either by the Israelites when they dwell in the land or by God when the Israelites are exiled. The Israelites are eventually punished for their lack of observance of the mitzvot, particularly *shemita*, and then they land receives its rest. Those who follow God’s commandments will enjoy the gift of agricultural success, while those who do not will be punished. According to the rhetoric of this passage, the land will eventually experience a rest as a result of God’s punishment:

(34) אִלּוּ תִרְצֶה הָאָרֶץ אֶת־שַׁבְּתֹתֶיהָ כָּל יְמֵי הַשְּׁמָה וְאַתֶּם בְּאֶרֶץ אֹיְבֵיכֶם אִזּוּ תִשְׁבֹּת הָאָרֶץ וְהִרְצֹת אֶת־שַׁבְּתֹתֶיהָ:

Then the land will enjoy its rests [during] all the desolate days, but you will be in the land of your enemies so the land will rest and it will enjoy its sabbatical.

The passage here is aware of the necessity of sabbatical rest. However, *shemita* is a reward that is given to the land due to the Israelites' misbehavior. The text has foreknowledge of *shemita* as a concept that allows the land to rest every seven years. While disobedience towards God will result in punishment of both the people and their land, the land will be swiftly redeemed.

The final passage in Torah that informs any discussion of *shemita* is found in Deuteronomy 15:1–6. This section of text uses the same terminology and cyclical nature of *shemita* found in the previous three, but the concept is entirely economic. The deuteronomic rendering of *shemita* has little to do with the land; rather, the description comes in the midst of an explication of ethical (tithing) and ritual observances (*Pesach*, *Sukkot*, and *Shavuot*):

1 מִקֵּץ שְׁבַע־שָׁנִים תַּעֲשֶׂה שְׁמִטָּה: 2 וְזֶה דְּבַר הַשְּׁמִטָּה שְׁמוֹט כָּל־בַּעַל מַשָּׁה יָדוּ אִשָּׁר יִשְׂאֵהוּ לֹא־יִגָּשׁ אֶת־רֵעֵהוּ וְאֶת־אֲחִיו כִּי־קָרָא שְׁמִטָּה לַיהוָה: 3 אֶת־הַנִּכְרִי תִגָּשׁ וְאִשָּׁר יִהְיֶה לָּךְ אֶת־אֲחִיד תִּשְׁמֹט נָדָּה: 4 אֲפֹס כִּי לֹא יִהְיֶה־בָּךְ אֲבִיּוֹן כִּי־בִרְדּוֹ יִבְרַכְךָ יְהוָה בְּאֶרֶץ אִשָּׁר יִהְיֶה אֱלֹהֶיךָ נִתְּנָלְךָ נִחְלָה לְרִשְׁתָּהּ: 5 רַק אִם־שָׁמוּעַ תִּשְׁמָע בְּקוֹל יְהוָה אֱלֹהֶיךָ לִשְׁמֹר לַעֲשׂוֹת אֶת־כָּל־הַמִּצְוָה הַזֹּאת אֲשֶׁר אֲנִי מֵצִוְךָ הַיּוֹם: 6 כִּי־יִהְיֶה אֱלֹהֶיךָ בִּרְכָּךָ כַּאֲשֶׁר דִּבֶּר־לְךָ וְהִעֲבַטְתָּ גוֹיִם רַבִּים וְאַתָּה לֹא תַעֲבֹט וּמִשְׁלַת בְּגוֹיִם רַבִּים וְכָךְ לֹא יִמְשְׁלוּ:

(1) From the end of seven years you will have a *shemita*. (2) This is *shemita*: remit loans for all creditors who are making loans to their fellow. One should not oppress their fellow nor their relative, because a remission of debts was claimed for God. (3) You may oppress the foreigner, but you shall remit your family. (4) It shall come to an end, for there shall not be any needy by you, for God will surely bless you in the land which God is giving to you as your portion to inherit. (5) Only if you heed well the voice of Adonai your God, to carefully keep all of these commandments which I command you today. (6) For Adonai your God will bless you as [God] spoke to you, “you will lend to many nations, but you shall not take a loan. You shall rule the many nations, but they shall not rule you.

According to this passage, the covenant is dependent on the observance of *shemita*. Here the explanation of *shemita* becomes distinctly a part of the biblical tradition. Whereas in Leviticus 25:6 *shemita* extends to all humans, the *shemita* of Deuteronomy 15:3 is starkly opposed to debt remission for non-Israelites. The mention of *shemita* in Exodus 23:10–11 bears a striking resemblance to Deuteronomy 15 in regards to the treatment of the poor. In both cases *shemita* functions as relief for the economically disadvantaged. However, Deuteronomy 15:4 prophecies the eradication of poverty entirely. While Deuteronomy 15 promotes financial comfort and elimination of the financially poor, Exodus 23 relates to *shemita* agriculturally.

One vital underlying assumption of *shemita* is the particular relationship between God and the Israelites. Though the economic easing of Deuteronomy relates more heavily to finance, a line regarding divine-human relationships makes it into the passage. Deuteronomy 15:6 describes what is reinforced elsewhere in the Bible: that God is the creator and ultimate owner of the universe. Perhaps this statement is made most clear in Leviticus 25:23:

“וְהָאָרֶץ לֹא תִמְכַּר לְצִמְמָהּ כִּי־לִי הָאָרֶץ כִּי־גֵרִים וְתוֹשָׁבִים אַתֶּם עִמָּדִי”

But the land you shall not sell permanently, because the land is Mine. For you are resident aliens who are with me.

Indeed, this relationship will become even more important to later Jewish authorities, particularly Jewish social contract theorists; however, it first gains traction in rabbinic literature.

Shemita is cited elsewhere in the Bible; however, many of its usages are restricted to the land of Israel. In the rabbinic canon, *shemita* gains a broader definition. *Shemita* is not a uniform concept. Biblical literature relates to *shemita* as an aid to the poor; however, Torah contains two competing ideas of *shemita*: agricultural and financial. The two aspects of *shemita* are not

mutually exclusive, but their differences signal that the biblical authors did not conceive of *shemita* under the same terms.

Connection to Distributive Justice

The biblical authors do not explicitly connect distributive justice and *shemita*. *Shemita* was not created with distributive justice in mind, nor was distributive justice created as a result of *shemita*. Yet *shemita* can provide insight into this modern concept. The premise of distributive justice is that a society's resources are not equitably allocated so that the most disadvantaged members and the most advantaged members gain at the same time; as a result, social and economic mechanisms need to be put in place in order to ensure equal economic opportunity.

How do the texts reviewed in the previous chapter apply to distributive justice? Exodus 23:10–11 includes the commandment to allow the land to have a sabbatical rest, and to allow the poor to harvest from the fields freely. Using the aforementioned rubric of distributive justice, Exodus 23 provides an opportunity for the poor to access the resources they might otherwise struggle to acquire. However, the mechanism described in Exodus 23 is not a permanent fix; there is no guarantee that the poor will improve their lot during this sabbatical year. Nevertheless, *shemita* may afford them a respite from their struggles.

Leviticus 25:1–7 reiterates the same sabbatical rest found in Exodus 23; however, *shemita* in Leviticus 25 is described in further detail. In terms of distributive justice, Leviticus 25 does no more for the poor than Exodus 23. In fact, one key difference between the two passages is the target of the sabbatical rest. Exodus 23 is meant to help the poor; the sabbatical rest in Leviticus 25 is destined for the laborers in service to the landowner. Surely they are in greater need than the landowner; however, there is no implication that *shemita* is meant for the entire

community's poor. In this way, the *shemita*-related verses of Leviticus 25 fulfill distributive justice on a smaller scale than Exodus 23. However, the passages of Leviticus 25 regarding the Jubilee, the 50-year *halakhic* mechanism to revert land to the original Mosaic partition of the land, is a massive re-distribution of lands. The economic opportunities are open to the laborers of the field, but not to any other employed or indentured workers from other fields.

Though Leviticus 25 and Exodus 23 benefit the less advantaged members of the community, Leviticus 26:34 relates only to the rest the land deserves. The *shemita* that the land will experience according to Leviticus 26 is meant to make up for its disobedient residents. As it relates to the notion of distributive justice Leviticus 26:34 does nothing to increase access to economic or educational opportunities. Instead, it seems that the land is the greatest beneficiary of the sabbatical rest, more so than human beings.

The notion of *shemita* is not only related to land. Deuteronomy 15:1–6 regards the sabbatical year as one that is observed through debt remission. While the passage does maintain a connection to the land, the major goal is to lessen the economic burden on the poor. According to Deuteronomy 15, poverty or the lack thereof is contingent with divine blessings. God will determine provide for the needy based on the people's adherence to the *mitzvot* and especially the remission of debt in the sabbatical year. The ideal described in Deuteronomy 15 is one in which distributive justice is achieved. As a result of obedience to God, there will be no poverty. In a society which prioritizes divine law, the legal structures reflect adherence to a higher power. However, that is not to say that divine law or religious law is not or cannot be a part of a larger legal-constitutional vision of justice. In such a community, the highest authority becomes the government and the legislative process.

Leviticus 25:23 indicates that a sabbatical rest for the land and the remission of debt for the people necessitates the involvement of the divine. If God is the ultimate creator and owner of the land, then the mortal tenets must acknowledge the tenuous hold they have. Similarly, members of a society must acknowledge that there is no absolute human ownership over the resources of a community. Others, like God or the poor, have a claim on the equal access to education and economic opportunity.

Rabbinic Sources for *Shemita*

The laws of *shemita* expand in rabbinic literature. This section will explore several commentaries on *shemita* from the perspective of *halakhic midrash*, Talmudic discourses, medieval rabbis, and modern-day rabbinic sources. This section is not intended to be a comprehensive rabbinic survey of *shemita* nor a diachronic study of the topic. The following texts are grouped according to three themes: *shemita* as a law inextricably tied to the land, *shemita* as a social/spiritual construct, and *shemita* as both social/spiritual and connected to land.

Social/Spiritual and Landed

Many of the commentaries regarding *shemita* explicate the verses from Exodus 23:10–11:

י) וְיֵשׁ שְׁנַיִם תִּזְרַע אֶת אֶרְצְךָ וְאָסַפְתָּ אֹת תְּבוּאָתָהּ: יא) וְהַשְׁבִּיעַת תִּשְׁמְטָנָהּ וְנִטְשָׁתָהּ וְאָכְלוּ אֶבְיָנֶי עַמְּךָ וְיִתְּרָם תֹּאכַל חֵיט הַשָּׂדֶה כִּן תַּעֲשֶׂה לְכָרְמְךָ לְיִיתָד:

(10) Six years you shall tend to your land and harvest its yield. (11) But in the seventh year you shall let it rest and lie fallow. The poor amongst you shall eat of it, and what they leave shall be for the beasts to eat. Thus will you [also] do for your vineyards and your groves.

In *Mechilta D'Rabbi Ishmael (Mechilta)*, Exodus 23:10–11 is read as permission for the poor to benefit from the land but a prohibition for the farmer to profit from the work of the impoverished.

דבר אחר והשביעית תשמטנה ונטשתה, מפני מה אמרה תורה, לא שיאכלו אותה עניים, הרי אני מכניסה ומחלקה לעניים, תלמוד לומר והשביעית תשמטנה - ונטשתה, מגיד, שפורץ בה פרצות אלא שגדרו חכמים מפני תקון העולם.²⁴

Another perspective [on Exodus 23:11], “In the seventh [year] you shall let it rest and lie fallow.” Why does Torah say this? Was it not so the poor could eat? See then, I will gather and distribute [food] to the poor. Rather Scripture says, “in the seventh year you

²⁴ Mechilta d'Rabbi Yishmael Mishpatim, Mascehta Dekaspa, Mishpatim Parasha 20

shall let the land rest and let it lie fallow. Saying that one should actually make openings [in the fences surrounding the fields]. However, the sages determined that he could maintain the fence for the sake of *tikkun olam*.

The initial reading by *Mechilta d'Rabbi Ishmael* understands Exodus 23:11 as a radical reimagining of private ownership. Not only is the *shemita* year meant to benefit the needy, the owner is required to remove the barriers to entry in a literal sense. The sages modify this ruling by *Mechilta* by using the same justification as Hillel for the *prozbol*²⁵, מפני תיקון עולם, for the sake of repairing the world.²⁶ In the case above, מפני תיקון עולם, is a term used to justify an action on the basis of maintaining or repairing the order of the world. The *tikkun* in *Mechilta* is a way to allow the field owners to feel that they still retain ownership in appearance, though not legally.

Maimonides examines these verses and cites two reasons for the institution of *shemita*. First, *shemita* allows the poor to eat from the fields free of charge. Second, the land needs to be rested for it to successfully yield crops for another six years.²⁷

ואמנם כל המצות אשר ספרנום בהלכות שמיטה ויובל מהם לחמלה על בני אדם והרחבה לבני אדם כולם, כמו שאמר ואכלו אביוני עמך ויתרם תאכל וגו', ושתוסיף הארץ תבואתה ותתחזק בעמדה שמוטה. ומהם חנינה בעבדים ועניים כלומר השמטת כספים והשמטת עבדים, ומהם עיון בתקון הפרנסה והכלכלה על ההתמדה, והוא היות הארץ כולה שמורה לבעלים אי אפשר בה מכירה לצמיתות, והארץ לא תמכר לצמיתות, וישאר ממון האדם שמור עליו ועל יורשיו.

As to the precepts enumerated in the laws concerning the *shemita* and the *yovel*, some of them imply sympathy for our fellow, and promote the well-being of humankind. As it is written, “the needy of your people will eat, and their leftovers will be eaten by the beasts” (Exod. 23:11) and besides, the land will also increase its yield and improve when it remains untouched. Other precepts of this class prescribe kindness to laborers and to

²⁵ mShevi'it 10:3–4; mGittin 4:3; bTGittin 36a–b

²⁶ As will be shown below in the section treating the *prozbol*, Hillel's enactment takes human nature into consideration. Here too the sages take the notion of private ownership into consideration. The benefit for the poor cannot occur if the farmer does not feel that their land is secure.

²⁷ Guide to the Perplexed, III, 39

the poor, by remitting debts and freeing slaves from bondage. There are some precepts in this class that serve to secure for the people a permanent source of income and support by providing that the land should remain the permanent property of its owners, and that it could not be sold." And the land shall not be sold for ever" (Lev. 25:23). In this way the property of a person remains preserved for oneself and one's ancestors, and he can only enjoy the produce thereof.²⁸

Rambam views *shemita* as a social and agricultural act. The land requires the rest, but the disadvantaged members of the community - the laborers and the indebted individuals - need a break as well. The injustices of a society build over the course of six years; therefore, the *shemita* year resets the scales of justice.

While Maimonides is concerned about the social aspect of *shemita*, he presents a conservative perspective for a class of people who already own the land. Rather than interpreting Leviticus 25:23 as referring to divine ownership, Maimonides reads this verse as most beneficial to the land owners. Though the land belongs to God, it may not be sold in perpetuity, because it was originally partitioned for a particular group/class of people. Though God owns the land, the original inhabitants are the perpetual stewards.

When discussing *shemita* of the land, "land" refers specifically to the Land of Israel. However, the defined borders of that Land are up for interpretation. In the Babylonian Talmud, Chullin 7a, Rabbi Shimon ben Eliakim states that, upon the return from the first exile, the Israelites purposefully drew the borders of the land to exclude certain lands to benefit the poor.

אִשְׁתַּמִּיטְתִּיהָ הָא דְאָמַר ר' שְׁמַעוֹן בֶּן אֱלִיָּקִים מִשּׁוּם ר' אֲלֵעָזָר בֶּן פְּדָת שֶׁאָמַר מִשּׁוּם ר' אֲלֵעָזָר בֶּן שְׁמוּעַ:
הָרַבָּה כְּרֻכִּים כְּבִשּׁוּם עוֹלֵי מִצְרַיִם וְלֹא כְּבִשּׁוּם עוֹלֵי בָבֶל, וְקִסְבֵּר: קְדוּשָׁה רִאשׁוֹנָה קְדוּשָׁה לְשַׁעֲתָהּ וְלֹא קְדוּשָׁה
לְעֵתִיד לְבָא, וְהִנִּיחוּם כְּדִי שִׁסְמְכוּ עֲלֵיהֶן עֲנִיִּים בְּשִׁבְעִית.

²⁸ Adapted from M. Friedlander translation, 1904, second edition

Rabbi Shimon Ben Eliakim stated, in the names of Rabbi Elazar Ben Pedath and Rabbi Elazar Ben Shama'u: Many cities which were [originally] conquered by those Israelites who came up from Egypt were not re-conquered by those who came up from Babylon [after the return from the first exile], for he held the view that the consecration of the Holy Land on the first occasion consecrated it for the time being, but not necessarily for the future. They therefore did not annex specific cities in order that the poor might have sustenance from them during the Sabbatical Year.²⁹

Rabbi Shimon ben Eliakim echoes the struggle of *shemita*. On the one hand there is the obligation for the *shemita* year to benefit the needs of the poor. On the other hand is the actual yield the *shemita* year will have available for the poor. In this case, if the state practically draws its lands to exclude certain designated farms, it can better facilitate its practice of sustaining the poor.

Though the aim of this thesis and the perspective of some medieval rabbinic commentators is to focus on the benefits of *shemita* for the soul of the farmer/landowner, the Palestinian Talmud (Talmud Yerushalmi), Ta'anit 3:1, notes the potential suffering of the landowner during a sabbatical year.

דר"ז כר' חד ספר הוה חשוד על פירות שמיטתה אייתוניה גבי ר' אמר לון ומה יעביד
עלובא ובגי חייו הוא עבד.

A certain teacher was suspected concerning Sabbatical year produce [growing and then selling the 'ownerless' harvest]. He was brought before Rabbi Yehudah Hanassi. R. Yehudah Hanassi said to the accusers: "What can this poor man do? He did it for the sake of his life."³⁰

The quote above shows a glimpse of what *shemita* could have meant for a landowner.

While the *shemita* year is meant to benefit the poor laborer, it could also cause the farmer to become destitute. In later texts we will see how Maimonides balances both concerns: the welfare

²⁹ This translation comes from Yigal Deutscher, Anna Hanau, and Nigel Savage, eds., *Hazon Shmita Sourcebook*, 2nd ed., 2014, p.23.

³⁰ Translation credit goes to the *Hazon Shmita Sourcebook*, p.23.

of the poor (the intended beneficiaries of *shemita*) and the farmer (the suppliers of produce/resources).

The above concerns were not lost on Rabbi Aharon Lichtenstein, who provides two reasons for *shemita*: benefitting the financial status of the poor and humbling the landowners.³¹ Likewise, Sefer HaKhinuch posits three alternative explanations for *shemita*: that land ultimately belongs to God, to increase the trust of humanity in God, and to reinforce the value of trust, rest, and respect for God on Shabbat.³² The third reason of Sefer HaKhinuch comes by way of a comparison between the phrase *Shabbat HaAretz* (Rest for the Land) and *Yom Shabbat* (The day of rest).

Social/Spiritual

Rabbinic commentators like Abravanel and Yitzchak Arama dispute Rambam's agricultural explanation found in *The Guide for the Perplexed*. Both Arama and Abravanel reason that the land will progressively produce less and less through the years. Therefore, the sixth year will logically be the year with the least yield. Though Maimonides explains that the single year of rest will be sufficient to provide an equal yield of crops for the subsequent six years, Abravanel and Arama note that this way of thinking only works if divine intervention plays a role in the harvest. Normally, a field's yield lessens each year after a rotation. Yet, the concern raised by these two commentators is addressed in a verse in Leviticus 25:20–21:

³¹ Yosef Tzvi Rimon, *Shemita: [from the Sources to Practical Halacha]*, Halacha from the Sources Series (Jerusalem: Yeshivat Har Etzion [u.a.], 2008) 20.

³² *ibid.* 21. see also Sefer HaChinukh, Mitzvot 326–330

20 וְכִי תֹאמְרוּ מִה־נֹּאכֵל בַּשָּׁנָה הַשְּׁבִיעִית הֵן לֹא נִזְרַע וְלֹא נֶאֱסַף אֶת־תְּבוּאָתָנוּ: 21 וְצִוִּיתִי אֶת־בְּרַכְתִּי לָכֶם בַּשָּׁנָה הַשְּׁשִׁית וְעָשַׂתְּ אֶת־הַתְּבוּאָה לְשָׁלֹשׁ הַשָּׁנִים:

When you think, “what will we eat in the seventh year? See, we did not sow nor harvest the yield.” [That is why] I ordained my blessing for you in the sixth year. The field should produce a harvest [enough] for three years.

In such a scenario, where God causes the land to yield threefold, Maimonides’ line of thinking makes sense. However, Abravanel and Arama set doubt on the idea that this is how fields truly operate. They are the beginning of rabbis who place the overarching concern of *shemita* on the social and spiritual benefits of the act.

Nevertheless, Rambam does not present a monolithic approach to *shemita*. Though Maimonides’ concern for the agriculture and connection to the land is well marked in the texts above, the commercial, social, and spiritual aspects of *shemita* were not lost on him. Money that is tied to the produce retains the same sanctity as the goods it represents. Rambam notes in the Mishneh Torah that the concern for showing divine ownership extends even in marketplace exchanges.³³

כשמוכרין פירות שביעית אין מוכרין אותן לא במדה ולא במשקל ולא במנין, כדי שלא יהיה כסוחר פירות בשביעית, אלא מוכר המעט שמוכר אכסרה להודיע שהוא הפקר ולוקח הדמים לקנות בהן אוכל אחר.

When the produce of the Sabbatical year is sold, it should not be sold by measure, nor by weight, nor by number, so that it will not appear that one is selling produce in the Sabbatical year. Instead, one should sell a small amount by estimation to make it known that [the produce] is ownerless. And the proceeds of the sale should only be used to purchase other food.

The essence of this *halakha* by Rambam is that the sabbatical year takes on a different quality in purchase and sales. People buy food everyday; however, something is essentially different about the acquisition of sustenance in the seventh year. One way to show the alternative nature of this

³³ See also: Mishnah Torah (MT), Hilchot Shemita v’Yovel 6:1–2 and 7:7

year is by estimating one's sales and purchases. A sale for an exact amount shows concern for profit, whereas a sale in estimation shows less care for revenue.

Avraham Ibn Ezra and Rav Kalischer, a 19th century German rabbi, attach a spiritual notion to the *shemita* year. First, Ibn Ezra asserts that the sabbatical year is a time of learning. Just as Shabbat is a day of rest from work that can be made holy through study, so too is the *shemita* year a time that Jews should turn away from the labors of the field and towards learning. Rav Kalischer goes further, saying that working (the land) for material purposes should not be the primary goal; rather, Jews should focus on the study of Torah.³⁴

The Shmita Year teaches us further that the rich should not lord it over the poor. Accordingly, the Torah ordained that all should be equal during the seventh year, both the rich and the needy having access to the gardens and fields to eat their fill... Yet another reason [for Shmita]: in order that they should not always be preoccupied with working the soil to provide for their material needs. For in this one year, they would be completely free. The liberation from the yoke of work would give them the opportunity for studying Torah and wisdom. Those who are not students will be occupied with crafts and building and supplying these needs in Eretz Yisrael. Those endowed with special skills will invent new methods in this free time for the benefit of the world.³⁵

Both rabbis imply that gaining capital in the sabbatical year is not spiritually aligned with the purpose of a year of rest. They speak not only about the land or the laborer, but also about the potentially endless drive to work for more money.

This notion, the ceaseless drive to amass capital, is a primary concern for this thesis. In the case of agriculture, and specifically *shemita*, the farmer/land owner ought to not be primarily concerned with revenue. According to Ibn Ezra, Rav Kalischer, and Arama, the desired effect of

³⁴ Yosef Tzvi Rimon, *Shemita: from the Sources to Practical Halacha*, 23.

³⁵ Translation credit to Hazon Shmita Sourcebook, p.57.

shemita is the impact it has on the social and spiritual perspective of the wealthy. For example, the sabbatical year abstracted from the land could bring the attention of hyper-focused landowners to the rejuvenation of subsisting on past earnings and concentrating on aspirations that are not tied to revenues. Such a perspective is not present in the modern main-stream discussion of distributive justice.

One of the strongest statements on the social/spiritual benefit of *shemita* comes from the 16th century Torah commentary, *Kli Yakar*. This particular citation is found in connection with Deuteronomy 31:12; however, *Kli Yakar* equates the effect of *shemita* and the *Hakhel* year.

כי שנת השמיטה גורם גם כן ההקהל והשלום על ידי שלא יזרע ולא יצמיח בו ואכלו אביוני עמו כי אינו רשאי להחזיק בתבואת שנת השבע כבעל הבית, וזה בלי ספק סיבת השלום כי כל דברי ריבות נמשכין ממדת שלי שלי זה אומר כולה שלי וכל זה אינו כל כך בשנה השביעית כי בקום ועשה אין הכל שוים אבל בשב ואל תעשה הכל שוין וזה באמת ענין השלום.

The year of *shemita* causes peace because one does not plant or tend to the crops during that time. The poor eat with the farmer because the farmer is not permitted to claim ownership over the harvest of the seventh year. This is, without a doubt, the reason for peace. For all matters of debate come forth from the value, “what’s mine is mine.” This value says that everything is mine, but that value is not in effect in the seventh year. For in the phrase, “arise and do,” everything is not equal; however, in the phrase, “sit and do not do,” everything is equal. This is the essence of peace.

For six years the value of private ownership prevails. A person works the land and claims that through work the harvest belongs to the farmer; however, the sabbatical year levels the metaphorical field. All are equal in this year, because the farmer has no claim to the yield of the land. Not only does the farmer relinquish ownership, the result of this act actually fosters peace.

Kli Yakar takes this perspective from Mishnah *Pirkei Avot* 5:10

ארבע מדות באדם האומר שלי ושלך שלך זו מדה בינונית ויש אומרים זו מדת סדום שלי שלך ושלך שלי עם הארץ שלי שלך ושלך שלך חסיד שלי שלי ושלך שלי רשע:

There are four measurements of the character of a person: one who says, ‘what’s mine is mine and yours is yours,’ is mediocre (there are those that say this is the character of

people from Sodom). One who says, ‘what’s mine is yours and what’s yours is mine’ is an unlearned person. One who says, ‘what’s mine is yours and what’s yours is yours’ is a righteous person. Finally, one who says, ‘what’s mine is mine and what’s yours is mine’ is a wicked person.

Kli Yakar wants to move human beings from being unlearned individuals to righteous people. *Taken a step further, this commentary by Kli Yakar might imply that private ownership creates the conditions for disagreement and dispute, whereas equality in access to food or land creates the conditions for peace.*

A survey of these Torah-itic and rabbinic sources concludes that *shemita* is not *only* about efficient agricultural techniques. Indeed, the soil needs rest, but many sources have ritualized the sabbatical rest to teach a society about the higher pursuit of serving God. The foundational purpose of the ritual is not blind adherence to the laws. Rather, the above sources teach that material wealth is not the primary motivation in life. These sources teach that human beings are not the actual owners of the land, that assisting the poor and trust in God are one and the same, and that rest allows people to step back and see Creation not as a means but as an end unto itself.

Connection to Distributive Justice

The rabbinic sources cited above further define the parameters of *shemita*. While not an all-encompassing rabbinic view of *shemita*, the texts presented are ones which will be most instructive in understanding the relationship between *shemita* and distributive justice. This subsection will examine the rabbinic connections to distributive justice.

The first set of texts examined relates to a very concrete relationship between the land and *shemita*. As the texts relate to the notion of distributive justice, the passages from the *The Guide for the Perplexed* and from Bavli Chullin 7a have the greatest connection to distributive

justice. In both texts, there is a concern for the equitable access to crops that disadvantaged citizens have in the *shemita* year. The increasingly inequitable distribution of resources (or the potential thereof) in the first six years is redirected in the seventh year. Bavli Chullin 7a recognizes that the *shemita* year may not have the greatest benefit to the poor. Though the intention of *shemita* is to increase access to resources for the impoverished members of the community, Bavli Chullin 7a seems to suggest the reality may be that *shemita* makes it more difficult for the community to observe the statute. The text describes a scenario in which borders are drawn so that the laws of *shemita* do not apply to those lands and their owners can use the produce to support the poor. Though *shemita* is traditionally thought of as a mechanism which supports the poor, Bavli Chullin 7a presents a reality in which *shemita* is a hinderance to aiding the needy. Finally, Sefer HaChinuch helps to inform the rubric of distributive justice by loosening the connection of human ownership over the land. According to the Chinuch, *shemita* reminds humanity of God's ownership in the world. By recognizing God's supreme role in Creation, absolute claims on the earth become more problematic.

The second group of texts in the rabbinic treatment of *shemita* deals with passages that are almost exclusively focused on the social/spiritual benefits of *shemita*. Maimonides' opinions fall on both sides of this debate. In the Mishneh Torah, Rambam writes about the benefits *shemita* could have for marketplace exchanges. In this view, *shemita* allows customers to purchase goods at cost or for a generously low estimate. In terms of distributive justice, this marketplace standard lowers the barrier for the poor to purchase necessities. While the seller has little to no profit margin, they do not become destitute as a result of the exchange. This is a close

parallel to Rawls' Difference Principle, in which the poor and the rich benefit proportionally to one another.

Rav Kalisher, the author of *Sefer HaBrit*, is interested in *shemita's* educational benefits. While all of the previous commentators have written about the benefits to the land or to the bank accounts of the poor or rich, Rav Kalischer appreciates *shemita* for the educational opportunities available to the community. For six years the community is focused on an economic bottom line, but the seventh year is spent on benefitting the mind. Distributive justice is not only about economic opportunities; equal access to education is a paramount goal for a more equitable society.

The final rabbinic text in this section is the *Kli Yakar*. This text promotes the most important potential benefit of *shemita*: the opportunity for peace. The passage from *Kli Yakar* focuses on dissent that comes from a reliance on private ownership. The *shemita* year allows members of a community the opportunity to see one another as human beings, and not as stakeholders in a future monetary transaction. The desired societal goal for distributive justice is a community at peace. One of the highest goals of distributive justice is to loosen the mental grip on notions like "what's mine is mine," and instead focus on the righteous state of, "what's mine is yours, and what's yours is yours."³⁶

³⁶ Adapted from *Pirkei Avot* 5:10

***Shemita* in the Modern State of Israel**

If the social-religious practice of *shemita* is intended to offer adherents a new perspective on the world, then those who study *shemita* must take into account the many centuries it was not practiced on any institutional level. The enactment of rest on the sabbatical year is a *halakha* which can only be enacted within the Land of Israel; the practice of *shemita* did not begin until the 19th century. As Jews began to return to the Land of Israel in numbers greater than had been seen for the previous two millennia, the practice of *shemita* became a relevant *halakhic* concern for those Jews settling the land and diaspora communities who were observing from the outside.

Rabbi Avraham Yitzchak HaCohen Kook (R. Kook) has had the most impact on the reality of *shemita* in modern Israel. At the beginning of the 20th century, HaRav Kook stepped into a debate between Jews of the Old and New *Yishuv*.³⁷ The Old *Yishuv* was made up of more observant Jews who did not have a Zionist motive to their decision to live in the Land of Israel. On the other side of the struggle were the young Jews of the New *Yishuv*, who made *aliyah* in order to fulfill their Zionist ideology. These younger Jews were not initially concerned with the *halakhic* implications of returning to Israel; rather, they considered their immigration to be a matter of safety from czarist Russian and European prejudice.³⁸ The debate surrounding the sabbatical year is emblematic of HaRav Kook's grander rabbinic mission; he sought to reconcile *halakhic* queries with a modern sensibility.

³⁷ The New *Yishuv* is term for the immigrants motivated by a Zionist ideology to move to Palestine and the Old *Yishuv* is the term for immigrants to Palestine who moved to the Land of Israel out of religious fervor.

³⁸ Avinoam Rosenak, "Ideology and Halakha: Struggle and Compromise," in Rabbi Avraham Yitzchak HaCohen Kook (Mercaz Zalman Shazar, 2006) 84.

On the one hand, HaRav Kook upheld the *halakhic* precedent of observing the sabbatical year in the Land of Israel. On the other hand, the New *Yishuv* were only interested in farming and once again establishing a Jewish presence in the Land. If followed exactly, the sabbatical year would have been an agriculturally and economically devastating practice for the young movement. However, the *halakhically*-observant communities would have been outraged if *shemita* was not observed on Jewish lands.³⁹ Though not consistently followed for millennia, the wave of immigration to Israel led to renewed attention to this particular *halakha*.

For the sabbatical year that occurred during 1909–1910 (5670), settlers were permitted to harvest their crops through a legal loophole of selling the land to non-Jews.⁴⁰ HaRav Kook and his supporters did not intend for the *heter m'chira* to become a permanent solution; instead, they sought to reinstate the *halakhic* institution of *Otzar Bet Din*. *Heter M'chira* was a way to encourage non-religious farmers to observe the *shemita* year, but Rav Kook was not completely comfortable with it as a final method for the year. First recorded in *Tosefta Shvi'it*,⁴¹ the rabbinic passage calls for the creation of a corporation that harvested and tended the fields.

הלכה א

בראשונה היו שלוחי בית דין יושבין על פתחי עיירות כל מי שמביא פירות בתוך ידו נוטלין אותן ממנו ונותן לו מהן מזון שלש סעודו' והשאר מכניסין אותו לאוצר שבעיר הגיע זמן תאנים שלוחי בית דין שוכרין פועלין עודרין אותן ועושיין אותן דבילה וכונסין אותן בחביות ומכניסין אותן לאוצר שבעיר הגיע זמן ענבים שלוחי בית דין שוכרין פועלין בוצרין אותן ודורכין אותן בגת וכונסין אותן בחביות ומכניסין אותן לאוצר שבעיר הגיע זמן זתים שלוחי בית דין שוכרין פועלין ומוסקין אותן ועוטנין אותן בית הבד וכונסין אותן בחביות ומכניסין אותן לאוצר שבעיר ומחלקין מהן ערבי שבתות כל אחד ואחד לפי ביתו הגיע שעת הביעור עניים אוכלין אחר הביעור אבל לא עשירים דברי ר' יהודה ר' יוסי אומ' אחד עניים ואחד עשירים אוכלין אחר הביעור ר' שמעון אומ' עשירים אוכלין מן האוצר אחר הביעור

הלכה ב

³⁹ *ibid.* 84–85.

⁴⁰ *ibid.*, 85–86.

⁴¹ *Tosefta Shevi'it* 8:1–2.

מי שיש לו פירות לחלק מחלקן לעניים מי שיש לו פירות שביעית והגיע שעת הביעור מחלק מהן לשכניו ולקרוביו וליודעיו ומוציא ומניח על ביתו ואומ' אחינו בית ישראל כל מי שצריך ליטול יבא ויטול חוזר ומכניס לתוך ביתו ואוכל והולך עד שעה שיכלו

8:1

At first, agents of the court would sit at the gates of the city. Everyone who brought fruits would have the fruits removed and be given enough food for three meals in exchange. The rest would be entered into the storehouse. When it came time for dates, the agents of the court would hire workers to gather them together, make them into cakes and enter them into the storehouse in the city. When it came time for grapes, agents of the court would hire workers, squeeze the grapes, press them, enter them into jugs and place them in the storehouses of the city. When it came time for olives, agents of the court would hire workers to prepare and press them in the oil press and enter the oil into jugs and place them in the city storehouses. These products would be distributed *erev shabbat*, every person according to his house. After the time of "Biur" passed the poor may eat but not the wealthy, said Rabbi Yehuda. Rabbi Yosi said that both poor and wealthy may eat after the biur. Rabbi Shimon says that wealthy may eat from the storehouse after the biur.

8:2

Someone who has fruit from *shevi'it* when the hour for biur arrived distributes the fruits to neighbors and relatives and people he knows. He then goes out and places the fruits on his doorstep and says "my brothers from the house of Israel, anyone who needs may come and take." He then returns and enters back into his house and eats until the are gone.⁴²

While the agents of this corporation are Jews, they are hired workers of a separate entity that does not own the land. Instead, this corporate body takes the yield and distributes to its dependents based on need. One of the principle prohibitions of *shemita* is to harvest and tend to crops in an ordinary way, the way crops are usually harvested.⁴³ Herein lies the problem: how can the *halakha* allow Jews to sustain their lives on the crop yield and the profit of its sale while respecting the land as ownerless? Rash Sirilio, Ramban, and the Chazon Ish all provide essential perspectives to understanding what would become a life-saving institution.

⁴² Translation credit to [hazon.org http://hazon.org/wp-content/uploads/2012/11/Shmitta-3.pdf](http://hazon.org/wp-content/uploads/2012/11/Shmitta-3.pdf)

⁴³ Derived from *mShevi'it* 8:6

In Talmud Yerushalmi, Rash Sirilio does not reconcile his interpretation of the *halakhic* practice with the tradition found in *Tosefta Shevi'it* 8:1–2.⁴⁴ Instead, Rash Sirilio states that the *Tosefta* refers to the sixth year. As far as *halakhic* practice is concerned, Rash Sirilio is among the minority opinion; his opinion is recorded, but the practice of *otzer bet din* remains valid. Centuries later, Nachmanides writes in his Torah commentary that the verse from *Tosefta* is interpreted differently than Rash Sirilio.⁴⁵ Ramban understands that the agents of the court would harvest the crops and then distribute just enough to each person who asked. However, what Ramban does not address is that prohibited labor is still being performed on *shemita* produce. The Chazon Ish, the 20th-century sage, further clarifies the role of the *otzar bet din* by emphasizing the ownerless nature of the harvest.⁴⁶ The Chazon Ish rules that as long as the owner of the field is not performing any of the harvesting acts, then the crops are not being collected in a normal way. The normative way of harvesting, according to the Chazon Ish, would be for the owner to perform the task alone or to manage the workers; however, the court administers the collection of crops during the *shemita* year and distributes them without seeking a profit. For the Chazon Ish, the key function of the *otzar bet din* is to demonstrate that the field is ownerless. In essence, the owner should derive humility from the act of the sabbatical rest. The land, its produce, and the profit it might have derived do not belong to the mortal owner; nevertheless, the land can still be harvested to provide the necessary sustenance for those who depend on the yield. While *Otzer Beit Din* ensures the people are sustained by the land during

⁴⁴ yShevi'it 9:6

⁴⁵ Ramban, Lev 25:7

⁴⁶ Chazon Ish, Commentary to the Mishnah, Shevi'it 12:5–6.

the *shemita* year, this debate still centers around Rav Kook's argument to reconcile the *halakhic* requirements with the social and ecological needs of the people and land

***Shemita* as a Lens for Distributive Justice**

How is *shemita* a lens for distributive justice? Certainly, the label distributive justice, as it has been defined above, is a modern application of an already established idea. Neither the biblical authors nor the medieval rabbinic commentators had any notion of what is now known as distributive justice. Nevertheless, aspects of distributive justice are found in the execution of *shemita*: the concern for the equitable distribution of resources, respect for the welfare of the laborer, and the opportunity communities create for the least advantaged (the poor, widowed, orphan) to access basic necessities.

Together, the Chazon Ish and HaRav Kook provide a strong foundation for the reconciliation of *halakha* and *ma'aseh* (action). *Otzar Beit Din* is a modern Israeli/Jewish response to the cry for distributive justice. A society cannot cease to provide for its population; nevertheless, a community founded upon binding religious principles must honor the tradition. The compromise must bend, but not break, the bond between tradition and modern necessity. However, the reality of the reach of *shemita* is that agriculture as an industry is a small part of the modern Israeli economy. Recent figures from Israel's Ministry of Agriculture and Rural Development suggest that agriculture employs just 2% of Israel's workforce, and a third of those are self-employed farmers.⁴⁷ In 2010, agriculture amounted to 1.9% of Israel's gross domestic

⁴⁷ Arie Regev, "Israel's Agriculture at a Glance," Israel's Agriculture (The Israel Export and International Cooperation Institute & Ministry of Agriculture and Rural Development), accessed May 7, 2016, http://www.moag.gov.il/agri/files/Israel's_Agriculture_Booklet.pdf.

product (GDP).⁴⁸ In total, about 64,000 people are directly employed in agricultural work within the State of Israel.⁴⁹ As such, the impact of *shemita* is small.

In an age of corporate agriculture and a decline in family-owned farming, the institution of *shemita* would need to be valued at the highest levels of the companies: shareholders, investors, and the corporate boards. Though *shemita* is not the divisive *halakhic* principle it was one hundred years ago, the values it represents remain relevant. How can the institution of *shemita* be applied in a modern society that is so far removed from the agricultural industry? This is the essential question for Judaism in the 21st century. It may be the essential question in every age: how does Judaism, its laws and precepts, remain relevant in a time which does not regard progress and innovation with all of the former in mind. For instance, the changes that take place in western society do not occur with consideration for the customs and rituals of *halakha*.

The modern capitalist economy does not expressly operate with Jewish principles. However, Judaism can remain relevant as its adherents consider the ways it can be reapplied in a new time. It may be the case that for *shemita*, the newest application is not explicitly related to the land; rather, a 21st-century landless *shemita* may involve a rest for the self or for the workers, who are also divinely owned/created.

The *halakhic* debate that surrounds *shemita* is evidence to the controversy it once caused. On its own, the injunction from Torah to let the lands rest every seven years would be a disastrous economic and agricultural practice. If, as Ibn Ezra claims above, the natural yield of a field decreases each year, then the sixth year would be the smallest harvest. Therefore, God will

⁴⁸ *ibid.*

⁴⁹ *ibid.*

ensure a successful crop yield for three years prior to the *shemita* year according to the Book of Leviticus.⁵⁰ While this reasoning inculcates a trust in God, the act requires a natural phenomenon to occur every seven years. A small agrarian society without the option for global trading cannot be expected to subsist on such a chance. Therefore, rabbinic commentaries have, for centuries, come to provide explanations and loopholes for *shemita* that allow the people to live off the harvest of the land while recognizing the importance of *halakha*. Today, *shemita* is no longer a relevant economic concern for 98% of the Israeli economy. As a result of this knowledge, *shemita* could become resigned to the shadows of *halakhic* practice; on the other hand, *shemita* could also become a lens through which Jewish thought can interpret other societal values like economic justice, ecological responsibility, building towards a less materially-focused culture (as was mentioned above in *Kli Yakar*).

Alternatives Applications of *Shemita*

One might consider how a society accounts for the abstract idea of *shemita* without focusing on agriculture. Such considerations would be akin to those of Ibn Ezra and Arama, who considered the spiritual and social impact of *shemita*. If one's thinking proceeds from the notion that an individual has ownership over their own labor, then a society must consider how it compels individuals to act in certain ways which may not provide direct and immediate benefit to their life. A community may compel its citizens to serve in a military, to provide economic benefit for childbearing, or to choose a particular profession. *Shemita's* primary teaching may be that complete and private ownership over anything is a pretense. The one "owner" of space and time is the imminent and transcendent power that is responsible for the creation of the world. The

⁵⁰ Lev 25:21

individual must recognize that ownership over a thing is limited to one's mortality. *Shemita* reminds human beings of this verse:

“וְהָאָרֶץ לֹא תִמְכַּר לְצִמְתָּהּ כִּי־לִי הָאָרֶץ כִּי־גֵרִים וְתוֹשָׁבִים אַתֶּם עִמָּדִי”

But the land you shall not sell permanently, because the land is Mine. For you are resident aliens who are with me.”

Profit is a necessary but finite good; however, the Creator is ultimately the owner.

Possible Applications

Those who have the opportunity to determine the path of their labors should use *shemita* as a way to personally provide their services in a way that affords the most disadvantaged members of the community an opportunity to gather the professional's “harvest.” The value in remitting debts and land is not intended to cause suffering; rather, a sabbatical year demonstrates what is necessary to live and nothing more. Yes, these individuals will likely lose potential profit in the sixth year and throughout the seventh year, but *shemita* is intended to teach exactly this: profit and material wealth are not life goals.

In a society that values *shemita*, which understands the true purpose of life is not capital, the community can find applications for *shemita* every year. The soft reset which occurs every seven years is meant to remind humanity that this is the better way to live: to raise up the poor, those with misfortune, and those who have faced systemic inequality. An understanding of *shemita* should create an ethical “ought” in society, that all people should be compensated equitably for their labors, and all people should have equal access to the necessities of life: food, shelter, and quality education.

Section Summary

This paper is a radical reimagining of the application of *shemita*. The social, income, and wealth inequality within our society should be a pressing concern for all religious groups who value the Bible as a foundational text. The threat of inequality is all the more pressing for Jews, who have faced systemic prejudice for thousands of years. If *shemita* is made into a relevant 21st-century practice, then human beings will bring further equity to the world and a greater sense of justice to life.

A thorough investigation of *shemita* can yield far-reaching public policy implications. Within non-profit institutions, particularly Jewish organizations, *shemita* represents an opportunity to prioritize aid to the needy. This may manifest itself in volunteer projects that feed, provide shelter, or offer care and training for those in need. On a more foundational level, the existence of *shemita* is a value statement on Jewish life, one that should compel communities to instill further values of giving through multiple lenses: charitable (tax-deductible) donations, welfare taxes, and volunteering at institutions that support those struggling in poverty.

The commanded remission of lands and debts every seven years is a powerful statement on Judaism's sense of meaning in life. Economic gain and the accumulation of material wealth is not the primary directive of Jewish life. Assuredly, Judaism does not view the acquisition of capital as a sin. However, elements and practices like caring for those who have been "other-ed:" the poor, the orphan, the widow; these are more central to Jewish practice. Nevertheless, throughout Jewish literature and history, there is a recognition that some people will have more than others. One's ability to generate capital is only relevant for six out of every seven years. The society starts anew every seven years by either remitting capital or increasing the potential to

gain capital. The just and equitable Jewish society, as was mentioned in Leviticus 25:10, then corrects its path to provide for those who have been neglected for the better part of a decade.

Others Way to Understand the Intersection of Judaism and Distributive Justice

This section is an examination of alternatives and additional perspectives through which distributive justice may be achieved within the Jewish context. The discussion will begin with an examination of Hillel's *prozbol*, the *halakhic* precept which allows loans to be carried over into the next *shemita* cycle. Subsequently, this section will include analyses of different *halakhic* methods and tools that achieve distributive justice.

It is reasonable to conclude that *shemita* was not always practiced in the land of Israel based on the rabbinic and biblical passages above. The relevance of the sabbatical year necessitated rabbinic interpretation. Given the meager Jewish demographic reality after the destruction of the second Temple in 70CE, *shemita* as a *mitzvah* connected to the land was not as relevant or observable in most Jewish communities. However, the remission of debts was still possible in urban communities and Jewish areas in the diaspora. Hillel and the rabbis of the Bavli ask two questions: (1) whether it is permissible to practice a *shemita* of debts in a place where there is not a *shemita* of land and (2) what should be done if people are not observing the remission of debts. Hillel famously enacted a *prozbol* to encourage lending, but subsequent generations of rabbis debated whether or not such an enactment was permissible or appropriate.

The following text is a brief passage from Bavli Gittin 36a:

הלל התקין פרוסבול וכו'. תנן התם: פרוסבול אינו משמט, זה אחד מן הדברים שהתקין הלל הזקן, שראה את העם שנמנעו מלהלוות זה את זה ועברו על מה שכתוב בתורה בהשמר לך פן יהיה דבר עם לבבך בליעל וגו', עמד והתקין פרוסבול; וזה הוא גופו של פרוסבול: מוסרי לכם פלוני דיינין שבמקום פלוני, שכל חוב שיש לי אצל פלוני שאגבנו כל זמן שארצה, והדיינים חותמים למטה או העדים.

Hillel enacted the *prozbol* for the sake of *tikkun olam* (Mishnah Gittin 4:3): We have learn elsewhere (Mishnah Shivi'it 10:3–4): A *prozbol* does not [allow] the remission of debts. This is one of the enactments that Hillel the Elder made. He saw that the people were avoiding the practice of lending money to one another, and they transgressed what was written in the

Torah, “Beware, lest you hold a base thought in your heart saying, ‘the seventh year, the year of remission, is approaching.’” (Deuteronomy 15:9) [Hillel] enacted the *prozbol* [as a result]. This is the text of the *prozbol*: I send to you, judges X, in town Y, that all the debts that I have against debtor Z may be collected at anytime that I desire. The judges or the witnesses sign below [the statement].

While the immediate effect of *prozbol* is that debts will not be remitted in the *shemita* year, the long term effect is a continuation of lending. Hillel observed that those with the ability to lend did not, because they were concerned about the ability to make their money back. As a result, lending conditions worsened as the *shemita* year approached.

The *prozbol* presents a clash of two ideals for distributive justice. On the one hand, debt remission can be a functional tool to lift financial burdens on the poor; however, the lending terms may be a disincentive for those with the means to give. On the other hand, the *prozbol* ensures that the poor, those who need financial aid the most, will receive it regardless of the year. The *prozbol* touches on the conflict between the benefits of encouraging loans to the poor and remitting debts in order to lift financial burdens. The implicit question is whether the poor are aided best by a constant source of loans or the cyclical remission of loans. As Madeline Kochen argues in “Organ Donation and the Divine Lien,” the *prozbol* is an example of the rabbis taking a step in the direction of distributive justice by ensuring that loans would still be offered.⁵¹ The line between private property and distributive justice will fall under further examination in subsequent sections as this is a major consideration: how does a society respect the need for private property while ensuring those disadvantaged members of the community have access to necessities?

⁵¹ Madeline Kochen, *Organ Donation and the Divine Lien in Talmudic Law*, 2014, p115n116.

The Impact of Divine Ownership

Essential to a discussion of property is the notion of ownership. For the sages of the Babylonian Talmud there are two competing claims. The first claim of ownership states that God's domain is the entire earth. The notion that God is the ultimate "landlord" is one which originates with Leviticus 25:23.⁵² The second claim is that God's domain is only in heaven, and humanity has ownership over the earth.⁵³ The discussion in BT Ber 35a–b attempts to define human versus divine ownership.

תנו רבנן: אסור לו לאדם שיהנה מן העולם הזה בלא ברכה, וכל הנהנה מן העולם הזה בלא ברכה - מעל.

Our rabbis taught, "one is forbidden to derive benefit from this world without a blessing. All who derive benefit from this world without a blessing, it is as if this person has stolen from God.

Rav Yehuda continues in the name of Shmuel in a similar way to the tannaitic statement above; however, he adds a prooftext from Psalm 24:1,

לַהוָּה הָאָרֶץ וּמְלוֹאָתָהּ תָּבֵל וְיֹשְׁבֵי בָהּ

"the earth and all it contains is God's, the world and all those who live in it."

This verse affirms divine ownership in the world; however, Rabbi Levi, who agrees with Shmuel, Rav Yehuda, and the Tanna, adds a challenge to the discussion that he solves himself. Rabbi Levi adds a verse from a different Psalm: "The heavens are God's, and God has given the earth over to humanity."⁵⁴ The contradiction is solved by implying that both statements are true. The first prooftext, Psalm 24:1, represents the world before a blessing is recited; all of the world

⁵² As will be shown below, this can also be found in Psalm 24:1.

⁵³ Psalm 115:16

⁵⁴ *ibid* 115:16

is God's. The second proof-text, Psalm 115:16, is indicative of a world after a blessing has been invoked.

On the following page, Rav Hanina bar Pappa adds the final element to this discussion of divine and human ownership and lien. Rav Hanina bar Pappa includes the entire Jewish community as having been robbed by the transgressor who did not bless. An individual who eats without blessings is said to have robbed his father and mother.⁵⁵ However, Rav Hanina bar Pappa takes this verse out of the context of the nuclear family and extrapolates its meaning to include God, "your Father who created you,"⁵⁶ and the Jewish community, "the Torah of your mother."⁵⁷ Rav Hanina bar Pappa utilizes the gendered language of Proverbs 28:24 and the metaphoric use of father and mother to include God and the Jewish community as the victims of theft.

While this passage becomes the basis for justifying the act of blessing, we also learn that there are varying claims to ownership within the rabbinic world. One concept places God as the owner of all earthly material. A second notion of ownership gives humanity a claim to the earth, but only through a verbal transaction with the divine: the act of blessing. A third ownership construct introduces a new victim of theft to the picture, the Jewish community. Whereas the first two ownership models claim God as the victim of theft, the last model includes human as having been robbed as well.

If one's fellow human beings can claim theft, then they must have a prior claim to the stolen produce. The result of Rav Hanina bar Pappa's assertion is that human beings have a right

⁵⁵ Proverbs 28:24

⁵⁶ Deuteronomy 32:6

⁵⁷ Proverbs 1:8

to consecrated items. Phrased differently, items in the divine domain are also part of the domain of other human beings. For one to derive benefit from the produce of the earth without acknowledging the claim of others to that item would constitute a theft.

Section Summary

The debate between divine ownership and human ownership is central to the intersection of Judaism and distributive justice. The challenge that Rabbi Levi introduces in Berachot 35b is precisely the philosophical dilemma of modern distributive justice. While Berachot is a theological claim and distributive justice is a philosophical claim, the two share a parallel concern for the care of the earth and the inhabitants upon it. If the earth belongs to God, then human claims of private property are diminished. Through a blessing, a person can come to possess an object for their consumption, but that individual cannot claim to have absolute ownership over the item. However, the second prooftext used by Rabbi Levi, Psalm 115:16, allows a marketplace of exchanges between God and humanity. The Talmudic compromise would allow for a shared ownership of the world. The impact of this legal debate is the ability of a community to designate produce (and possibly other necessities) for the disadvantaged members of the society. If a portion of the harvest (or profit) still belongs to God, then there are conditions placed upon its use. Ownership by the divine limits the claim an individual can make over the use of the fruits of their labors. The key is to balance individual ownership with the obligation to God and the needy.

Private Property and the Obligations of Ownership

Private property, as has already been established, is a necessary part of any theory of distributive justice. The difficulty is in maintaining a semblance of personal ownership over the product of one's labor while providing for the needs of others. What obligations are inherent or implicit in property ownership? From the biblical perspective, there are a series of agricultural taxes and tithes to be paid to the priestly class and the indigent. The fifth chapter of Baba Metzia represents a reinforcement of a communal lien on all property. The discussion at the beginning of chapter five, Baba Metzia 61b–62a, centers around the forbidden interest a lender may not charge and a debtor must not pay. A debate ensues regarding the lender's obligation to return forbidden interest charged on a loan. Rabbi Elazar's opinion is in favor of this action, which rests upon the verse, "that your fellow may live with you."⁵⁸

וחי אחיך עמך - אהדר ליה כי היכי דניחי. ורבי יוחנן, האי וחי אחיך עמך מאי עביד ליה - ? מבעי ליה לכדתניא: שנים שהיו מהלכין בדרך, וביד אחד מהן קיתון של מים, אם שותין שניהם - מתים, ואם שותה אחד מהן - מגיע לישוב. דרש בן פטורא: מוטב שישתו שניהם וימותו, ואל יראה אחד מהם במיתתו של חברו. עד שבא רבי עקיבא ולימד: וחי אחיך עמך - חייך קודמים לחיי חבריך.

"That your fellow should live with you": return [the money] to your fellow, that this person should live with you. What does Rabbi Yochanan make of the verse? He uses it for [this story which was taught] in a tannaitic source, "two were journeying together and one had a container of water. If the two of them drink, then they'll both die. If [only] one of them drinks, this one will make it to civilization." Ben Petura explained, it is better that they both drink and die, than one of them see the death of their fellow. [This was the case] until Rabbi Akiva taught regarding this verse, "that your fellow should live with you," your life precedes the life of your fellow.

The outcome of this financial debate is an Amoraic ruling from Rabbi Akiva that the person with the means (water, food, or money) must remain alive in order to fulfill the commandment, "וחי אחיך עמך." Rabbi Akiva's statement appears within a discussion that is, on the surface,

⁵⁸ Lev 25:36

unrelated. However, later Babylonian rabbis insert Akiva's teaching after the fact; the insertion is signaled by the term "כדתניא," meaning, "according to a tannaitic text." In the case of the loans in the talmudic discussion, one should provide the loans only insofar as their life will not also be at risk. In this passage the rabbis view the economy as a zero-sum game. Both travelers cannot have the water, so one must die. The lender and recipient relationship is transactional according to the *Baba Metzia*.

The no-interest loan is seen through the lens of saving the life of the fellow. The obligation to return the interest is seen by Rabbi Elazar as sustaining life. However, Rabbi Akiva expands the ruling to this law. While the borrower's life is made secure by the loan, the lender has an obligation to lend in order that the money itself be of assistance. The difference appears in the application of the verse "That your fellow may live with you." While Rabbi Elazar is content to keep the application of the verse strictly within the realm of lending without interest, Rabbi Akiva states that the loan itself is the sustaining force. If a lender, capable of bearing the burden of lending without interest, denies a borrower a loan, then they violate the obligation to sustain the life of their fellow. They passively contribute to the death of their fellow.

The lender-borrower relationship is clarified in the course of chapter five of *Baba Metzia*. However, this agreement represents only one aspect of mutually beneficial relationships in the tractate. In chapter seven of *Baba Metzia*, 88b, the *stam* Talmud struggles with the obligations and prohibitions of landowners towards their employees. On the one hand, the *stam* Talmud of *Baba Metzia* 88b, as in *Baba Metzia* 61b–62a, recognizes the precedent set by Lev 25:36, not to charge or collect interest on a loan; however, no negative commandments are violated should a landowner deny their employees food. The dynamic at play here is similar to what is found in

Baba Metzia 62a. The obligation of an employer is to, when possible, sustain their employees through the crops the workers harvest. Similarly, two travelers must prioritize their personal health in order to save the life of their companion. to that of a travel companion. A worker is entitled to their fill of produce while on the job. The employer is obligated to sustain the life of their worker. Yet, the form of this sustenance could come by monetary remuneration or the ability to eat attached or detached produce. The talmudic passage does not provide a clear explanation or expectation of the notion “to sustain a worker.” Modern society and our definition of distributive justice would define sufficient sustenance in a different vocabulary from the ancient rabbinic literature. A society which prioritizes the sustenance of the poor or workers would provide wages which allow the family to be independent of social welfare.

Note here that no specific wage is mentioned for the field worker. Instead, the employer is obligated to sustain the life of the worker, to provide for his health and wellbeing. This worker’s lien is not in place of a salary or hourly payment; rather, it is in addition to what the field-owner already owes the laborer.

The nuance to this idea of an obligation to sustain one’s fellow comes at the end of the chapter, Baba Metzia 92a. The worker is allowed to eat the produce belonging to the employer/landowner, and this entitlement is not connected to the worker’s wage; however, this provision is only applicable in the immediate vicinity of the field. A worker cannot collect food and bring it to their family, nor can the worker transfer their entitlement to someone else. The ability to satiate one’s appetite while at work is connected with the obligation to sustain one’s fellow, but not at all related to the specific wage of the worker.

Section Summary

People of means have an obligation to sustain the lives of those in need. This obligation does not imply one should risk their own life in order to save another; however, ownership does not come without requirements. Employers are required to provide for the wellbeing and sustenance of their workers. The talmudic pericopes cited here do not specify the wages owed to the laborers, yet the language implies one's payment for work (in whatever form it takes) should be enough to sustain their life. Therefore, as mentioned above, the onus is on the society to prioritize the independence of its workers and its poor. Wages ought to reflect the cost of living and the ability to grow one's economic status.

The relationship of the passages from Baba Metzia to distributive justice is straightforward. The obligation of the employer to advance the economic wellbeing of their laborers is, without a doubt, in service of justice. Furthermore, the employer is not permitted to endanger their wellbeing in service to their workers. This relationship fits Rawls' Difference Principle that requires the most and least advantaged members of an economic system to progress proportionally to one another.

Tovat HaNa'ah: Can *Tzedakah* be self-directed?

Obligatory gifts in rabbinic literature such as tithes, gleanings, forgotten sheaves, *pe'ah*, *terumah*, and *shemita* involve rules regarding the ability of the donor to designate the destination of the gift. The modern system of social welfare includes the assumption that the donor—the tax payer—cannot designate most of their taxes.⁵⁹ Though the assumption of property in America is that possession of an object means one has complete authority over its use, the tax system violates this belief. An individual who comes into possession of produce may not claim ownership over the entirety of the item. Instead, there are obligatory gifts like gleanings, forgotten sheaves, and *pe'ah*, for which one cannot designate target of the gift. In the rabbinic world, the ability to specify the target of a gift is a privilege. As Maimonides states below, this privilege can be nullified by a recipient asking for *tzedakah*; in such a case the donor is obligated to give to the one who asks. However, the ability to determine the destination for a gift is a rabbinic term called, “*tovat hana'ah*.” The discussion of *tovat hana'ah* is relevant to this thesis because it is in stark contrast to the method of giving in a *shemita* year. The land-owner during the time of *shemita* cannot determine who receives produce or who may derive benefit or sustenance from the yield of the fallow land; rather, the needy are given the freedom to determine how best to appropriate the fruits of the harvest. While *tovat hana'ah* provides an element of control for the donor, the possibility exists that gifts would be concentrated in areas which do not provide the greatest economic benefit to the poor.

⁵⁹ The exception is in states which permit taxpayers to designate certain state taxes to non-profit organizations which the state vets.

In tractate Nedarim⁶⁰ the rabbis attempt to discern whether an individual is able to have *tovat hanaah* for the poor person's tithe on produce that is purchased from one who doubtfully tithed the item (called "*demai*"). *Demai* is a category of produce which is in *halakhic* doubt; that is, the produce of a farmer who is perceived as having not rigorously observed the harvest laws, particularly tithing their produce. A farmer must tithe produce, but if a certain farm is suspected of not having scrupulously observed the agricultural laws, then the obligation to tithe rests on the buyer. At the top of the page, the Sages determine that one must designate the poor person's tithe (offered in years three and six of the shemita cycle). Therefore, there is a small degree of *tovat hana'ah*. All tithes do not carry this ability, but it is the case with *demai* and *ma'aser ani* (a tithe designated specifically for the poor). As a result, produce which is doubtfully tithed must be tithed once more by the new owner and then designated for a specific recipient.

Maimonides determines that an individual who asks for direct assistance cannot be turned away. Such an individual effectively nullifies all *tovat hana'ah* except for the ability to evaluate what or how much to give.

מפרנסין ומכסין עניי עכו"ם עם עניי ישראל מפני דרכי שלום, ועני המחזר על הפתחים אין נזקקין לו למתנה מרובה אבל נותנין לו מתנה מועטת, ואסור להחזיר את העני ששאל ריקם ואפילו אתה נותן לו גרוגרת אחת שנאמר אל ישוב דך נכלם.

The Jewish and non-Jewish poor are sustained and clothed [equally] for the sake of maintaining peace. When a poor person comes to the doors one is not obligated to give a large gift; rather, one [can] give the needy individual a small gift. It is forbidden to turn away a poor person that [comes] asking. You [should] even give that person a tiny bit of food. As it is written, "Do not allow the oppressed to turn away in shame, let the those in need praise your name" (Psalms 74:21).

⁶⁰ BTNed 84b

Maimonides uses the verse from Psalms to justify his approach to giving to the poor. Elsewhere, Joseph Karo expands on this direct giving and explicates who should be the recipients of material support.

הנותן לבניו ובנותיו הגדולים, שאינו חייב במזונותיהם, כדי ללמד את הבנים תורה ולהנהיג הבנות בדרך ישרה, וכן הנותן מתנות לאביו והם צריכים להם, הרי זה בכלל צדקה. ולא עוד אלא שצריך להקדימו לאחרים. ואפילו אינו בנו ולא אביו, אלא קרובו, צריך להקדימו לכל אדם. ואחיו מאביו, קודם לאחיו מאמו. ועניי ביתו קודמין לעניי עירו, ועניי עירו קודמין לעניי עיר אחרת

The parent who gives to their grown children—who is not obligated to feed them—in order to teach the sons Torah and to direct the daughters in proper conduct; therefore, the child who gives gifts to their parents in need; behold, this is *tzedakah*. Not only that, but this person is required to give precedence [their relative] over others. But even if one isn't a child or a parent, instead a relative, one must give precedence over an unrelated person. One's paternal uncle takes precedence over one's maternal uncle. Even the poor of one's household take precedence over the poor of the city, and the poor of one's own city take precedence over the poor of a different city.

The description in the Shulchan Aruch allows for *tovat hana'ah*; however, the implication of the passage directs one's efforts to certain recipients. If one is going to give *tzedakah*, then preferential treatment is given to nuclear family, then the extended family, then one's household (possibly one's employees), then to one's city, and finally to another city. These expanding rings of giving narrow one's options for *tzedakah*, limiting *tovat hana'ah*.⁶¹

While the description of *tovat hana'ah* might imply a certain emotional benefit to the gift, the Gemara clarifies that there was (also) a monetary value in the poor person's tithe. As a result, the priests could not receive such gifts. The text of the Gemara is unclear as to whether the monetary value referred to in the text is a profit that the donor received in addition or whether it constituted part of the worth of the object.

⁶¹ Later commentators like the Aruch HaShulchan, the Chatam Sofer, or Moshe Feinstein have provided an increasingly detailed understanding of these rings, including the poor of Israel or of Jerusalem.

This obligatory gift to the poor is like an in-kind donation made to a non-profit organization. Both *ma'aser ani* and the in-kind donation have a monetary value, but neither are necessarily gifts of cash or credit; the recipient has little ability to determine the best use of the gift. Similarly, the poor person's tithe is made to a specific recipient, and that donation has monetary value. Today, the value of this donation could be claimed as a tax write-off or one could cite the transactional value it has to the recipient. However, the poor person's tithe is an obligatory gift, and in this way, it is different from a donation in our modern tax parlance. While our society encourages donations through tax benefits and social pressure, there is no obligation to give directly to the needy outside of the welfare part of our tax code. The "tax system"⁶² which the rabbis of the Gemara elucidate provides direct support for specific recipients through *tovat hanaah*.

Tovat hanaah has vital importance to the discussion of justice through shemita. Shemita produce, unlike the poor person's tithe, cannot be directed to a specific recipient. Open fields are made available to the needy in accordance with their ability and need to gather produce from the field. The forfeiture of profit and produce denies the donor any *tovat hanaah*; however, the shemita year is just as obligatory as the other gifts described in Nedarim 84b. If shemita produce is collected by the *beit din* and distributed based upon need, then we find a similar distribution system, a hybrid of sorts, to a donation and welfare system. In a sense, shemita is a blind gift. While there is no *tovat hanaah*, shemita parallels the fifth level of *tzedakah* on Maimonides'

⁶² Placed in quotation marks because it mimics but is not directly equivalent to the tax code of our modern society.

ladder of giving: the donor does not know the identity of the recipient, but the recipient is aware of the identity of the donor.⁶³

The question at the beginning of this section pertained to whether an individual donor can designate the recipient of an obligatory gift. In some cases the answer is yes, a donor makes targeted gifts; however, there are other instances where specified giving is not permitted. What remains to be determined is the efficacy of such giving. On the one hand, can the needy be relied upon to know and to take what they need? On the other hand, should the donor be allowed to specify the destination of a gift with or without information about the needs of the recipient?

Section Summary

The ability to designate one's gifts/*tzedakah* seems to be a limited concept in the sources cited above. One who wants to give *tzedakah* does not have absolute freedom to assign where the funds go. While one is able to determine certain recipients (children, parents, etc.) for a present, the evidence does not say that an individual can give to whomever one desires. This conclusion is moderated by the fact that there are many different kinds of gifts that are given to the poor. On the one hand, there is the *ma'aser ani*, which can be directed to a specific recipient. On the other hand is the practice of *Shemita*, which, in rulings seen above, must be left completely open for anyone to come and gather food.

The discussion of *tovat hana'ah* is pertinent to distributive justice in terms of how the society permits its individual members to direct welfare. Relatively speaking, a donor has more *tovat hana'ah* when one gives *tzedakah* and *ma'aser ani* than in comparison to *Shemita*. One

⁶³ Maimonides, MT Laws of Gifts to the Poor 10:7–14.

could compare *tzedakah* and *ma'aser ani* to social welfare taxes and tax-deductible donations to a non-profit organization. Both forms of aid provide assistance to disadvantaged members of the society, but the latter, tax-deductible donations, have virtually unlimited *tovat hana'ah*. In areas where taxation is high and social welfare is expansive, some members of the society may feel disincentivized to donate; however, when taxation is low, the disadvantaged individuals are reliant upon good-natured people to donate on their own volition.

Though *tovat hana'ah* supports a donor-centered process of aid, a freewill donation may not be an appropriate solution to achieving distributive justice. Without compulsory donations to causes determined by the group, the bulk of *tzedakah* could go to one or two causes which are not the most efficacious. A system centered around *tovat hana'ah* gives more freedom to the donors, but the needy are at a greater risk to suffer. In order to ensure donations or *tzedakah* are properly distributed throughout a community, there needs to be a council or legislative body which determines or advises the destination of *tzedakah*. The goal of distributive justice is to ensure equitable access to economic opportunity and education; however, this may only be reliably determined through careful consideration by the group.

In consideration to the rubric outlined at the beginning of this thesis, distributive justice may be achieved through taxation or through donations. The dilemma for a society is how to ensure the most disadvantaged people are aided in the most ethical manner. *Tovat hana'ah* provides advantaged persons with a sense of ownership and directorship over their money; however, the feeling attached with giving does not necessarily ensure more equitable access to

economic opportunity or the improved economic situation of the most needy.⁶⁴ At this point, it is difficult to conclude that *tovat hana'ah* provides the incentives needed to ensure distributive justice is achieved.

⁶⁴ This section of the thesis would benefit most from an in-depth section on human nature through a discipline such as psychology.

Evaluating the Ability of Persons to Do *Tzedakah*

As a result of the previous discussion, the question arises of the ability for a community or its individuals to evaluate their level of *tzedakah*. As has been firmly established above, the community, and certainly many individuals, must expend resources to bring others out of poverty. Just how much should be given to alleviate the burden of poverty? A similar question is proposed in relation to the obligation to save a life, *pikuach nefesh*. While *pikuach nefesh* is relevant in regards to immediate danger, poverty is a long-term threat to one's health and wellbeing. The distinction between these two situations is different in degree, but not in kind. The urgency of *pikuach nefesh* requires one to quickly react to save a life, whereas the threat of poverty requires long-term intervention to turn a system or a life around.

For situations in which the laws of *pikuach nefesh* are applicable, the reasoning for this is based on the citation as the talmudic basis for not charging interest on a loan:⁶⁵ A Jew is obligated to, first and foremost, look out for one's own well-being. Indeed, in Bavli Yoma 85b the *stam* talmudic authors add that *mitzvot* are intended to lengthen one's days.

אמר רב יהודה אמר שמואל: אי הואי התם הוה אמינא: ידי עדיפא מדידהו, דוחי בהם - ולא שימות בהם.

Rav Yehuda said in the name of Shmuel: If I had been there, I would have said something preferable from what they said, “you should live by them, but you should not die by them.”

Like in Bavli Baba Metzia 62a, only when one is assuredly safe can this individual aid the survival of their fellow. One who follows the ruling in Baba Metzia and Yoma learns that a *mitzvah*, like *tzedakah*, should not cause the donor to endanger their life—even to save their

⁶⁵ bBM62a

fellow's life.⁶⁶ This is not unlike the instructions passengers receive at the beginning of a commercial flight: in case the cabin loses pressure, adults are instructed to attach their own oxygen masks before helping others, even children.

Any evaluative measures, that is the act of assessing one's financial capability, for giving *tzedakah*—sustaining a life—must begin with the donor. The obligation to live is first and foremost on each individual. A person may receive support from the community, but a donor is under no obligation to give aid if the act of helping would cause harm. This follows from the passages quoted above in Yoma and Baba Metzia; however, a similar conclusion can be made from Bavli Sanhedrin 74a. The passage below uses the hypothetical scenario of a lethal chase scene: one person is trying to kill another, and the rabbis ask who is liable for damages made in the chase.

רודף שהיה רודף אחר חבירו, ושיבר את הכלים, בין של נרדף ובין של כל אדם - פטור. מאי טעמא - מתחייב בנפשו הוא. ונרדף ששיבר את הכלים, של רודף - פטור, של כל אדם - חייב. של רודף פטור - שלא יהא ממונו חביב עליו מגופו, של כל אדם חייב - שמציל עצמו בממון חבירו. ורודף שהיה רודף אחר רודף להצילו, ושיבר את הכלים בין של רודף בין של נרדף, בין של כל אדם - פטור. ולא מן הדין, שאם אי אתה אומר כן - נמצא אין לך כל אדם שמציל את חבירו מיד הרודף.

A murderous person (a *rodef*) was pursuing their victim, and the *rodef* broke a vessel [accidentally]. The *rodef* is not liable for any damages. Why? Because he must pay for his life [for trying to kill someone]. In the case of the victim who [accidentally breaks vessels while fleeing], if they belong to the *rodef*, then the victim is not liable for damages, but if they belong to anyone else, then the victim is liable to reimburse the owner. The exemption for property belonging to the *rodef*: that property should not be more valuable than one's body. The obligation for property of anyone else: because the victim has saved their life at the expense of another's property. In the case of a rescuer pursuing the *rodef* in order to save the victim and [accidentally] breaks a vessel belonging to anyone, [this rescuer] is free of liability. But this is not from a law, because if you said [that a rescuer was required to reimburse an owner], then no one would attempt to save their fellow from a *rodef*!

⁶⁶ Madeline Kochen, *Organ Donation and the Divine Lien in Talmudic Law*, 2014, 168.

In this extreme example, the victim of the *rodef* is obligated in two regards: 1) to save their own life and 2) to reimburse anyone (except the *rodef*) for damages. The passage goes on to exempt the rescuer from reimbursing anyone in attempting to save a life. Furthermore, the passage does not include a legal imperative to save a life. While there are a plethora of text which provide such support, the discussion in Sanhedrin 74a revolves around the incentive to save a life and the obligations of the victim of rescuer.⁶⁷ Not only must individuals look out for their own personal safety; but, the legal conditions must be such that individuals are not discouraged from helping others.

The example of the *rodef* and the victim can be extrapolated in a theory of distributive justice. While the victim of a *rodef* is certainly in more extreme and imminent danger, the concept of personal obligation in saving a life is applicable in this case. The case of the *rodef* and their victim implies that, first and foremost, the individual is responsible for their life. However, by removing an economic barrier to the act of saving a life, the rabbis create the environment needed to save the lives of others.

One may connect this discussion to distributive justice through the relationship between the advantaged and disadvantaged demographics of a population. In this case, the disadvantaged population is like a victim being pursued by the *rodef* of poverty. The primary obligation is on the victim to (a) save themselves or (b) ask for assistance. Just as the discussion of the *prozbol* (see above) creates the legal and economic conditions to continue lending to the needy, so too

⁶⁷ For texts regarding the imperative to save a life, see the discussion above regarding *pikuach nefesh*.

does the determination—“לא מן הדין, not from a legal precept”—provide the economic incentive to save those in need.

The concern for the rescuer, or the giver in the case of distributive justice, is how to evaluate one's ability to aid others. Bavli Baba Batra 9a notes that one should give at a third of a shekel.

אמר רב אסי: לעולם אל ימנע אדם עצמו [מלתת] שלישית השקל בשנה, שנא: 'הוהעמדנו עלינו מצות לתת עלינו שלישית השקל בשנה לעבודת בית אלהינו.

Rav Assi said, “one should never avoid giving less than a third of a shekel each year”; as it is written, “we have placed upon ourselves the obligation to give third of a shekel each year in service to the house of our God.”

In this case, the house of God supports the Levites, the same category of people who are dependent upon the support of the population. According to the text above, the minimum anyone can give is a third of a shekel. The implication is that everyone should give something; a third of a shekel seems to be more symbolic than effective, because the amount cannot realistically sustain a person's life in a modern economy.

Rav Assi presents the minimum one should give, but this passage does not establish a maximum donation. Bavli Ketubot 50a offers an opinion based upon the experiences of an earlier generation of rabbis and a proof-text from Genesis.⁶⁸

א"ר אילעא: באושא התקיננו, המבזבז - אל יבזבז יותר מחומש. תניא נמי הכי: המבזבז - אל יבזבז יותר מחומש, שמא יצטרך לבריות; ומעשה באחד שבקש לבזבז [יותר מחומש] ולא הניח לו חברו, ומנו? רבי ישבב, ואמרי לה רבי ישבב, ולא הניחו חברו, ומנו? רבי עקיבא. אמר רב נחמן, ואיתימא רב אחא בר יעקב: מאי קרא? וכל אשר תתן לי עשר אעשרנו לך.

Rabbi Elai said, “In Usha it was determined that one who wants to spend liberally (waste their money) should not spend more than a fifth.” It was also taught in a baraita, “one who wants to spend liberally (waste their money) should not spend more than a fifth, lest

⁶⁸ Igrot Moshe Yoreh Deah (YD) 1:143 and Shulchan Aruch YD 249:1 both expand on the ruling found in Ketubot 50a.

this person become dependent on others.” There is a story of one person who wanted to spend more than a fifth, but their fellow did not allow it. Who was it? Rabi Yeshovav. Some say it was R’ Yeshovav and that his fellow did not allow him to spend. Who was it? Rabbi Akiva. Rav Nachman said there are those who say it was Rav Acha bar Yaakov. What is the biblical prooftext for this? “All that you give me, I will surely set aside a tenth for you.” (Genesis 28:22)

Rabbi Elai suggests the maximum donation of a fifth, although he does not define what is included in the whole. The closing line of the text sets a tenth as the proper amount with a fifth being the most one should give. Most relevant to the discussion is the addendum that is found in a *baraita*, an early stratum of talmudic literature, that one should not give and end up in need of the aid of others.

Section Summary

The case of the *rodef* and their victim shares many common features with the plight of the most disadvantaged members of a community. Poverty is a life-threatening state of being. Those who experience the strains of poverty are more likely to suffer health complications and are less likely to advance their economic standing. Unfortunately, socioeconomic status is a reliable metric of longevity.⁶⁹ All individuals of a society are expected to exert personal effort in order to better their situation in life; however, those able to assist may be required to do so if they are able. One’s limit to give as defined by Bavli Ketubot 50a is any donation that would cause the donor to be dependent upon *tzedakah*. This guideline is consistent with the rubric of distributive justice set at the beginning of this thesis. This ruling makes no judgment on the

⁶⁹ National Research Council (US) Panel on Understanding Divergent Trends in Longevity in High-Income Countries; Crimmins EM, Preston SH, Cohen B, editors. Explaining Divergent Levels of Longevity in High-Income Countries. Washington (DC): National Academies Press (US); 2011. 9, The Role of Inequality. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK62362/>

lifestyles of those with the means to give; rather, this perspective places the responsibility on the donor to determine their budget and their ability.

The overwhelming sentiment in these texts indicates that giving should be done with intention and careful regard for one's ability to give. Each person should make *tzedakah* a part of their practice, but it should be performed in such a way so as to ensure that the needy are supported and the donors are not left in need. This principle shares a strong comparison with the Difference Principle proposed by Rawls. The welfare of each segment of a community should increase proportionally. The rich should not give and become destitute, and the poor should always find support.

Conclusion

The research above represents a balancing act for the individual, an agent within an economic-political system. An individual is both an entity with rights to ownership over one's self and other material things and that person is a member of a community which has contingent obligations. A single person is obligated to serve their own self-interests, the interests of their community, and the duties to God. One person cannot completely serve one of the three without neglecting the other two. Therefore, an economic/political/religious system must balance the rights and duties of the single agent.

This thesis began with a gloss of distributive justice in non-Jewish and Jewish sources. The principle rubric of distributive justice used for this thesis comes from John Rawls' Difference Principle: the notion that a society should guarantee equal access to jobs and education, and that a society should ensure that wealth is generated proportionally across economic classes. The Difference Principle has its shortcomings in its means of achieving justice, some of which were brought up in the research above; however, the end ideal for which it strives is a shared vision of communal wealth and happiness. From this research emerged a question of Jewish versions of distributive justice: what mechanisms and methods does *halakha* employ to achieve a just community.

One particular mechanism of Jewish distributive justice is *shemita*. This thesis examined *shemita*, its sources and implications for distributive justice. *Shemita* is a radical obligation placed on an individual with crops or wealth. For six years a person is supposed to lend or harvest in a normal way, serving their own self-interests; however, the seventh year is meant to be a year-long sabbath of sorts: outstanding debts are remitted and the landowner cannot profit from

the yield of the harvest. Using the vocabulary above, six years are about serving one's self interests, but the seventh year is all about service to the community and to God.

Underneath all Jewish notions of property and justice is a *halakhic* precedent that God, the infinite creator of the universe, is the ultimate owner of all finite things and beings. *Shemita* is a tool which recognizes divine ownership; however, the implications of God's property rights extend beyond the sabbatical year. All produce which is grown must be acquired by human beings through a blessing; otherwise, one who partakes in the yield of the earth would be guilty of theft of God's property. Such a perspective of material goods is a strong fence around notions of private property rights. Individuals are permitted to enjoy the fruits of their labors; however, God's place in the world order cannot be ignored. In this sense, *shemita* is a cyclical reminder of this fact. However, for the other six years a person is still obligated to relinquish personal claims in order to satisfy divine decrees to support the needy.

A Jewish vision of distributive justice does not completely map onto the many non-Jewish versions mentioned above. The methods and visions of distributive justice mentioned in this thesis are not entirely egalitarian nor are they libertarian. While Jewish text remains central to the decision making process of distributive justice, the method is not a freewill top-down model in which the poor live off of the beneficence of the rich. Instead, the image is more like a core which emanates influence outward to circles of influence. The individual is responsible to ever widening notions of community. In the Jewish model, the individual is clearly obligated to others and to God. As a result, a person must relinquish personal claims on material goods; however, the means of distributive justice do not demand that everyone reach the same place in life, as Rawls claims. As noted above, Deuteronomy 15:11 reminds us that the existence of those

in need will not permanently disappear from our communities; therefore, the precedent of collective responsibility to support the poor with an open hand is always upon the individuals *and* the whole.

The intention of this paper was to examine the intersection of Judaism and distributive justice through the lens of *shemita*. Judaism certainly contains one (if not many) idealized versions of society. One of the methods by which Judaism achieves its standard is through *tzedakah*, property, and *shemita*. Individually, these notions do not achieve distributive justice; however, the combined *halakhic* tools lay the groundwork for a society in which the most needy are supported by the collective, but the most advantaged are afforded the opportunity to amass capital. *Shemita* is the tool which narrows the ability to gather generational wealth at the expense of the poor.

The evidence and research in this thesis is the groundwork for future in-depth looks into the influence, relationship, and intersection of the Jewish and non-Jewish view of justice. In a time in which political and social activism is on the rise, it will become ever more important for religious leaders to justify their communities' positions based on the sacred and historical texts and experiences of their faith-traditions. Jewish activism for social justice must be grounded in foundational texts.

The intersection of Judaism and distributive justice via *shemita* and *tzedakah* should compel communities to focus on the relationship between the Jewish community and those in need, whether they are Jewish or not. The source texts of *shemita* focus on the theological aspect of allowing the land to lie fallow. However, in a modern, nominally secular society, the replacement for the theological imperative is the democratically elected government which rules

through a system of checks and balances. The charge to the community, especially the faith-based community is to lobby their representatives on their values. While *shemita* was biblically limited to the land of Israel, the concept of debt remission to aid the needy need not be proscribed to specific borders. If *shemita* is the method by which people should relate to one another, then it seems that such a practice could and should happen outside of the Land of Israel.

Shemita is not only a social justice mechanism for the benefit of the needy; there are very real environmental considerations and benefits that emerge from the study *shemita*. Six years of working the land exhaust the worker and the soil. As environmental stewards, the notion of *shemita* also benefits the earth. Rotating crops and allowing fields to rest is already a well-established agriculture concept; however *shemita* adds a theological and a ritual element to feeding a community. While the source texts of this thesis should not lead someone to conclude that we should allow the land to rest entirely, a more reasonable conclusion might be to focus on the benefits of farming which do not unduly deplete the soils natural resources. This might mean a focus on hydroponic or urban farming. Perhaps urban communities could use green spaces more efficiently to provide food (and meaningful work) for the citizens.

The research into *shemita* is an examination into the best way to serve and empower the most disadvantaged of a community. The financial aspects of *Shemita* could be a powerful mechanism to relieve debt-ridden communities of their financial burden; however, the agricultural benefit of *shemita* is greatest conceptual aid to empowering the poor. By opening the fences to a field and allowing the poor to take what they need, the laws of *shemita* allow the needy to determine what would benefit them the most. A land owner cannot dictate that the poor may only take grapes or avocados or brussel sprouts. The same can be applied to financial

dispensations given to the poor. Today, Finland is experimenting with a social welfare system that is conceptually similar to the freedom afforded to the poor in a *shemita* year. Finland's government has selected a number of families in the country to receive a basic income. Instead of receiving piece-meal social welfare, the country is allowing some of its citizens the freedom to determine how best to appropriate their spending.⁷⁰ Of course, the question remains whether people will be disincentivized to search for work; however, the Finnish government is experimenting with a old notion that people know best how to provide for their own life. This trial empowers the needy to choose for themselves and potentially bolsters the efficacy of social welfare.

The study of *shemita*, *tzedakah*, and the intersection of Judaism and distributive justice should, at the very least, compel readers to pursue social justice through a Jewish lens. The Jewish voice in social justice should not only come from well founded Enlightenment ideas of ethics and morality; rather, a Jew should be able to cite and defend social action—*tikkun olam*—with Jewish texts. As Jews continue the American legacy of adding their voices to the halls of government, they should do so with the foundational support of Jewish tradition on their side.

⁷⁰ Maija Unkuri, "Finland Considers Basic Income to Reform Welfare System," BBC World Service, August 20, 2015, www.bbc.com/news/world-europe-33977636.

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Deuteronomy 8

Deuteronomy 15

Deuteronomy 32:6

1Sam 8:11, 14, 17

Proverbs 1:8

Proverbs 28:24

Psalms 115:16

Midrash

Mechilta d'Rabbi Yishmael Mishpatim, Mascehta Dekaspa, Mishpatim Parasha 20

Tanaitic Texts

Pirkei Avot 5:10

Tosefta Shevi'it 8:1–2.

mShevi'it 10:3–4

mShevi'it 8:6

mGittin 4:3

Jerusalem Talmud

yShevi'it 9:6

Babylonian Talmud

Nedarim 84b

Baba Metzia 62a

Gittin 36a–b

Guide to the Perplexed, III, 39 *translation by Hazon Shemita Sourcebook*

Mishneh Torah

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