

About Economy and Sustenance
Judaism, Society and Economics

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Foreword

By Russell F. Robinson

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The economic story of the Jewish people started as our ancestors entered the land of Israel some 3,000 years ago, after having been freed from Egypt. Before that we had a period of existence as an extended family, then as guests and later as slaves for hundreds of years. In all those periods, the nation was either too small, lacking the critical mass needed to be considered an independent economic system, or it was simply not independent. Then came the forty years of wandering in the desert in which it is hard to say that the regular laws of production, consumption, supply and demand governed our people. It was a temporary miraculous period, that prepared us for the real thing.

As the Bible says, upon entering the land of Israel the Manna stopped pouring from the heavens, and the People of Israel started eating from the bounty of the land of their forefathers. For the first time, they divided the most important natural resource among themselves—the land itself—and did so according to a just and objective measure of size and

productivity of the land, combined with some blind luck. They also had to reach certain national agreements, better known as the “Regulations of Joshua,” set forth by Joshua in order to create the basis for the Israelite economic system (for example, everyone was granted the rights to use a natural spring, even if it was located in private property).

As the people settled and started working the land, producing crops, trading and developing their local economy as part of a growing network of international commerce, the inevitable problems with the system became apparent. Due to a complex array of reasons, in a process we can see to this day and probably will see to the end of days, a free market makes some people very successful and wealthy, some people very poor, and places the majority of the people somewhere in the middle. Nowhere does Jewish tradition endorse a controlled economy that will allegedly do away with these differences in personal wealth and success, perhaps because it realized from the start that such a system is not possible and will simply create different stratification, while depriving people of their freedom. However, at the same time, the tradition did not allow us to forsake our brothers and sisters to their fate, but rather commanded us to put several unique and groundbreaking mechanisms in place in order to secure the well-being of all citizens, Jews and non-Jews alike. It commanded us to support the poor by giving tithes from the produce of the land, leaving part of every field of produce to the poor (allowing them to come and harvest it for themselves) and by other methods. The Sages state that even a poor person who lives off charity is obligated to give charity himself, so everybody would take part in this cycle of giving and caring for others.

Unfortunately, this period lasted only several hundred years, and most of our nation has lived outside the land of Israel for

most of the last two thousand years. Yet, though the Jewish people were deprived of an independent economic system, they proved to be very successful in prospering under foreign systems of economy when given the liberty to act in the economic field as a free agent. During the long and dark period of exile from the land of Israel, the mutual support among Jews became even more important and led to the development of new mechanisms of *Tzedaka* – charity. These new modes of charity took the basic ideas of the agricultural mechanisms and modified them in accordance with the new situation. In order to maintain this system, get everybody involved in it and make sure funds are allocated properly, the leaders of the communities had to step forward and organize the whole operation. This role was so highly esteemed by the Sages, that they even say that “he who makes people do [i.e., give charity] is greater than he who actually does [gives charity]”.

Then something happened. In 1898 Theodor Herzl convened the first Zionist Congress, and set our people on the path to an independent state of our own, established only a few decades later. Later on, the Zionist movement realized that such an endeavor will not succeed without proper, continuous and sustainable funding. So in 1901 they declared the establishment of the Jewish National Fund, which was to become the operating arm of the Zionist movement. At first, it mimicked the traditional models of *Tzedaka*, with hundreds of thousands of blue charity boxes dispersed in Jewish communities around the world, funding the first steps of settling the land of Israel. The JNF did, and still does, what the Sages instructed us to do: it gives people the opportunity to give for a cause.

In my long years in this organization, I have seen us move from the classic model of charity to a more advanced model, geared for a mature State of Israel in the 21st century. As the newly

independent Israeli economy boomed, it seemed only natural to support it in new ways, beyond maintaining lands and planting trees: building new communities, scientific research, modern *aliyah*, education and more. However, it seems that modern Jewish thought is still lagging behind in respect to charity, and has not yet fully reflected on our new situation. Furthermore, whatever thoughts are developed, they will certainly make a significant contribution to the advancement of general economic theory, which is facing some crucial questions as we move into the Age of Information, questions such as: What does charity mean in our generation? How should a Jewish welfare system function? How should we understand basic concepts such as property, commerce and production?

I have had the privilege of knowing Aharon Ariel Lavi for several years now. Aharon Ariel is a leading social entrepreneur involved in building and supporting intentional communities throughout Israel. But I have also come to know him as an original and deep thinker. The book that lies before you aims to answer exactly the questions put forth above, and many more. I believe that a deep and new discourse on Jewish economic thought is of the essence, as we try to make the most of the third Jewish commonwealth and contribute as much as we can to the world around us. This book should be considered a cornerstone in this effort, and I invite all of us to take part in the discussion.

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Their Toil Is Their Rest

On Rest and Toil in the Sabbatical Year

Aharon Ariel Lavi¹

The issue of work and rest, and the relationship between them, lies at the very foundation of the Torah and has accompanied the Jewish people throughout its existence. The foremost outcome of the end of the world's creation is rest: "And God completed on the seventh day the task He had done, and He ceased on the seventh day from all the task He had done. And God blessed the seventh day and hallowed it, for on it He had ceased from all His task that He had created to do."² Note that the exact Hebrew words that appear in Genesis are in fact *melacha* ('labor' or 'craft'), which is contrasted with *shevita* (cessation of labor), but without delving into the full analysis of these terms and their appearances in the Bible, we can view them as interchangeable with "work" and "rest."

In this article, I wish to challenge the commonly accepted

1 Aharon Ariel Lavi is an economist exploring various social issues through Judaism. He is a serial, social entrepreneur and founder of several major social endeavors in Israel, specifically in mission-driven communities and Haredi integration.

2 Genesis 2:2.

distinction between the two, and the assumption that the time and place of rest bring happiness, freedom, self-fulfillment, etc., whereas the time of work and industry brings slavery, burden, a feeling of discomfort and above all: a longing for the next vacation. This may be true in regards to work, as the Bible presents it, but with regard to *melacha*, toil in its positive sense, the Rayatz (Rabbi Yosef Yitzchak, the sixth Lubavitcher Rebbe) teaches us an important principle: “For some, their toil is their rest and their rest is their toil.” Meaning, when one is occupied with a certain level of *melacha*, industry and creation, he or she is already in a state peace of mind, whereas moving away from it burdens the soul, even though outwardly it might appear to be additional “free” time, a time of no obligations. But there is a different level in which the spiritual and material life connect into one larger whole that is greater than the sum of both their parts. As the Rayatz describes Rabbi Baruch Schneersohn, father of the founder of the Chabad movement:

The life of Baruch was ostensibly focused on two different worlds: the world of Torah and the world of work. However, for Baruch, this was one world, and one spirit bind them together. When Baruch sat and studied, the Torah was for him the world that he lived in. Before him stood as if living the Tannaim and Amoraim, with whom he argued and philosophized as though they were beside him in the flesh. When he went out to the marketplace, to engage in difficult labor to earn his living – he was deep in work, not in a casual way, but as a favorite activity done wholeheartedly, knowing that he is earning every penny honestly and properly. Thus, within Baruch there was perfect harmony between his spiritual and earthly life, between the world of the spirit and the material world, between body and soul, between heaven and earth. For him it was all one complete

thing – imbued with holiness and purity.³

However, at this level as well, the Sabbath, the day of rest that comes at a prescribed time, is not lessened but gains another, deeper status. It is no longer a day of escape from the troubles of life, from the burdens of one's workload and everyday concerns. Instead, it becomes the most influential day of the week, and determines the nature of the other six days, precisely in its separation from them – which is a means for renewed closeness. As the Zohar commented on the word “made” (*la'asot*) that appears in the commandment of Sabbath: “And God blessed the seventh day and hallowed it, for on it He had ceased from all His task that He had created to do,”⁴ in the following passage:

One should always try to act kindly, and to study the Torah often – and his work must be in both of these manners, since both of these labors exalts one of his wrongdoings. And if one might proclaim, 'I am the son of the world's forefathers, of a great family, it is beneath me to work or belittle myself.' Say to him: Fool, your Predecessor worked to make you, as has been written, 'In the beginning God created the heaven and the earth', and He worked before you came into this world. And where does this come from? As it has been written (Genesis 2): 'From all His work which He had made' – meaning that same work.⁵

3 *Sefer HaZichronot*, p. 80.

4 Genesis 2:3.

5 Zohar, parshat *Bereishit*, in the article "In Wisdom a House is Built."

Shabbat and *Shmita*

The connection between the Sabbath and *shmita* is already noted by the Talmud, which discusses the question of why the seventh chapter of tractate Shabbat opens with the words, “a great principle,” and against which other principle does it stand?⁶ Indeed, among other writings, the Talmud refers to tractate Shevi’it, in which two consecutive chapters begin with the words “a great principle.” Tractate Shevi’it itself provides more direct connections between the Sabbath and *shmita*, such as: “Six days you shall labor and do all your work – from the evening of Sabbath you may start your work until the sunset, and on the eve of the seventh year you are permitted to labor until the sun sets.”⁷ The Tosafot on the above-mentioned Babylonian Talmud present a more precise comparison between the Sabbath and the seventh year, based on the words of the Talmud Yerushalmi: “The Sabbath applies to all, whereas the sabbatical year applies only to agricultural work.”⁸ Indeed, so it is written in the *shmita* commandments in the Torah: “And six years you shall sow your land and gather its produce. But in the seventh you shall let it go and let it lie fallow, and your people’s indigent may eat it, and what is left, the beast of the field will eat. Thus shall you do for your vineyard and your olive grove.”⁹ The depth of this connection was described by Rabbi Kook as follows:

“The effect that the Sabbath has on each individual, is the effect of the sabbatical year on the nation as a whole... the cessation of the social order in known aspects, from time to time, enables this nation, when all in it is in order, to

6 Shabbat 68a.

7 Yerushalmi Shevi’it 1:1.

8 Yerushalmi Shabbat 40a.

9 Exodus 23:11.

elevate itself to the heights the internal qualities of moral and spiritual life, from the side of their Divine contents, which stand high above from any social ploy or order, and he processes and elevates the social orders and gives them their wholeness.”¹⁰

Further in this article, we will attempt to understand the nature of the Sabbath's effect, what is that thing which is created in the space between toil and rest, the constant dance between them by virtue of the Sabbath – and on a more general level, by virtue of the sabbatical year.

Toil and Rest as the Foundations of Life

As one can learn from a stone flying through the air in front of him about the hand that threw it, and as one can learn from a painting about the hand that painted it, so can one understand, from looking at the phenomenon of life itself, something about creation and the direction inside it.¹¹ Observing this phenomenon, according to the best of our scientific knowledge, raises a number of fascinating insights that are relevant to the question of toil and rest.

Both the most inanimate stones and the most complex living creatures, including human beings, are made from exactly the same basic building blocks, the same elements, and the difference between them is the arrangement of the particles and the relationship among them. Contrary to previously held conventional wisdom, there is no “vital matter,” i.e., living matter that contains the phenomenon of life and has essentially

10 Rabbi Abraham Isaac Kook, *Shabbat Ha'aretz* (Hebrew), Introduction.

11 See: Rabbi Shalom Dovber Schneersohn, "*Be'Shaa She'hekdimu*" (Hebrew), p. 92.

different characteristics from other materials, and which by virtue of its mere presence gives an organism life. The correct description of life is cells composed of elements also found in inanimate nature, that are in a continuous dynamic state between constantly moving particles due to the energy they carry while, according to the laws of thermodynamics, the natural aspiration of the system – any system – is maximal disorder.¹² Biologically, disorder means disintegration of the boundaries between the cell and its environment, and thus death. However, life continues to exist despite the threat of death and disintegration due to an increase in entropy, only through constant investment of energy originating from the outside. That is the reason living things need continuous nourishment in every single moment to maintain their current condition (from oxidization, through liquids and to food) – the respiratory and digestive processes in the body transform energy used to conserve life.

In addition to the external energy that must be invested, life is made possible by the restriction of directionality of disorderly processes, and the use of constantly occurring disorder to create new phenomena by channeling it into certain directions. That is, you cannot “fix” the internal disorder that all organisms (and in fact every existing thing) contain. However, through the investment of energy in accordance with a certain pattern originating from data (such as DNA, in our case), you can limit the range of possibilities within which disorder can exist. This

12 For the sake of physical accurateness – the second law of thermodynamics describes an increase in entropy, or in the number of states of the system (due to statistical considerations, as illustrated by statistical thermodynamics) when an orderly situation begins to become "disorderly" since this is (to us) a specific situation, and hence statistically the probability that it remains in this state is low.

restriction is not absolute, and the degrees of freedom given to matter are part of the secret of the living organism's existence, despite their inherent risk. In the biological sense, freedom means randomness – mutations that enable the organism to adapt to changing conditions and to transfer new capabilities to the next generation, while at the same time, mutations also cause the risk of cancer that could eventually destroy the whole system.

The transition from the common situation of disorder to the unique situation of order is done in small steps, through trial and error and without great revolutions. In creating sustainable life, there is no room for unrestrained leaps forward, which, in the vast majority of cases, will turn out to be cancerous tumors. The secret to the success of the phenomenon of life is following nature's footsteps along with creating restrictions that guide it in a certain direction of life and continuity, rather than death and cessation.

But what is the source of this order? How does matter – which as stated is not living matter – know how to arrange itself? The source of the order is information. Of course, the information is also encoded in simple material means that are not significantly different from the rest of the matter surrounding them, and in the case of life as we know it – the DNA. However, its form and context allow it to direct the system towards sustainability through a series of commands that form the mechanism of limitations that create goal-oriented structures. The extent of the information needed depends on the complexity or uniformity of the system. A crystal does not require much information because the arrangement of atoms is known. But the less cyclical a system is, the more data is required to describe it, e.g., the human genome that enables our own life.

In conclusion, the driving force of life is random, but random movement in itself is not life. It becomes life because of the limitations placed on it by means of hastening processes in a certain direction, although still maintaining gradual development without big jumps. Life depends on the existence of continuous transfer of information, but the replication of that information also entails errors during its copying. These errors are the source of cancer on the one hand, but on the other hand are also the source of positive mutations that improve an organism's ability to survive in the next generation.

The Dynamics of Social Life

How can all of this be linked to the society we live in and its prevailing economy? Let us first state that essentially, just as the body is composed of a network of small living units (cells), which make up tissues, which make up organs and so on, society is also a network of small "life units:" people who make up families, families that make up communities, communities that make up nations, and so on. In this section, we look at whether any significant insights can be reached by drawing parallels between the systems, particularly with regard to the relationship between work and rest.

In general, the work in society is disorderly and economic activity in itself does not turn a society into a "living" society, in the deeper sense of the word. Continuous economic activity is a necessary condition for social life, but it is not a sufficient condition. It is the process that assimilates external resources into the system so that it can sustain itself, using a huge variety of agents working in a huge range of directions freely and disorderly, but based on a limited number of generic economic components: mining resources, production of goods, trade, provision of services and a few more. The sum total of this

economic activity is usually measured in terms of growth (even if it is negative). However, growth alone is directionless, and disorder does not necessarily possess the dynamics of life, even if it is very active and dynamic. Creating a healthy social fabric requires further involvement, requires creating order within the disorder, without annihilating the main benefit of disorder: freedom.

The order that enables biological life is achieved, as mentioned, by applying restrictions on the free flow of disorderly activity, low-intensity restrictions that provide direction but do not block the flow of life itself. These restrictions reduce the number of available possibilities, but do not relate in any way to the ability of free choice of each and every individual within the system. I would like to suggest that the main limitation we impose – or at least can choose to impose – is collective rest, and this of all things – in what seems paradoxical – enables the conversion of the multitude of economic activity into a vibrant society.

Naturally, every individual in the system needs rest, and hence he or she takes care (or should take care) to ensure vacation times, professional development, quality family time, and so on. But on its own, this rest will naturally occur at different times for every individual and will serve as another item in the general disorder, rather than a social mechanism with sustainable affect. However, the Sabbath and consequently the sabbatical year, provide a social mechanism that at superficial glance might seem to restrict the flow of life, but on closer inspection actually allows its very emergence and reduces social entropy. The perception of the mechanism of rest as one that is not intended to replace or reduce the “dance” of social life, but rather to strengthen it in a certain direction that will give it livelihood which it cannot achieve by accident, reveals

rest and work to be two sides of the same coin. The crux of the matter being the excess of social wealth produced by their joining, in the sense of a whole greater than the sum of its parts.

Similar to what we described in the first part, the ability to create such a mechanism every week, during every sabbatical year, and in every generation anew depends on the transfer of information from one individual to another and from one generation to another, according to which the social mechanism is formed, a social DNA of sorts. As mentioned above, copying this information cannot be done without errors, which entail great risk alongside a huge opportunity. If the information was perfectly applied and copied, we would attain exemplary order that repeats itself, but in effect, it would be a state of social stagnation and inability to deal with changes external to the system, not to mention benefiting from them.¹³ On the other hand, overly large errors, or ones made in the wrong context, could damage the entire system, similar to cancer cells that have gone out of control and eliminate the restriction mechanisms that prevent raging entropy. The source of information, in this case, is culture and tradition, and more specifically in the Jewish context, Torah and the Jewish wisdom and practice

13 The sustainability of living organisms over time is highly dependent on their ability to adapt to changing environments, and throughout the ages, one can clearly see that creatures which failed to adapt to a new environment became extinct, even if they were among the strongest creatures in the old environment. This phenomenon is also present in the social-historical field, in the form of empires that vanished after failing to change over time. Contrarily, a commonly held notion is that the Jewish people's unique ability to survive is strongly related to its ability to change and adapt itself to countless different environments and dynamic situations. This historical analysis is beyond the scope of this paper, but essentially it is the same mechanism of preserving tradition on the one hand, and unceasing creative interpretation of it on the other.

accumulated through the ages. Inherently, ‘errors’ will be made when the information is copied from one generation to another – from well-known technical mistakes in copying the Talmud and the industry of formula investigation that developed as a consequence, and up to ‘purposeful mistakes’ of creative interpretations that have developed throughout the ages. As for the Sabbath, these interpretations, a form of cultural ‘mutations’, appeared throughout the ages and introduced significant changes to the Sabbath, which adapted it to various historical periods.¹⁴ Tractate Shevi’it itself refers to one such case in regards to *shmita*, to the permit to plow “old trees,” and says: “This was the law, and they have forgotten it, and the later generations agreed with the first generations, which goes to show that every matter to which the court devotes itself will eventually come to be as a thing that was told to Moses at Mount Sinai.”¹⁵

As for *shmita* as a whole, it seems that a similar “mutation” has yet to occur when copying it from the days of the Torah and the Mishna to the realm of contemporary reality. For example, the collective definition of the time of rest also dictates the nature of the activity that should be defined as “work” on Sabbath. For work to be considered impermissible during Sabbath, it needs to benefit the world (“those who break are exempt”¹⁶) and also be done intentionally (“the Torah forbids [only]

14 A notable example is the early previous century innovation of interpreting the reality of electricity and including it in the forbiddances of the Sabbath, without which the Sabbath – at least in its traditional form – would be completely different today, while when the innovation was made electricity was still a relatively minor part of human life.

15 Yerushalmi Shevi’it 1, 5.

16 Shabbat 106a.

intentional work”¹⁷). A new interpretation of the concept of work on the Sabbath was made – and is made regularly – in Jewish discourse because of its prevalence and centrality in the people’s lives. In *shmita*, the same rule has been applied to a large extent, although only with regard to the agricultural aspect of work (“the Sabbath applies to all, whereas the sabbatical year applies only to agricultural work”), and indeed, huge changes have been made in the modern era by the school of Rabbi Kook with the creation of the *heter mechira* (sale permit), which aims to allow Jewish agriculture to thrive while observing the halachic requirements of *shmita*. However, aside from this halachic innovation, no new meaning has been cast into the concept of *shmita* that can be relevant to contemporary reality, in which barely 3% of the population are occupied in agriculture. How can we achieve Rabbi Kook’s deeper vision of *shmita*, as a mechanism that results in the “cessation of the social order in known aspects”¹⁸ which can process and “elevate the social orders and give them their wholeness?”

Rethinking the nature of toil and rest can be a good point from which to start the contemporary reinterpretation of *shmita*, as an additional mechanism that aims to impose restrictions on social disorder, restrictions that are essentially the true freedom to create a sustainable social fabric.

17 This saying appears in many places in the Mishna, and is part of the famous controversy between Rabbi Yehuda and Rabbi Shimon Bar-Yohai regarding "an unintentional act" and "*psik reisha*."

18 In my humble opinion, the word "order" can be understood here as referring actually to the natural "disorder," using the concepts we borrowed from the study of biology.

Universal Versus Selective Aid in Light of the Halacha

Ido Rechnitz¹

Foreword

One of the main debates regarding the nature of the welfare state is whether the state must provide social services across the board to all parts of the population, i.e., the so-called “universal system,” or whether it should provide targeted aid only to those who need it – i.e., the “selective system” or “relief pattern.” On the relief pattern, Johnny Gal wrote that it characterized “most of the relief programs in the period preceding the establishment of the modern welfare state. This pattern works on the principle of neediness. Meaning, programs that operate on the basis of this pattern provide pensions and aid only to those who can prove, via a so-called means test or income test, that they have no source of income or that their income is insufficient to sustain themselves.” In contrast, regarding universal aid, he writes:

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The person's standard of living – his income level – is not usually taken into account as a condition for eligibility... These programs cover different groups of the population against so-called specific assessed needy situations – such as aging, birth, work accidents and unemployment.²

The father of the modern welfare state, Lord William Beveridge, suggested in a report he composed towards the end of the Second World War that the welfare state will be based on basic services which will be provided to the entire population and will follow them “from cradle to grave.” His proposal was adopted by the British government elected after the war, and afterwards by all Western governments, in different forms.

To this very day, the welfare state provides a broad range of services to the general population. The State of Israel, for example, provides affordable loans for purchasing apartments (mortgages), public health insurance, free education from kindergarten to high school, a uniform pension plan, child allowances and more. As one can see, aid is provided by rendering services, as well as by means of loans and pensions. Alongside the universal aid there is also selective aid to those in need and who are eligible: income support payments, disability benefits, reduced municipal taxes, home purchase loans for the eligible, tax reductions for disabled people and more.

Unsurprisingly, proponents of the free market economy support the selective approach, which reduces the scope of government spending (while some would prefer the abolition of all government welfare programs altogether) – and on

2 Johnny Gal, *Social Security in Israel* (Jerusalem: Magnes – the Hebrew University, 2004), p. 21 (Hebrew) (hereinafter: *Social Security in Israel*).

the other hand, proponents of the welfare state support the universal approach.

Yosef Katan summarized the arguments supporting both approaches, while taking into account practical and moral considerations.³ Proponents of the selective approach argue that there is no justification to aid those who are not in need of aid, especially since it causes budgets to become dispersed between populations that have no need for them. Whereas the selective approach facilitates reduced welfare budgets, resulting in a reduced tax burden and increased economic growth. In addition, widespread uniform aid increases the citizens' sense of dependence on government aid, while the government's ability to address unique and diverse needs is limited. On the other hand, proponents of the universal approach argue that social services are a right every citizen is entitled to, regardless of his or her financial situation. In addition, limiting services only to underprivileged populations creates alienation between the "givers" and the "receivers." This alienation then leads the public to demand reducing aid for the "receivers," in contrast to the (relatively) broad public support for universal support programs.⁴ Moreover, selective services necessitate the establishment of costly screening systems. These institutions require welfare applicants to undergo a lengthy procedure and to label and stigmatize themselves as "needy," which deters some of them who are thereby simply left to their means. And apart from this, there is also the argument that selective aid is an incentive to remain needy (the "poverty trap"). Katan's discussion can be summarized in the following table:

3 Yosef Katan, *The Welfare State at the Verge of a New Century* (Jerusalem: Henrietta Szold Institute, 1999), pp. 34-38 [Hebrew].

4 For a detailed discussion of these terms from a Hasidic-Philosophical point of view, see Aharon Ariel Lavi's article in this anthology, p. 156.

The Universal Approach	The Selective Approach
Social services are a right that every citizen is entitled to.	There is no justification to aid those who are not in need of aid.
Limiting social services only to those in need causes alienation between givers and receivers.	Providing social services to everyone causes disgruntlement in the middle class, which bears a heavy tax burden.
Limited services force the person in need to undergo lengthy procedures and label themselves as needy.	The difficulties and stigmatization are an incentive to seek employment and independence.
Selective aid provides incentive to remain needy.	Universal aid provides incentive for financial dependence.

In considering this dilemma in light of the Jewish sources, we will focus on ethical considerations.

Charity – Must Be Given Selectively

The first point of controversy between the two approaches is the question of whether social services are a right or not. As mentioned, proponents of universal aid argue this is a right that every citizen is entitled to, regardless of his or her financial situation. In contrast, proponents of selectivity believe that this is not a right, but rather a social necessity to help those who have failed financially and provide them with a safety net

until they recover. Moreover, there are those who believe it is a political constraint that has no moral justification, and is, in effect, meant to facilitate peace and order in society, and they would be pleased to see all welfare programs completely eliminated. Against these two approaches the positions stated in the Jewish sources is noteworthy: it presents aid to others, i.e., the commandments of charity, as a duty rather than a right. This begins already in the Torah: “For the pauper will not cease from the midst of the land. Therefore I charge you, saying, ‘You shall surely open your hand to your brother, to your poor, and to your pauper, in your land.’”⁵ Maimonides held on to this formulation, writing: “We are **commanded** to give charity — to support and relieve the poor,”⁶ and also in the *Shulchan Aruch*: “Every person **must** give charity.”⁷ However, it is generally difficult to determine whether one’s duty towards his fellow man originates from duty, or from the beneficiary’s right. Thus for example, the Torah also mentions the duty to retrieve robbed items: “And it shall be, when he offends and is guilty, he shall return the theft that he stole or the fraud that he committed or the deposit that was placed with him of the lost thing that he found.”⁸ Some interpreters believe that the source of the duty of restitution is the victim’s proprietary right, as Rabbi Shimon Shkop writes: “The classification of properties and laws of ownership over assets is a legal matter, even without the warning of ‘you shall not rob.’”⁹ He argues that ownership over property is not the result of the prohibition against robbery that appears in the Torah, in fact, the opposite

5 Deuteronomy 15:11.

6 Maimonides, *Sefer Hamitzvot*, Positive Commandment 195. Also see *ibid.*: Negative Commandment 232.

7 *Shulchan Aruch*, Yoreh De’ah 248, 1.

8 Leviticus 5:23.

9 Rabbi Shimon Shkop, *Sha’arey Yashar* 5, 2.

is true – because there is ownership over property the Torah decreed that this property must not be robbed.

Therefore, it is not enough that the Torah mentions the duty to give charity, and the claim that it is a duty and not a right must be substantiated on additional evidence. Such evidence can be found in the Talmud, which states that charity is a duty imposed on the poor as well, who are entitled to receive it: “Even a poor man who himself subsists on charity should give charity.”¹⁰ If it was a right, it would have been wrong to impose the duty of almsgiving on the person who is himself entitled to receive alms. But since it is a duty, then it applies to every person according to his or her financial capacity, and hence it is unsurprising that a poor person “when he can sustain himself”¹¹ is also obligated to aid “even [in] a small amount of charity... someone less fortunate than him or on the same level as himself.”¹² Further evidence that charity is a duty and not a right can be found in the unusual division of responsibilities between the giver and the receiver in this context. In most cases, if the creditor concedes his debt the debtor is exempt from payment.¹³ In contrast, when it comes

10 Gittin 7b. A similar ruling is found in *Shulchan Aruch*, Yoreh De'ah 248, 1.

11 Ibid.

12 Maimonides, *Sefer Hamitzvot*, Positive Commandment 195.

13 See for example the *Shulchan Aruch* (Choshen Mishpat 75, 11): “Said to him: I owe you money, and the latter responded: to me it is certain that you owe me nothing, he is exempt, although he certainly knows he is still in debt, as the other one is seen as having forgiven his debt.” That is, one who owes money, and the creditor tells him he is exempt – does not have to pay, since the creditor has forgiven his debt. The *Shulchan Aruch* (ibid., 32) writes that the debtor is completely exempt, also by divine law, and has no duty to try and repay the debt. In *Sefer Netivot Hamishpat (Hidushim*

to charity, the person in need is instructed to make every effort to avoid receiving: “Treat your Sabbath like a weekday rather than be dependent on other people,”¹⁴ and also: “At all times shall one [rather] hire himself out to idol-worship than be in need [of the help] of [his fellow] creatures” while the concept of “idol-worship” is interpreted there as “work that is strange for him” (the Hebrew expression for idol-worship, *Avodah Zarah*, literally means “strange work”). Meaning, it would even be better for a person to practice ‘strange work’ rather than take charity.¹⁵ On this matter, Maimonides rules:

A person should always construct himself and bear hardship rather than appeal to people at large and make himself a burden on the community. Our Sages commanded, saying: ‘Make your Sabbaths as weekdays, and do not appeal to people at large.’ Even a distinguished sage who becomes poor should involve himself in a profession – even a degrading one – rather than appeal to people at large.¹⁶

At the same time, the giver is instructed to ensure that whoever is entitled will receive charity even if he does not want to receive and even if exceptional efforts are required to achieve this. “If a man has no means and does not wish to be maintained [out of the charity fund]... It is given to him as a loan and then it is granted to him as a gift.”¹⁷ Maimonides followed this reasoning in his ruling: “When a poor person does not desire

75, 25) it was ruled that the creditor cannot change his mind and demand anew the payment of a debt which he has forgiven.

14 Pesachim 102a.

15 Bava Batra 102a.

16 Maimonides, *Mishneh Torah*, Hilchot Matnot Aniyim 10, 18. A similar ruling is made in *Shulchan Aruch*, Yoreh De’ah 255, 1.

17 Kethuboth 67b.

to take charity, we trick him and give it to him as a present or as a loan.¹⁸

In no other monetary obligation do we find a similar instruction to chase after the person entitled to receive, while the latter must make every effort not to receive. Usually, the situation is reversed; the burden of claim is on the creditor, and even if the debtor is commanded to repay his debts, still the creditor's concession exempts the debtor.¹⁹ The instructions which are unique to the commandments of charity are the result of charity essentially being a duty that does not derive from a right, and hence it applies mostly to the one who bears the duty – the giver. Despite the commandment of charity being a personal duty, the Halacha also mentions a public system of collection and distribution:

In every city where Jews live, they are obligated to appoint faithful men of renown as trustees of a charitable fund. They should circulate among the people and take from each person what is appropriate for him to give

18 *Mishneh Torah*, Matnot Aniyim 7, 9, and a similar ruling is made in *Shulchan Aruch*, Yoreh De'ah 253, 9.

19 However, the Sages have differing opinions on the question of whether it is prohibited to avoid giving charity to a poor person who has not asked. Maimonides (Matnot Aniyim 7, 2) suggests that the prohibition applies even when the poor person does not ask for aid. Whereas the Rashba (Shevu'ot 25, 1, DH Elima) writes that when the poor person does not ask or refuses to receive, the giver does not infringe a prohibition. However, the Rashba also ruled (Rashba Responsa 3, 380), according to the Talmud, that when the poor person does not want to receive charity, one must try and give it to him under the pretext of a loan. Hence, it seems we must make a distinction between the prohibition that exists only in case one is asked for aid, and the duty and commandment to aid the person in need even if he does not ask.

and the assessment made upon him... This is called the *kuppah* (charity fund).²⁰

Halachic authorities who came after Maimonides have asserted that the establishment of a public collection system transforms the personal **duty** to a monetary **right** of the needy, who are represented by the heads of the collection and distribution system (the trustees of the charitable fund). Thus is written in *Sefer Netivot Hamishpat* on this matter:

It seems then that property cannot be taken as collateral except when the Beit Din has taken it for charity, such as... to give to the town's *kuppah* and *tamchuy* (soup kitchen).²¹

Meaning, the duty to pay taxes to the community charity fund, is not merely a commandment but also a monetary right of the poor and of the charity collectors who act as their representatives. The transformation of duty into a monetary right enables taxes to be forcibly collected rather than making do with social or moral pressure on the obligated person.²²

Eligibility for Aid

The commandment of charity obligates us to aid only those who need aid and not every person. Therefore, the Halacha decrees that in order to receive aid from the farmers (*Matnot Aniyim*, literally – “gifts for the poor”) one must meet specific economic criteria (relating to the scope of the needy person's property): “He who has two hundred *zuzim* [coins] shall not

20 *Shulchan Aruch*, Yoreh De'ah 256, 1.

21 *Netivot Hamishpat* 290, 8.

22 For a detailed discussion of the right and necessity to forcibly collect taxes from the public, based on the Halacha, see p. 457. In the article by Meir Tamari and Ruth Tsuria in this anthology.

take *leket*, *shikhekha*, and *pe'ah* (parts of the agricultural produce dedicated for the poor), and *ma'aser ani* [tithes for the poor].”²³ Rabbi Jacob, author of the *Arba'ah Turim*, believed this criterion also applies to eligibility for charity: “He who has two hundred *zuzim*... shall not take charity at all.”²⁴ Even without discussing the threshold after which one is eligible for personal aid (charity) or public aid (*kuppah* [charity fund], *tamchuy* [soup kitchen]),²⁵ it is clear that such a threshold exists. In other words, the Halacha states that charity is a **duty** which dictates that every person must **selectively** aid the eligible needy.

We can conclude that the commandment of charity obligates one to aid others selectively, even if the person in need declines the offer for aid. A modern application of the principle of selective duty would mean that in addition to setting selective criteria for aid, we must establish a mechanism that will ensure that the eligible persons enjoy the full extents of their rights. Thus, for example, we need to invest resources in increasing the eligible persons' awareness of their rights, and design the welfare qualification system in such a way that does not discourage those entitled to aid from seeking it. The assertion that aid must be awarded selectively raises the next question we shall consider: if, when and how do we classify and test the eligibility of applicants for aid?

23 Mishna Pe'ah 8, 8.

24 Tur Yoreh De'ah, 253.

25 Also see: Rabbi Ido Rechnitz, *Measuring Poverty in view of Judaism* [Hebrew], published in *Techumin* 27 (Alon Shevut: Tzomet Institute, 2006).

When Are Eligibility Tests Prohibited?

The Talmud presents a debate regarding cases where aid must be given without eligibility tests:

Rabbi Huna said: ‘Applicants for food are examined but not applicants for clothes... because the one [who has no clothing] is exposed to contempt, but not the other’...

Rabbi Yehudah, however, said that applicants for clothes are to be examined but not applicants for food... because the one [without food] is actually suffering but not the other.²⁶

Maimonides ruled in favor of the second opinion: “When a poor person whose identity is unknown says: ‘I am hungry, provide me with food,’ we do not investigate whether he is a deceiver. Instead, we provide him with sustenance immediately. If he was unclothed and he said: ‘Cloth me,’ we investigate whether he is a deceiver.”²⁷ This debate reveals the fundamental tension of each classification system: on the one hand, there is no obligation to give to everyone, while on the other hand – being overly strict out of fear of mistakenly giving to the ineligible could hurt those who are eligible. The halachic solution is to decree that in areas where eligibility tests cause great suffering, there will be no tests. The criterion to decide between the dissenting opinions is the extent of the needy person’s suffering. Rabbi Huna prioritizes emotional distress (contempt), while according to Rabbi Yehudah, whose opinion prevailed, priority will be given to physical suffering. In other words, when against the fear of supporting ineligible persons

26 Bava Batra 9a.

27 *Mishneh Torah*, Matnot Aniyim 7, 6, and a similar ruling is made in *Shulchan Aruch*, Yoreh De’ah 251, 10.

stands the physical suffering of the needy person, who will be forced to wait until his eligibility test is complete, preference should be given to quick aid to all and without testing. Rabbi Yaakov Hagiz added on this matter:

A poor person who comes before us freezing at night and will suffer until his matter can be examined, what is his fate?

Answer: he will be clothed immediately, and if he is later examined and found unworthy, he shall return the clothes; not so with the hungry, who shall not be examined even after food is given.

That is, even in regard to lack of clothing, when the applicant for aid is suffering physically, aid is given immediately and afterwards eligibility tests are conducted. According to Rabbi Hagiz, a person in need of food must not be tested for eligibility even after aid is given. This may be because we must not further demean a person who demeans himself by begging for food, even if he is not eligible for aid.

Another area in which examination is prohibited arises from the following issue in the Talmud: “Let us be grateful to the rogues for were it not for them, we would have been sinning every day.”²⁸ In other words, we must thank those who pretend to be poor because without them any man who would refuse aid when requested – would be guilty of a transgression. However, since there are pretenders, the person who refuses to give aid has an excuse for his behavior, because perhaps he suspects the poor person who stands before him is a deceiver. Rabbi Jacob Joshua Falk, in his book *Penei Yehoshua*, deduced a Halachic conclusion from this part of the Talmud. According to him,

28 Kethuboth 68a.

there are two tiers in the commandments of charity: one is the duty to aid the poor person to save his life, and the other – to provide for poor person’s personal needs in a broader sense, and in the Torah’s words, cited also in the Talmud: “enough for his want that he has.”²⁹ He argues that we can deduce from the Talmud that it is permitted to test applicants for aid, but this is only for the second tier. In the first tier, wherein most of the applicants are eligible for aid – we must aid them without conducting any examination.

The guidelines that emerge from this chapter are especially relevant with regard to medical aid, which if withheld until eligibility is determined can cause great physical pain and even risk of death. Therefore, public health insurance is preferable as it obviates the need for eligibility tests in many cases. When eligibility tests are necessary, we must examine ways to reduce the suffering caused to those who are pending approval, for example, by approving temporary aid for a period of a few months, in order to allow the completion of the examination process without suffering.

Qualification by Contempt

One way to prevent those who are ineligible for aid from unlawfully receiving aid is to compel the poor person to degrade himself by means of the eligibility tests, based on the assumption that those who are ineligible will concede the opportunity for shameful, albeit easy, profits. Furthermore, in public discourse statements are heard to the effect that the needy must be shamed in order to convey the message that

29 According to the verse: “But you shall surely open thy hand unto him, and shall surely lend him sufficient for his need in that which he wants” (Deuteronomy 15:8).

neediness is shameful. In this context, we must ask whether qualification based on shame is legitimate. Most of the *poskim* opposed measures that would shame those in need of aid. For example, thus wrote the Mahari Mintz regarding the possibility of setting a procedure that humiliates the poor:

On hospitality by means of randomly allotted notes. Some say that the guest should take a note from the ballot box and not the host, so that the poor person will be ashamed and will not come again. And the opponents say that such an act cannot be called ‘hospitality’ but rather ‘inhospitality’. But the custom is that the elder takes the note and gives it to the guests, and this custom should not be changed to shame the poor.

Answer: God forbid that we should make a rule that shames the poor person and humiliates him.³⁰

Meaning, in a certain community, it was customary to accommodate the poor in the townsmen’s homes according to notes on which the name of the host was written. There was a debate between community members on whether the elder should hand out the notes to the poor, or to demand that the poor take the notes from the ballot themselves to shame them and cause them not to come. The Mahari’s answer was that under no circumstances should the poor be put to shame. Apparently those who supported shaming wanted to help the needy, but they also hoped to create a process of natural selection by instilling a barrier of shame. Nevertheless, the Mahari declined using this type of screening tool. The prohibition on shaming the needy appears in additional contexts. The Midrash condemns a person who helps the poor while at the same time shaming them: “He who helps his neighbor in a non-private manner

30 Mahari Mintz responsa, 7.

and causes the poor person to be ashamed, even though he (the former) has done a good deed he shall be brought to justice for doing so indecently.”³¹ *Sefer Hasidim* permitted the charity collector not to make public the names of aid recipients, so as not to embarrass the poor:

At times the charity collector gives to people of good families, and only two or three of the town’s leaders know of it, as if the others would know the receivers would have been ashamed... and it is better that the collector’s own reputation be blemished rather than the poor person be ashamed to receive.³²

Rabbi Menashe Klein objected to a proposal that would require the poor to undergo an examination after which they will receive written approval to collect charity with their picture on it, “for the sake of the reputable poor who are ashamed to bear witness, and God forbid they might choose to starve to death rather than degrade themselves.”³³

The Advantages of Universal Aid

Along with the clear assertion that charity means a duty to aid others selectively, further study of the Jewish sources reveals a certain moral advantage in universal aid, even if this is not considered duty. One of the most renowned sources on charity is Maimonides’ passage, cited in many places:³⁴

31 Psikta Zutrata, Genesis 45.

32 *Sefer Hasidim (Margalioth)*, 330.

33 *Mishneh Halachot* responsa, Part 13, 173.

34 *Orchot Chaim, Din Tzedaka*, 5; *Sefer Kolbo*, Hanoten Tzedaka; *Sefer Mitzvot Katan*, 148; *Tur Yoreh De’ah*, 149; *Shulchan Aruch, Yoreh De’ah* 149, 9; *Drashot Rabbi Ibn Shuaib*, Parshat Behar-Bechukotai; *Kitzur Shulchan Aruch* 34. 12.

There are eight levels in charity, each level surpassing the other. The highest level beyond which there is none is a person who supports a Jew who has fallen into poverty [by] giving him a present or a loan, entering into partnership with him, or finding him work so that his hand will be fortified so that he will not have to ask others [for alms].³⁵

Besides the instruction to help the person in need maintain their economic independence (by means of a “loan” or “work”) there is also a directive to give the poor “presents.” This is also an innovation since it is aid that is similar to any other form of charity, and yet it is considered to be the highest level. The reason is that the present was given before the economic collapse that made the person needy. In other words, the most preferable form of aid is the one that prevents poverty, even when it is done by way of a “present.”

Apparently, the modern-day parallel for this is universal aid. Universal aid given to the person in “specific assessed needy situations – such as aging, birth, work accidents and unemployment”³⁶ ensures the person is supported during events that can lead to poverty. Such aid results in that person not being forced to ‘ask others’ nor feel that he is needy, although he does, in fact, depend on those who pay taxes to fund this universal aid. Therefore, we can assert that the Halacha does not mandate universal aid, but does see the moral advantages this model presents, and it can perhaps be defined as a form of *middat hasidut* (piety) which is not mandatory, but is advisable.

35 *Mishneh Torah*, Hilchot Matnot Aniyim 10, 7. For more on this topic, see the articles in this anthology: Aharon Ariel Lavi (156); Rabbi Yaakov Ariel (p. 355); Yoav Rubin (p. 246); Rabbi Dr. Joseph Isaac Lifshitz (p. 402).

36 Gal, *Social Security in Israel*, p. 21.

In addition, proponents of universality argue that universal aid strengthens social solidarity. The reason is that such aid blurs the lines between givers and receivers, because there are many people of whom it is unclear whether they only receive or whether they also contribute their share to the public fund.

In light of this, it would be right to say that universal aid is indeed the best way to assist those in need, since it prevents their stigmatization and strengthens the sense of partnership between givers and receivers. However, it seems that practical difficulties entailed by choosing this alternative led the Sages to define this way as preferable, but not obligatory. Therefore, when the public fund is emptied, the number of those in need (and imposters) grows and the tax burden suppresses the motivation to produce, in these circumstances we can certainly choose the less preferable ways.

Epilogue

In the debate between universal aid and selective aid, the Halachic position is that there is a **duty** to aid in a **selective** manner. Since it is the giver's duty, it is also his or her duty to ensure that he or she has indeed aided a person who is entitled to aid. Also, the Sages rejected measures meant to shame the recipients, and in cases wherein eligibility tests will cause suffering and risk of death they instructed to concede these measures. In light of these statements, we can lay out some guiding principles for the modern welfare state:

1. Selective aid must be given to those in need.
2. There is a duty to act so that those eligible for aid will receive it, and it should not be the sole responsibility of the needy person to demand aid.

3. In areas where the lack of aid causes risk of death or physical suffering, universal aid must be given.

4. We must make every possible effort to avoid shaming the needy when assessing their eligibility for aid.

Alongside these guidelines, the Sages wrote that the most preferable way is aid that prevents one from falling into poverty. Hence, we can say that universal aid, although not mandatory, is preferable. But when it is difficult to give universal aid, we can make do with the minimum, which is also far from low.

The question we have discussed here is one of the focal points of discussion regarding the emerging constitution for the State of Israel. According to the conclusions brought forth here we can examine the formulation that is closest to the position expressed in the Jewish sources, which can be integrated into the proposed constitution. The various suggestions and alternatives in the area of ‘social rights’ have been summarized as follows:

Alternative A – a provision regarding the authorities’ **obligation** to pursue the development of well-being and adequate and living conditions, without mention of the person’s right to this.

Alternative B – a provision that anchors the constitutional **right** to well-being and adequate living conditions, which are subject to the economic capacity of the state, alongside a separate anchoring of the right to education.

Alternative C – a provision that anchors a constitutional **right** to social security and adequate living conditions alongside a separate anchoring of the right to education, the right to health and the right to environment.

A similar clause was added to each of these alternatives

regarding protection of welfare rights, and a clause regarding rights in labor relations.³⁷

The most significant difference is between the first alternative which is formulated as an “obligation,” and the second two which are formulated as a “right.” In light of our analysis, the formulation in the first alternative is closer to the Halachic position. But this proposal does not include a precise definition of the Halachic duty incumbent on the public to aid the needy according to its economic capacity. The latter alternatives are more in line with modern and postmodern discourse, which has given prominence to the concept of human rights, and uses it as the foundation for determining appropriate and inappropriate behaviors. In contrast, the first alternative is closer to the Jewish discourse (including in modern times), that by virtue of its very essence, which is imbibed by the concepts of commandments and commitment to the Halacha, frequently uses the term “duty” rather than “right.” For example, Judaism does not mention a “right to life,” but does mention the obligation not to deprive of life and so on. The practical results of these two mindsets are similar upon first glance, but in many ways, both practical and perceptual, there are essential differences. I have tried to point out some of these differences here, both in an attempt to delineate practical guidelines for a modern Jewish welfare state, and in an attempt to enrich the Jewish discourse on Economics and the depth of our view of the society in which we are living.

37 Sigal Kogot and Eyal Zandberg, annotated edition of the proposals for a constitution, Volume 2 (Jerusalem: 2005), p. 45.