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## **Beyond the letter of the law**

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TZEDAKAH: ASPIRING TO A HIGHER ETHIC

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## TZEDAKAH: ASPIRING TO A HIGHER ETHIC

*Daniel Schiff*

I dedicate this article to my dear friend and mentor, Rabbi Dr. Moshe Zemer. Moshe's scholarly accomplishments and his extensive contributions to the pursuit of a "sane *halakhah*" are detailed elsewhere in this volume. Beyond these considerable achievements, I cherish even more Moshe's personal qualities that have meant so much to me through the years. It was Moshe's infectious enthusiasm for the responsa literature that first started me on the path that led toward my interest in the field; it was Moshe's unending academic curiosity and careful intellectual rigor that proved so very inspirational; and it was Moshe's love for the Jewish people, for our rich heritage and for *Medinat Yisrael* that provided such a wonderful model. I am deeply indebted to Moshe for all his wisdom, guidance, patience and encouragement. Perhaps more importantly, the Jewish people are indebted to Moshe for having taken us "beyond the letter of the law" in seeking to understand the *halakhah* in a way that is compassionate, coherent and fully consistent with the Jewish heritage.



In 1993, archaeologists unearthed a fifth-century mosaic synagogue floor at Zippori in the Galilee. Alongside a host of rich symbolic representations, the mosaic included the following inscription: "May he be remembered for good, Yudan son of Isaac the Priest and Paragri his daughter, Amen, Amen." Scholarly speculation holds that the tribute was probably designed to offer recognition to a generous donor who helped the synagogue financially. It is, of course, impossible to ascertain what type of *mitzvot* this alleged donor performed beyond that of contributing to

the communal construction project. However, on the reasonable assumption that the other commandments he fulfilled did not exceed those of his compatriots, the inscription likely testifies that the practice of providing special honors for those individuals whose distinctive contributions to society are monetary in nature is an age-old one within the Jewish world.

The question, though, that ought to be of concern – to Jews in particular – is whether this practice, despite the fact that it is embraced across the Jewish spectrum, is just. Is it altogether harmless to Jewish standards of justice and equality to offer wealthy donors extraordinary recognition, including naming rights, plaques, gifts, or access opportunities to events and personalities, that are unavailable to lesser givers? While such practices have become so common in contemporary Jewish life that they have become the *sine qua non* of organizational fund-raising, their near-universal employment does not offer assurance that these measures comply with the highest aspirations of Jewish ethics. Nor should the reality that such techniques are extensively utilized by numerous institutions renowned for Jewish learning, or for Jewish religious commitment, be seen as any guarantee that these methods are in full conformity with the traditions that these organizations espouse.

An oft-repeated lesson of fundamental Jewish education is that the Hebrew term “*tzedakah*” should not be translated as “charity.” Whereas charity denotes a voluntary gift – one given from the heart – the mandate to engage in *tzedakah*, Jews are regularly reminded, is an obligatory commandment. The Hebrew root “*tzedek*,” the lesson proceeds, is best rendered as “justice” or “righteousness,” behaviors that are demanded of a Jew. In other words, a Jew who wants to live as part of a community has no choice other than to participate in the creation of the just society through the utilization of his or her resources of money and time.<sup>1</sup> There is a powerful logic behind this requirement: the attainment of wealth – however great or small in measure – is in part due to the talents and industriousness of the

individual concerned, but also owes a great deal to the community's preparedness to utilize the products or the services that person offers. Wealth, clearly, does not strictly correlate with individual giftedness or even commitment to hard work. It does, however, depend heavily upon communal participation and the community's preparedness to support a particular service or product.

Hence, it follows that, since wealth attainment is dependent upon the privilege of being afforded a welcome place within the communal structure, justice demands that each person be required to contribute money and time to support the community from which he or she has benefited. This is, after all, the philosophical premise underlying taxation: according to one's means, we require everybody to participate in the establishment and maintenance of communal infrastructure that seeks to establish a society of opportunity, dignity, and safety for all its members. If participation in taxation were made voluntary, it would probably lead to the creation of certain services and institutions perceived to fulfill a variety of self-interests, but the societal outcome, at best, would be uneven, certainly not a result that would be regarded as "just" in anybody's terms.

It is, then, important to observe that the Jewish notion of *tzedakah* is far more akin to that of contemporary taxation than to that of contemporary charity. The *tzedakah* commandment connotes that contributing toward the ideal of a just society is a requirement that is incumbent upon all those who want to partake in that society. But the Jewish vision of what constitutes a just and righteous society extends beyond what is normally subsumed by the realm of taxation. Not satisfied with basic societal structures and support systems, Jewish law advocates that it is the duty of the individual to help in such a way as to maximize the shared communal enterprise and to raise the bar of human dignity. The Torah's injunction to "love one's neighbor as oneself,"<sup>2</sup> institutes the predominant theme: Jews are expected to stretch themselves toward enhancing their neighbors' lot, and not to be satisfied with simply helping in a perfunctory fashion.<sup>3</sup>

To balance the equation, conversely, Jewish tradition does not expect an individual to be so subservient to communal needs that he or she is required to undergo a substantial alteration in the financial well-being that he or she has come to enjoy. It is for this reason that the rabbis state that while there is an expectation that upstanding members of the community will give at the rate of twenty percent,<sup>4</sup> one is not to give at a rate of more than twenty percent, lest *tzedakah* begin to affect the giver adversely.<sup>5</sup> If, after all, *tzedakah* did in fact come to effect the giver's financial standing materially, compliance with the mandate would become an even more problematic proposition.

*Tzedakah*, then, from a Jewish perspective is a requirement that is like taxation in that *all* members of society are to be "*tzedakah* taxed" at a rate of ten to twenty percent, without regard to financial status.<sup>6</sup> Unlike taxation, however, where the direction of tax proceeds is a matter for communal decision, the use of one's *tzedakah* allocation is left in the hands of the individual. Judaism, to be sure, offers guidance as to how this money might most appropriately be apportioned,<sup>7</sup> but ultimately the allocation choice rests with the giver.

Given this context, it is readily apparent that when a particular Jewish communal institution honors a "big" donor, the honoring, from a Jewish perspective, cannot be because the donor has given a large amount of money – this is, after all, the donor's obligation; rather, it is because said donor chose that particular institution upon which to lavish funds rather than some other institution. By way of illustrating the point, we do not hold ceremonies to honor those who pay a large amount of tax or publish the names of those whose tax contribution has exceeded a certain limit, even though without these families many bridges, schools, and hospitals would never be built. We do not honor them specially, because we view taxation as just as much a requirement for them as for any other citizen – though the amount they might contribute might be large, they are not in fact doing anything that is considered unusually praiseworthy. Moreover, the

fact that any particular bridge or school might be constructed is not a result of their decision to pay tax but is a communal choice.

Within the Jewish system, though, it is certainly easy to understand the gratitude of any institution that has been fortunate enough to receive a large gift. It is, moreover, highly appropriate that such an institution should express its profound appreciation to the giver for voluntarily deciding to support it. If, however, it is the voluntary decision to choose that institution which is being recognized, rather than the size of the gift itself, then there is no reason why institutions would not be *equally* grateful to any individual who voluntarily chooses to give to that establishment, no matter what the size of the gift.

While some Jewish institutions might make the claim that they are indeed *equally* grateful for all gifts, no matter the size, their behavior will usually eloquently belie this assertion. In virtually all cases, "big givers" are recognized in ways that "small givers" are not. If it is in fact true that the institution is *equally* grateful for all gifts simply because the giver has voluntarily chosen that institution, then the only way to communicate this reality is to acknowledge all gifts in precisely equal fashion. The fact that this is almost never done goes beyond simple inequality. It is unjust. And it is un-Jewish.

The reasons why it is unjust and un-Jewish require explanation. There are five specific rationales why offering wealthy givers *tzedakah* inducements, which are unattainable for the less affluent, does not conform to the Jewish *tzedakah* ideal. The first has to do with the specific expectations of the mandate to fulfill the *mitzvah* of *tzedakah* in its financial form. Given that every Jew is expected to give at least ten percent to *tzedakah*, consistency with Jewish ideals would demand that if it were Jewishly appropriate to honor a particular sub-group, it would be the group that meets and exceeds the *tzedakah* requirement, i.e. the group that indeed does give between ten and twenty percent in a given year.

Reality, however, works differently. Imagine an extraordinarily

wealthy individual who has an annual income of five million dollars. Consider further that in one given year this individual gives all of his *tzedakah* money to one place: a one hundred thousand dollar gift to his synagogue rebuilding campaign. Compare him to a woman who belongs to the same congregation who, because she cannot work full-time, has an annual income of eight thousand dollars. She, too, gives all of her *tzedakah* money in that year to the synagogue rebuilding campaign, a gift of nine hundred dollars. If this is the totality of each of their commitments to *tzedakah* in one year, then, from a Jewish perspective, who has done better? Clearly, the woman has fulfilled the *mitzvah* of *tzedakah* by exceeding the ten percent level, whereas the man's contribution is dramatically short of this obligation. What, though, will be the actual outcome? The man, if he so desires, will be able to name the social hall, or some other part of the institution, in honor of his family, and he will be publicly celebrated. The woman will get a letter of thanks, and may get her name posted in a long list of soon-forgotten "also-ran" donors, even as the man's name is enshrined in stone and spoken about for decades.

This, of course, is Judaism inverted. One should not assume for a moment that those who give large gifts regularly fall short of their *tzedakah* obligations. One should certainly, however, appreciate that fulfilling the ten percent mandate, rather than providing some extraordinary dollar figure, is what we say really matters in Jewish life. Hence, even if the man's gift had been six hundred thousand dollars, it would be no more Jewishly worthy than the woman's nine hundred dollars. As a matter of fact, in terms of virtue, one might make the argument that her gift, which may have been far more difficult for her to do without, could actually have been the more meritorious and hence the more worthy of recognition. The Jewish system suggests that all who fulfill their *tzedakah* mandate should be respected alike. To honor "big givers" in unique ways, whether or not their *tzedakah* mandate has been fulfilled, is to treat those of lesser means, who have nevertheless given greater percentages, unjustly.

The second reason why offering inducements to those of extensive means leads to unjust application of *tzedakah* norms stems from what we might call pooling. Consider the following circumstances: If I have thirty thousand dollars to give to *tzedakah*, and I donate the entire sum to the local Jewish day school, that school will doubtless offer me a range of different honors or naming opportunities. If, however, I take the same thirty thousand dollars and divide it into fifty equal gifts of six hundred dollars, and I send those gifts to fifty worthy communal institutions, each of those places will acknowledge my kind donation, but not one of them is likely to offer me a special honor of any type. Yet the question must be asked: in which instance have I behaved better or served the interests of the community in a more desirable fashion? The answer is that this is an impossible call to make. The broader interests of the community may be better served by one institution getting all the money. It is possible, though, that the future of a number of places may be more assured if people were encouraged to spread their wealth more evenly among various institutions. Since, then, it is not plausible to state that one who concentrates his or her giving on one institution has done something better than one who spreads small amounts further, why should one be honored and the other not? The fact that it is quite possible that honors are being distributed to individuals who pool substantial amounts in one place, while those who give even larger sums to multiple addresses go entirely unrecognized, is clearly unjust. Moreover, it is yet another reason why a smaller donation might well deserve equal recognition with a larger one, since it is certainly plausible that it represents but a fraction of that individual's *tzedakah* commitment.

The third problem behind treating the rich differently is the unpleasant reality that it can, and at times does, lead to unseemly inequalities in other areas. Assume for a moment that you are the executive director of a large synagogue. Mr. Cohen, who last week was feted as a million-dollar giver to the synagogue capital campaign,



in which he has so far given the first installment of a five-year gift, is on the telephone. His son is becoming a Bar Mitzvah at a service a month from now, and Mr. Cohen is calling to ask whether the service could start a half hour earlier than normal because it fits in better with the family's postservice plans. Is this possible? Now if Mr. Cohen were just some "ordinary giver" you would immediately, politely, tell him that there is a policy as to when services begin, and you cannot start to deviate and make exceptions. But you know that Mr. Cohen is no "ordinary giver." He is one of your million-dollar givers. You do not want to upset him and potentially threaten his gift. You swallow hard, and you tell him that you need to consult further and you will get back to him. The consultation process will be relatively straightforward. If it is deemed likely that denying Mr. Cohen his request might in any way threaten his gift, the starting time will be moved, rather than risk offending such an "important donor." This is, of course, a relatively trivial example. One could think of countless ways in which the knowledge that somebody might provide a large amount of money can open up possibilities for special treatment – even rule-breaking exceptions – for that individual that would be unthinkable for others.

The fourth reason why putting the rich in a separate category can have invidious outcomes is, counterintuitively, because it disrespects the rich. This becomes clear when one considers the strategy that is so frequently used in fund-raising campaigns: Imagine that you are a solicitor who is visiting a "prospect" from whom you can reasonably expect a one thousand dollar gift. Since, in this particular campaign, the first level at which you can offer inducements of special parties, room-naming rights, public awards, access to distinguished scholars, and the like is that of a ten thousand dollar gift, you have no tangible incentive available to you with which to entice the person you are now visiting. "Why should I give one thousand dollars to your institution?" your fund-raising target asks. Given that you have no enticements to offer, you stress the worthiness

of your cause, the great *mitzvah* of *tzedakah*, and the fact that your "target" has the capacity to give at this level, such that he or she would be playing an important role in a critical communal endeavor in a fashion that is commensurate with his or her capacity. Impressed both by the nature of the fund-raising cause, as well as the ethical argument that a person should contribute to communal causes to the extent that funds allow, your prospect – with a measure of self-satisfaction – writes a one thousand dollar check.

The next day you visit somebody from whom you are expecting a twenty-five thousand dollar gift. This time the conversation is altogether different: "Why should I give twenty-five thousand dollars to your institution?" this fund-raising target asks. Again, you utter some worthy words about the importance of the cause and the *mitzvah* of *tzedakah*, but these items by no means form the focal point of your presentation. Instead, this time you talk extensively about the opportunity to name a classroom in honor of the giver's family, about the special "wall of merit" that is planned for big giver's names, and about the unique one-on-one opportunities on offer to meet with the special personality who will be attending the dedication.

The salient difference between the two presentations is obvious. To the less wealthy individual, the reasons you provide for giving amount to: it is a good cause, you should participate in communal projects of this type because it is the right thing to do, and you have the capacity to give at this level. To the wealthy individual, the major reasons for giving amount to: this is a great deal for you because we are putting forward distinguished honors, gifts and access in return for your donation.

While the contrast depicted between these two events is a stark one, the picture is close enough to reality to represent a reasonable approximation of real-life events. The implicit assumption revealed by these vignettes is telling. With the less wealthy, when there are no incentives to offer, the prevailing assumption is that the

sheer worthiness of the cause should be enough to merit the requested gift. With the wealthy, however, the prevailing assumption is that this will not suffice. The wealthy, according to this logic, will only give if offered sufficient trinkets, trophies, or slices of immortality to attract them. Why, though, it must be asked, should this be the case? Why is it unreasonable to expect that the wealthy will give to the campaign if presented with precisely the same arguments as the less wealthy? Why is there a belief that the wealthy have to be induced to give with tangible items, when we expect gifts from others without such inducements? Is it not implicitly disrespectful to the wealthy to convey that they will only give donations at levels appropriate to their capacity if they are offered gifts in return, as if to suggest that attempts to persuade them to do that which is ethically right for its own sake will never resonate with them? There is, then, a very real sense in which treating the wealthy in special ways diminishes their chances for altruistic giving, discounts their capacity to do what is proper, and unjustly treats them as if they were inextricably beholden to the heady drug of recognition.

There is yet a fifth reason why putting the wealthy in a distinctive category may have deleterious outcomes. This reason has to do with expectations that are sometimes sparked in the donor that he or she will be able to influence the shape of the project or the direction of the program that has benefited from his or her large gift, according to his/her personal vision. More than occasionally, donors who provide major gifts expect to be consulted on the manner in which their gift will be used, and seek to shape structures or steer organizational directions according to their own personal ideas. If the sponsoring institution balks at this desired involvement, there are times when the donor's indication that the money could be directed elsewhere is enough to provide the donor with the sought-after participatory role. Indeed, in burgeoning numbers, disinterested in others setting priorities or directions for them, "big givers" simply establish and fund their own foundations or organizations so that they

can pursue their own interests and direct their own legacies entirely as they see fit, without the slightest regard for communal priorities. "There are now in the Jewish community some families of such extraordinary wealth that their own private foundations have become players on the Jewish scene," observed one expert on contemporary Jewish philanthropy.<sup>8</sup> This phenomenon has begun to reshape Jewish communal priorities in significant ways. As one editorial writer stated it bluntly, the Jewish world has become witness to

the rise of the mega-donors, that handful of billionaire philanthropists who are becoming a sort of ruling aristocracy in communal life. The mega-donors whose gifts become the life's blood of key institutions, and who believe they've bought the right to dictate decisions. The mega-donors who create new institutions to address a pet crisis, ignoring cash-starved agencies that have been struggling with the problem for years. The mega-donors who insist on micro-managing the work of scholars and activists with years of experience and expertise. The mega-donors who suddenly lose interest in a cause and walk away, leaving the institutions they created to go begging, or simply collapse.

Most mega-donors would take exception to their portrayal as robber barons. . . . These are, after all, voluntary donations of private cash. Other millionaires are buying yachts, while these individuals are supporting Jewish life. The criticism smacks of ingratitude. But that's the point. In a voluntary community, private donations are the tax base that keeps things going. Jewish culture survived for centuries through a delicate balancing act, in which voluntary donors agreed to act as though they were under obligation. The community was treated as an entity that was entitled to demand members' money and spend it as the community saw fit."<sup>9</sup>

Allowing donors through the use of their funds – even those who have considerably less than the billionaires – to influence decisions beyond the ability of others to do likewise directly undermines the fabric of community. Indeed, there is increasing evidence that the "fabric of community" is already seriously fraying. There has been a noticeable "trickle-down" effect from the wish of the wealthy to establish their own *tzedakah* priorities: more and more Jewish communities are assisting those who – at all financial levels – wish to establish family funds that can be targeted as the donor's

interests dictates.<sup>10</sup> While this may have a few positive outcomes, like ending the lifespan of Jewish organizations that have lost relevance while encouraging new and creative ventures to come into being, there are also real costs associated with this individualization of *tzedakah*. Perhaps the most worrying issue is that as individual givers become more attracted to new, “cutting-edge” projects, the “nuts-and-bolts institutions of Jewish communal life – the synagogues, family service agencies, and nursing homes” – see their critical needs erode.<sup>11</sup> Unable to compete in terms of appeal, the vital core communal institutions are no longer guaranteed support, while novel “niche” projects attract interest that exceeds their communal utility. Thus, the diminution of a sense of communal duty on the part of the wealthy has the potential to lead to a similar reduction at all levels and a consequent failure to maintain a coherent and well-balanced communal funding structure. Again, the analogy with taxation provides insight: if individuals were permitted to determine the type of projects to which their taxation would flow, there would probably be plenty of parks and grand bridges and monuments, but would there be enough roads and sewer systems?

Yet another regrettable way in which donor influence can become manifest is when positions of organizational leadership are, at times, offered to members of affluent families with the aim of keeping them “committed to the cause” and giving at their customary amount. The result, of course, is to overlook those who may have the same or even more managerial or leadership skills, but who cannot compete at the same giving level. Not only, then, does paying attention to wealth have the potential to distort communal priorities, it can distort the very structures that drive communal decision-making, as well.

By supplanting the democratic communal process and bypassing those who have accumulated wisdom to guide communal priorities, a sense of communal participation and communal ownership of institutions and projects is replaced by a sense that true power resides in the hands of an oligarchy. Not surprisingly, this can have a

chilling effect on the *tzedakah* of those of modest means. Moreover, there can be no sense in which the dictation of communal direction by those who possess the most wealth is just. If the obligation to accede to communal wishes is voluntarily assumed in the same way by all, then decision-making divisions between the rich and the not-so-rich are the antithesis of the expectations of fairness subsumed within the *halakhah*.

Notwithstanding all these significant Jewish objections to providing the rich with special recognition, occasional discussions have explored *halakhic* justifications for affording the rich distinctive honors. A succinct illustration is provided in a brief piece by the contemporary ethicist Rabbi Dr. Asher Meir, in which Rabbi Meir answers the question, "Is it really proper to name buildings after donors?" This is an ancient question to which Jewish tradition gives an emphatic answer: It is proper and even desirable to acknowledge the generosity of donors by perpetuating their names.

Rabbi Shlomo Adret, a medieval rabbi who was one of the greatest Jewish legal authorities of all time, was asked about a man who donated a synagogue to the community. The man wanted to write his name on the entrance, but the community objected; in the end, they consulted Rabbi Adret.

The rabbi's answer was: "Who can stop someone who dedicates and builds from his own property, for the sake of heaven, from mentioning his name on what is his?" He continues, "And this is a trait of wise and experienced people, in order to give a reward to those who perform good deeds. Even the Torah itself adopts this trait, for it records and publicizes those who perform good deeds."

The main message of Rabbi Adret's answer is that there is nothing unethical or shameful about recognition. It is appropriate and even desirable to give people credit for their contributions.

However, it is still not proper to give in the first place in order to obtain recognition, or to draw excessive attention to our good deeds. The Talmud tells us that a person who gives in order to boast

is in danger of losing all the merit of his gift; charity needs to be given in order to provide for the needs of the community.

What then is the reason that giving charity with improper intention is so problematic?

One answer is that there is a difference between using honor as a motivator and viewing it as a true goal. A person who excels in his studies in order to obtain recognition strives to eventually surpass this level, to discard this crutch. But if the *entire purpose* of the good deed is for honor, then there is no spiritual progress at all.

Another answer is that in the case of charity giving, an improper intention can actually contradict the entire concept of this important commandment. The Torah doesn't just tell us to provide the needs of the poor; the first thing it tells us is "Don't harden your heart" (Deuteronomy 15:7). A critical aspect of the commandment of charity giving is to open our hearts as well as our wallets and identify and commiserate with the recipient. A person who is giving out of a desire to boast and exalt himself is not only missing the point, he is accomplishing the exact opposite of the true object of this important mandate.

A charitable donor is certainly entitled to ask that reasonable recognition be provided in return for the gift, and the charitable organization may and even should acknowledge generosity in this way. However, the giver should be certain that his main objective is to identify with the needs of the recipient; his desire for recognition should be an encouragement, and not the reason for the donation. Boasting and basking in recognition work against this important condition.<sup>12</sup>

Rabbi Meir's response is highly instructive. He begins by giving the impression that naming a building for a major donor would be a reasonable act of acknowledging "the generosity of donors by perpetuating their names." However, his citation of Rabbi Adret's *teshuvah*<sup>13</sup> puts this permissive stance within a narrow context: one individual has provided the entirety of the funds for the given project.

This donor has, effectively, "bought" the building or the institution himself, and, hence, it is more difficult to argue with his privilege to name what amounts to "his" building. This, however, does not address the normative situation in which the donor offered naming rights is one among numerous donors who contribute to the project. In that circumstance, Rabbi Adret reminds us, "even the Torah itself adopts this trait, for it records and publicizes those who perform good deeds." In the case of multiple givers, then, "those who perform good deeds" clearly subsumes everybody who has made a *tzedakah* contribution; there is no suggestion that Rabbi Adret would advocate omitting those who gave smaller amounts from the Toraitic mandate to record and publicize their *mitzvah*. Hence, we might appropriately understand Rabbi Meir to be conveying that unless one individual has shouldered the entire *tzedakah* burden alone, the involvement of all who have participated should be recorded and publicized, without singling out one or another for special recognition.

But Rabbi Meir goes further. He communicates that "the giver should be certain that his main objective is to identify with the needs of the recipient" and that "his desire for recognition should be an encouragement, and not the reason for the donation." In other words, in matters of *tzedakah*, while giving is what counts, the motivation behind the giving ought not to be ignored. When the donation of a particular gift is wholly dependent on the recognition or reward afforded the donor, the "main objective" is subverted in a way that is unacceptable to Rabbi Meir. Moreover, when attractive inducements are known to be on offer to those who provide substantial donations, the determination of whether the "desire for recognition" is just an "encouragement" or has become the "reason" for the donation becomes difficult indeed. It seems fair to assert, therefore, that the only way to be certain that the line between the two is not crossed is to avoid offering special inducements to "big givers" from the start.

In the book of Leviticus, the Torah instructs "*lo teh'dar p'nei gadol*" you shall not honor [literally, "beautify"] the great [literally,



the "big ones"].<sup>14</sup> Insufficient attention has been paid to this statement. The tradition has normatively understood this instruction to apply to the court system. Thus, Rashi specifies – based on the *midrash* – that one should not say, "This man is rich; he is the son of great men; how can I disgrace him?"<sup>15</sup> As *Sefer HaHimukh* explains,

This means, then, that he should not honor him more than his opponent at the trial, who is not as great as he. It is therefore stated, *nor shall you favor the person of the great.*

... Among the laws of the precept, there is what the Sages of blessed memory taught: that one [of the parties to the lawsuit] should not sit and the other stand, but rather both should stand.<sup>16</sup>

From a narrow reading of the Torah's context, it is easy to understand why the oral tradition emphasized the legal milieu when discussing this *mitzvah*. For the injunction not to favor the rich comes in the midst of a variety of directives, and those that are proximate to the statement under consideration do indeed seem to relate to the judicial process:

You shall not curse the deaf, and you shall not place a stumbling block before the blind; you shall fear your God – I am the Lord. You shall not commit a perversion of justice; you shall not favor the poor and you shall not honor the great; with righteousness shall you judge your fellow. You shall not be a gossipmonger among your people, you shall not stand aside while your fellow's blood is shed – I am the Lord.<sup>17</sup>

It becomes clear, then, from a broader view of the context, that while justice is certainly the object of the passage, it is not merely courtroom justice that is intended. Indeed, these verses, occurring as they do within the so-called Holiness Code of Leviticus 19, are really part of a series of regulations designed to elevate human interrelationships in a wide range of circumstances. Justice, they demand, is to be extended far beyond the legal process. It is supposed to permeate areas of social interaction thoroughly, such that one's speech and actions are fully oriented toward demonstrating that one truly aspires to the lofty goal of "loving your fellow as yourself."<sup>18</sup>

Consequently, perhaps a rigorous reading of Leviticus 19:15 should lead us to conclude that not favoring the poor and not

honoring the great are, in actuality, not micro statements about sitting and standing in court, but are in fact macro requirements about the manner in which society should handle fairly the reality of economic disparities. The poor should not be afforded inequitable opportunities or exemptions simply because they are poor,<sup>19</sup> and the wealthy should not be honored simply because they are wealthy. As has been discerned, when the wealthy give of their material blessings in the same proportion as do others, the dollar impact can be remarkable, but they have done nothing out of the ordinary that is deserving of special honor. If we honor the affluent, we are "beautifying" their contributions simply because they are wealthy, and this is precisely the action that Leviticus 19:15, in its fullest sense, prohibits.

There has been much discussion among scholars of Jewish law and ethics about the nature of the textual principle *lifnim mishurat hadin*, the notion that it is worthy to act "beyond the letter of the law." This principle, to be found in a number of places in rabbinic literature,<sup>20</sup> suggests that there are times when going further than the law specifies is regarded as deserving of praise. Professor Louis Newman offers a fine description of this concept in his perceptive essay on the subject:

It would appear that the concept of *lifnim mishurat hadin* parallels most closely notions of waiver in Anglo-American jurisprudence. While the concept of waiver arises in a wide range of legal contexts, the fundamental element is a "voluntary relinquishment or renunciation of some right, a forgoing or giving up of some benefit or advantage, which, but for such waiver, a party would have enjoyed. Specifically, the term denotes waiving a legal right to act, or to refrain from acting, in some specified manner. Whether we are concerned with an elder who has a right to refrain from unloading animals (but does so anyway), or a man who has the right to keep the property that has been sold to him (but returns it to the seller), the term *lifnim mishurat hadin* designates a willingness to waive voluntarily some benefit or right to which one is entitled by law. In each case it is implied that the party who waives the right in question does so out of a concern for the other party, who would be harmed or disadvantaged if the right were exercised. In this sense, *lifnim mishurat hadin* has a moral dimension that distinguishes it from other sorts of waivers that could be exercised for any of

a number of reasons, including monetary gain or self-interest. . . ." As we have also seen, one who acts *lifnim mishurat hadin* invariably gives up something, whether tangible property or intangible benefit, for the sake of another. Often this loss is financial . . . In other cases, it is a matter of . . . foregoing honor . . . . More to the point, the personal sacrifice that invariably accompanies an act of this sort is an expression of compassion or generosity.

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The central discussion about *lifnim mishurat hadin* concerns whether an act deemed to be *lifnim mishurat hadin* is one that should be considered as an act of "extreme piety or supererogation," or an act to which one is actually halakhically obligated, or – a middle position – an act that represents a moral duty.<sup>22</sup> Though this debate is interesting, it is not directly germane to our current purposes. What is significant, though, is Newman's explanation that *lifnim mishurat hadin*, whether invoked as an act of worthy piety, legal requirement or moral expectation, is designed to direct individuals towards abstaining from taking a benefit that is available to them "out of a concern for the other party, who would be harmed or disadvantaged if the right were exercised." *Lifnim mishurat hadin*, then, has the effect of urging, or perhaps requiring, individuals to strive toward the highest possible ethical ideal in the name of others, even if it means renouncing a legally permitted potential gain.

There is no arguing that the current *din*, the law, of *tzedakah* allows for the honoring of the wealthy in whatever fashion might be thought suitable for a particular campaign. Were this not the case, the honoring phenomenon would not be acceptable across the *halakhic* spectrum as it plainly is. Perhaps, though, it is time to challenge Jewish communities to aspire to a higher *tzedakah* ethos. Perhaps the moment has arrived to urge individuals and institutions to give *tzedakah lifnim mishurat hadin*, in a manner that goes beyond what the law requires and stresses compassion, generosity of spirit, societal welfare, and justice in a way that contemporary norms ignore.

Of course, there will be staunch opposition to such a proposal. The fund-raisers and campaign strategists will no doubt forecast

instant doom for anybody who is foolhardy enough to attempt such an approach. While such bleak predictions will probably prove exaggerated, the strategists will have a point. This will be all the more true if an isolated fund-raising effort attempts to go down this path while competing for dollars with surrounding campaigns that offer inducements; presumably the lure of the incentives will cause more than a few to simply gravitate toward projects with something to offer them in return. If, then, *tzedakah* is to be given in a *lifnim mishurat hadin* spirit that truly hopes to suppress inherent injustices and promote communal well-being, it will be important to garner broad local support.

However, even if such broad support proves difficult to muster, there are two points to be made in response to the fund-raisers' concerns. The first is that it is possible that their worries represent an overly cynical reaction to the inherent strength of the commitment to Jewish giving at all echelons. Is it not credible that, given effective leadership and educational guidance, Jews might well sense the virtue inherent in such an ethic and might indeed heed the call with classic Jewish dedication when challenged to aspire to the highest? Is it not conceivable that, after an initial dip in giving, as the shock of the new approach is absorbed, the dollar figures – though, admittedly, harder to obtain – might, before very long, approach previous levels?

The second response to the fund-raisers must be that, naïve as it may sound, Jewish priorities have always placed seeking justice ahead of dollar amounts. Let us imagine a Jewish Community Center (JCC.) that decides it would like to add a one million dollar extension. The fund-raisers advise that if the full range of incentives are offered to the “big givers,” the million-dollar target should be reached. If these incentives are not provided, their estimate falls to eight hundred thousand dollars. What should the JCC do? Is aspiring to a higher ethic really worth the potential loss of two-hundred-thousand dollars and the scaled-back plans and fewer resources that would result?

These are important questions, and the answers to them are not trivial – indeed, it is no exaggeration to state that they speak to the nature of the mission of the Jewish people itself. When God chose Abraham for a special task in the world, God described the role of Abraham and his descendents in this way: “I have singled him out, that he may instruct his children and his posterity to keep the way of the Lord by doing what is just and right. . . .”<sup>23</sup> In other words, the Jewish people became the Jewish people charged with one preeminent divine purpose: the shaping of Jewish conduct to represent the finest model possible for what is “just” and “right” in the world so as to further divine aims ahead of human ones. The Hebrew that the Torah employs for “just” and “right” is “*tzedakah u'mishpat*.” Jews are singled out, God declares, in order that their every act – to the extent that it is possible – should be characterized by the most refined manifestations of *tzedakah* – active justice – and *mishpat* – true judgment – imaginable. When inquiring, then, about which path a Jew or a Jewish organization should select, there is simply no competition: a Jew can only be fully faithful to the Jewish mission, and a Jewish institution can only be true to its ultimate *raison d’etre*, when behaving according to the best standards of justice and the fairest judgments available. As Abraham swiftly discovered, and as Jews have known through centuries of experience, commitment to these standards does have a cost, and sometimes the price is high. It is, however, a price worth paying in order to contribute to the significance of the Jewish odyssey through history. The JCC, then, has its answer: what a salutary lesson it would be to a world that is consumed by monetary pursuits for an institution to forgo income because of a commitment to an elevated pursuit of justice.

*Lifnim mishurat hadin* puts Jews on notice that there are times when seeking the finest ethical standards will demand an enhanced behavior that goes beyond the current stipulated requirements of the law. Perhaps, then, it is time for Jewish authorities to call for a *tzedakah* environment that transcends the law as written and ventures

*lifnim mishurat hadin*, placing a renewed focus on critical issues of justice and communal integrity. *Lifnim mishurat hadin*, after all, should not be left as just a historic concept that once in the past lifted Jewish eyes higher. It could serve the Jewish people in a renewed fashion if it were rabbinically applied to contemporary circumstances wherein a greater measure of virtue might be attainable. For the model it might provide to surrounding societies, as well as for the way it might dignify the Jewish landscape, maybe it is indeed time to aspire to a finer *tzedakah* ethic.

#### Notes

1. There is no question that *tzedakah* is more than just a financial requirement. The commandment to be engaged in *tzedakah* implies setting aside time to serve the community in a myriad of ways. However, this time requirement in no way relieves one of one's financial *tzedakah* obligations. Hence, while many Jews – at all levels of wealth – are involved in worthy acts of *tzedakah*, this paper focuses on the justice associated with *tzedakah*'s monetary aspects.

2. Lev. 19:18.

3. Assuming that most individuals have a high regard for themselves, the requirement to love one's neighbor in a similar fashion is, after all, an exceptionally demanding one. It suggests that we should attempt the extraordinarily righteous undertaking of being as assiduous about the well-being of other members of our society as we are of those in our own household.

4. There is a common misconception that the expected rate is ten percent. In fact, the rabbinic tradition regards ten percent as merely satisfactory, while twenty percent is seen to be the true fulfillment of the commandment. A giving rate of less than ten percent is unsatisfactory. See Maimonides, *Hilkhot Matanot Aniyim* 7:5.

5. *Ket.* 50a.

6. *Ibid.*

7. Maimonides, *Hilkhot Matanot Aniyim* 7:13-14.

8. David Altshuler, President of the Trust for Jewish Philanthropy, as cited in S. Fishkoff, "The Jewish Money Culture," in *Moment*, vol. 28, no. 1, (February 2003), p. 56.
9. Editorial in *The Forward*, November 29, 2002, p. 10.
10. "The Jewish Money Culture," pp. 56-57.
11. *Ibid.*, p. 79.
12. Taken from internet page: <http://www.besr.org/ethicist/namebuilding.html>
13. *Responsa of Rashba*, 1:581.
14. Lev. 19:15.
15. Rashi to Lev. 19:15.
16. *Sefer HaHinukh* (New York: Feldheim Publishers, 1984), vol. 3, p. 65.
17. Lev. 19:14-16. Translation adapted from that of *The Tanach* (New York: Artscroll, 1996), p. 293.
18. Lev. 19:18.
19. In Jewish law, for example, even the poorest member of the community is expected to participate in the requirement of *tzedakah*.
20. For a representative sampling and interpretation, see L. E. Newman, *Past Imperatives – Studies in the History and Theory of Jewish Ethics* (Albany: State University of New York Press, 1998), pp. 17-33.
21. *Ibid.*, pp. 29-30.
22. *Ibid.*, pp. 34-37.
23. Gen. 18:19.