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The pleasures of spring, the advent of tax season: a discordant time full of natural beauty and the drudgery of tax filings. Taxes are much in the air these days, not only because of the proximity of April’s deadline, but also, of course, because of a raging — and, as some see it, confounding — national debate about taxes. This issue of *Sh’m*a offers a guide to the perplexed. Several essays explain taxes historically, beginning with talmudic debates about who is responsible for the upkeep of the city’s walls, and how taxes must be collected to avoid corruption. Much of the issue roots taxes in a Jewish language of obligation, noting that taxes have always been assessed in order to meet communal responsibilities including care for those in need. We offer an essay that examines how the Jewish tax collector is viewed in Yiddish literature, and an excerpt of a humorous monologue that, with talmudic reasoning, pokes fun at tax accountants. We share the thoughts of several contributors — an economist on lowering taxes and limiting government, a social activist on progressive tax reform, and three lawyers on allowing undocumented students to attend public universities at in-state tuition rates. A rabbi shares her nuanced discomfort about the parsonage tax exemption, which provides a benefit to clergy who use their homes as places of work. Tax deductions, exemptions, and *tzedakah* are the focus of other essays. One looks specifically at federal exemptions for nonprofits; one addresses legacy planning; and this month’s *NiSh’m*a page revisits a conversation we held in an issue of *Sh’m*a last year on the differences between *tzedakah* and philanthropy. Dues themselves, of course, are a form of taxation, and our final essay offers a new way of thinking about congregational dues and also the dues that synagogues supply to the institutions that lead their movements — a contentious issue at a time when denominationalism and affiliation are on the wane.

—Susan Berrin, Editor-in Chief

Rabbis: Not Exempt

EMMA KIPPLEY-OGMAN

Tax exemptions for rabbis who serve a community have a long history. A story about Rabbi Judah the Prince (Yehuda HaNasi, a wealthy leader of the second-century Sanhedrin who was simply known as “Rabbi”) illuminates the situation: “When Rome imposed a tax on Tiberias, the mayor came to Rabbi, asking rabbis to share the burden. When Rabbi refused, the mayor threatened that the townspeople would flee to escape financial ruin, thus leaving the rabbis to pay the tax on their own. Half the townspeople fled, and Rome halved the levy. The remaining townspeople pleaded with Rabbi to contribute. When he refused, they, too, left the town. Rome put the full burden of the levy on the single remaining lay person, who then fled. With only rabbis remaining, Rome canceled the tax.” (BT *Bava Batra* 8a)

Although Rabbi was wealthy and the

Jewish community anticipated suffering under an oppressive tax, he refused to share the burden, insisting that this tax did not apply to rabbis. His gamble paid off; Rome, like other empires, did not tax religious leadership. The

Recent legal briefs have challenged a benefit that religious communities and clergy derive from a parsonage exemption. This could return as much as \$1.2 billion a year to the federal budget.

same section of the Talmud discusses an internal tax collection to build a city wall, exempting rabbis from this tax, reasoning that rabbis did not need the protection of a city wall, since learning Torah protected them.

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For communal wells, however, rabbis could be taxed, because even they needed water.

This discussion implies that taxes are levied based on the services that particular citizens require. The Talmud is ambivalent about rabbis being paid for their work at all,¹ so a rabbinic tax exemption could acknowledge that rabbis — without other means — could be impoverished by taxes. The other group exempt from taxes in this discussion is made up of orphans, who are among the most vulnerable in society.

If I were writing the tax code from scratch, I would abandon the complex system of deductions that encourages finding ways to avoid paying, rather than cultivating the understanding that what we contribute is in our greater interest.

In the United States, we citizens do not opt in or out of paying taxes based on whether we think we benefit from specific government services. And yet, our tax commitments depend on complex formulas of credits and deductions that factor in who we are and how we spend our money.

The ministerial housing (or parsonage) exemption allows U.S. clergy to pay all expenses related to their housing (mortgage or rent, furniture, utilities, and maintenance) from tax-exempt income. This exemption has an interesting history. In 1791, all religious institutions were granted tax-exempt status — considered an essential part of disestablishment. In 1921, that exemption was extended to ministers, who were given a tax exemption on the portion of their income they received in the form of housing from religious institutions that owned parsonage houses. In 1954, clergy who rented or owned their own homes gained access to the same benefit.² So, for example, a rabbi who pays \$1,500 per month in rent or mortgage, as well as an average of \$100 for gas and utilities, and who has monthly expenditures of \$400 on upkeep and furnishings would designate \$2,000 of his or her monthly income as parsonage, paying no income tax on that portion of income. Recent legal briefs have challenged this exemption.³ It seems that this loophole would be easy to close, and could return as much as \$1.2 billion a year of U.S. taxpayer money to the federal budget.⁴

Defending the deduction, Texas attorney Frank Sommerville has argued that clergy, like members of the armed forces (who have

a similar housing deduction), must live in the communities they lead, regardless of the desirability of the place or home. They use their homes to serve those communities, and oftentimes are vulnerable to sudden relocation if a contract is canceled.⁵ While clergy are not alone in serving fickle organizations, few other types of work make employees' homes an essential feature of their employment.

If I were writing the tax code from scratch, it would be straightforward, progressive, and easy to calculate. I would abandon the complex system of deductions that encourages finding ways to avoid paying, rather than cultivating the understanding that what we contribute is in our greater interest. Our taxes sustain our infrastructure and our society, allowing us to enact a broader, bolder vision than we could as individuals.

But as we wait for tax reform (and the Messiah), the moral obligation to discern reasonable use of the parsonage exemption sits with rabbis and our communities. Rabbis' homes are gathering places for meeting, learning, counseling, and ritual that knit together religious communities and strive for transformation in the world. Rabbis' homes are an essential asset for the community, far beyond the personal use of their families. But taxpayers and society at large pick up the tab. And so, within the legal framework of the parsonage exemption, personal ethical discernment is required.

Rabbis and the communities we serve benefit from this exemption; we thus have an obligation to serve the larger society — beyond our own communities. Perhaps we could serve as volunteer chaplains, or help with disaster relief, or organize for social change, using our rabbinic training for the greater good. Rather than assume we deserve this exemption, we should work to align our personal and organizational priorities so that we contribute commensurately with the benefits society affords us.



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¹ For example, see *Bechorot* 29a and *Avot* 4:6.

² Justin Butterfield, Hiram Sasser, and Reed Smith, "The Parsonage Exemption Deserves Broad Protection," *Texas Review of Law and Politics*, Vol. 16, 254-256

³ Andrew Seidel, "The Unconstitutionality of the Parsonage Exemption," *Forbes.com*



⁴ Ryan T. Cragun, Stephanie Yeager, and Desmond Vega, "Research Report: How Secular Humanists (and Everyone Else) Subsidize Religion in the United States," *secularhumanism.org*

⁵ Frank Sommerville, "In Defense Of Special Tax Treatment For Clergy," *Forbes.com*

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“That’s Why I Love Tax Law!”

JOSH KORNBLUTH

Look at me today and you see a model taxpayer — I dutifully file every year, and usually get a refund. This, however, was not always the case. For years I was a tax scofflaw, out of the System and proud of it! And then fate — in the guise of my temp agency — brought me to Bob Shelby.

If you had seen my boss in those days — if you had seen Bob Shelby ambling down the corridor to his office — I don’t think you would have made much of him. A tall guy — kind of nondescript. White. Very white. Extremely white. Reflecting perhaps 30 percent more light than actually hit him. *White*. And a bit hunched over — you know, from partner money.

And if you had watched him go inside his office, you might have stood outside and thought, “Oh, he’s just a guy — a golfer, maybe.” But if you had followed Bob inside his office, and had seen him surrounded by his beloved tax documents, I think you would have understood something: you would have understood that this Bob Shelby was no milquetoast. No, this Bob Shelby was a virile, passionate practitioner of the taxation arts. And the thing that got him going — the thing that activated Bob — was this: the U.S. tax code.

Now, if you’re like me, and you were to try to read the U.S. tax code, you might find it, I would venture to say, somewhat dry. But to Bob it was anything but dry. Because what Bob would do is, he’d find two code sections that were supposed to be right next to each other — welded tight — and he’d find just the tiniest little hairline crack between them, and he’d take his little wedge, and he’d wiggle that wedge into the crack between those two code sections, wiggle and worry the wedge, pushing those code sections farther and farther apart — until finally they were so far apart, you could push through billions of dollars in tax breaks.

That’s why Bob got the big bucks.

And once I realized the kind of tax excitement that was going on in Bob’s office, in truth I would have *paid* just to sit outside and be his secretary. But I got paid. In fact, I even got paid overtime on those special evenings when there was a deal deadline.

Usually, early in the evening, the corporate clients would shuffle languidly into Bob’s office, the door would shut, and then I’d hear

from inside his office the “click click click click click” of Bob’s marker on the whiteboard. “Click click click click click” — as Bob worked out the tax ramifications of the deal ... and made them go away. “Click click click click click.”

Often, after a couple of hours, Bob would call me into his office: “Josh, I need your help. I want you to go down the hallway to the Tax Library. In 1903, there was a case that was heard before a rural Wisconsin tax court. I’d like you to grab that case for me; would you, Josh?”

Well, I’d go and retrieve it. I mean, my mom’s a librarian: You give me the number of a book — it doesn’t matter what kind of library — I’ll go and get it. I’d bring it back to Bob ...

And this is the cutest thing I can tell you about Bob: Each time, he would treat it as if it had been *my* idea:

“Why, Josh — yeah! Nineteen oh three — very good, Josh! I think I know where you’re going with this! Based on this 1903 Cheese Mold Ruling, I think we may very well be able to trigger a ‘shotgun provision.’”

I’d go back to my desk. Shotgun provision — that sounds really cool! Of course, I’d have no idea what a shotgun provision was, but it certainly *sounded* cool. Shotgun provision! “You done knocked up my daughter!” Shotgun provision — sounds very exciting!

I’d listen for the sounds of gunshots exploding from inside his office, but all I’d hear was more of the “click click click click click” of Bob’s marker on whiteboard — “click click click” — until a couple hours later, Bob would again call me into his office:

“Josh, we couldn’t trigger the shotgun. I’d like you to go back down the hallway to the Tax Library. In 1913, right after the codification of our U.S. income tax, there were some loose ends that got memorialized in a Revenue Ruling. I’d like you to grab it for me.”

Soon thereafter, I returned: “Here’s your ‘Rev Rule,’ Bob!”

“Josh — this time you have truly outdone yourself. Because, thanks to this 1913 Rev Rule, I think we may very well be able to trigger a ‘collapsible corporation’ ruling!”

I’d go back to my desk. This was sounding better and better. “Collapsible corporation”

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Josh Kornbluth is a monologist living in Berkeley, Calif. His most recent performance piece is “Andy Warhol: Good for the Jews?” This piece has been adapted from his monologue “Love & Taxes,” written in collaboration with director David Dower. To see where Kornbluth is performing “Love & Taxes,” or any of his other pieces, or to learn about the upcoming film version of the monologue, go to JoshKornbluth.com.



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— it sounded like what my leftie parents had always wanted!

Now I'd be on the edge of my seat, listening for the sounds of corporations collapsing. I'm easily deluded about myself: I'd start to think, "Maybe it *was* my idea!" And I'd want my idea to work! I'd start to forget things — little things, such as the fact that I'm nominally against capitalism. I'd want my bad guys to beat the *other* bad guys. ... But all I'd hear was more of the "click click click click click" of Bob's marker on whiteboard — "click click click click click" — until Bob once again called me into his office:

"Josh, we couldn't collapse the corporation — but I think we still have just enough time to pull this iron out of the fire. Listen very closely: In 1924..."

**"You know, Bob, I actually haven't filed in seven years."
"Josh, I don't understand. You're a thoughtful guy —
how could you go seven years without filing?"**

"1924 — that's the year my dad was born!"
"Interesting information, Josh — we don't need it right now, but thanks. In 1924, a Private Letter Ruling was issued, and based on this 1924 PLR. I think we may very well be able to wheel out our heaviest artillery yet. I think we may very well be able to use the 'Reverse Double Dummy Maneuver'!"

Back to my desk. "Reverse Double Dummy Maneuver"! I would have imagined that even a single dummy would have been enough. But double? Probably twice as good. And I bet they'd expect you to go forward with the dummy — so to reverse it, very tricky, very clever, I'm digging it...

But again, all I hear is more "click click clicking" of Bob's marker on the whiteboard. I'm thinking, "Is he actually going to *make* it this time?" When, finally, right before the deadline, a roar comes from Bob's office, and Bob comes staggering out — loosening his tie; his collar's open and his face is all flushed.

He goes, "Josh, it worked! The 1924 PLR! It worked, Josh! We won! Josh, that's why I love tax law!!"

So don't try telling me tax law is boring, okay? Because I was there. I saw what it did for Bob.

And knowing how much he cared, one day I mentioned my own tax situation to him: "You know, Bob, I actually haven't filed in seven years."

"Josh, I don't understand. You're a

thoughtful guy — how could you go seven years without filing?"

"It was easy. In fact, it was *natural*."

Because, you see, my very first job out of college, I worked as a salaried copy editor for a newspaper. And at the end of that first year — in which I had earned 11,000 bucks — I got my very first "Important Tax Document Enclosed." And I did what everybody else was doing: I attached it to my 1040, sent it in — and I got a refund! So the next year I did the same thing — and again, I got refund.

But the year after that, someone in the newsroom — I don't remember exactly who, let's just say it was Satan — someone came up to me and went, "Josh, tax time's a-coming. I assume you're going to be *itemizing* this year."

"Itemizing? What's that, Satan?"

"Well, you see, Josh, now that you're not just a salaried copy editor but also a freelance television critic, you can file a Schedule C and deduct your legitimate business expenses. If you *don't* deduct your business expenses, Josh, you'll be *taking money out of your own pocket*."

Taking money out of my own pocket?! That's a weird and circular movement, and I won't do it!

So I went home, waded as usual through the pot smoke of my roommates, shut the door, and looked around my room. What was a "legitimate business expense"? Okay, I'm a television critic, so ... the television! Yes! Because I need something to criticize!

Okay, so the television ... And then, yeah, the DVR, because I can't catch *every* episode of "T.J. Hooker."

And, of course, the DVDs. And the replacement labels for the cases, which I get from Radio Shack. Oh! — and the *TV Guide*, which guides me to the television! And the books of television criticism I've bought. And, actually, the books I've bought that *aren't* television criticism: They've still informed my criticism of the television. Oh! — and the chair I sit in, of course; very important what my posture is when I criticize a television. And the food I eat — which literally makes up the cells that form the critic of the television.

I started looking around my room with increasing franticness: I didn't want to miss a single last deduction! I started to feel like the Gene Hackman character in "The Conversation." I thought, "If I miss a single last deduction, I'm *taking money out of my own pocket*!" Until

finally I blew a gasket!

And I did not file.


And nothing happened.

So, the next year, looking for some consistency in my life, I again did not file — and again nothing happened. And the seven years followed quite smoothly.

“Well, Josh,” said Bob, “it’s got to end now. You have to take care of this tax thing,

and pronto.”

What could I do? I didn’t want to stop working for Bob — and miss out on all that tax excitement, not to mention the free coffee and endless supply of uniball micro pens.

So I filed. And the next year — looking for some consistency in my life — I filed again. And the years since then have followed quite smoothly. 



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Subjects or Partners? A New Metaphor

MOSES L. PAVA

When Warren Buffet, a member of the highest echelon of the wealthy, starts complaining that he is not paying the government enough taxes, we may be forgiven for our initial cynicism, but not for our continued indifference. Nearly every significant public policy discussion and decision is influenced by our attitude toward the legitimacy of taxes. From the “fiscal cliff” to “debt ceilings” to “the right to health care,” our perspective is shaped by our implicit “theory of taxes.”

Jewish tradition and law have always grappled with questions related to fair and just taxation. Upon entering the Promised Land, the prophet Samuel warns his co-religionists that establishing a kingdom will give the new king the right to impose and collect high taxes. In the Talmud, the rabbis struggled with questions of who should pay for the collective building of a protective wall around the city. “Is it (the tax) made per person or according to assets?” Maimonides, writing in the Middle Ages, insisted that Jews have an obligation to pay taxes to a non-Jewish king, as long as the taxes are not imposed in a discriminatory manner.

Today’s rabbis generally agree about the obligation to pay taxes. Based on talmudic precedents, this obligation is grounded in the concept of *dina d’malchuta dina*, “the law of the sovereign is the law.” In practice, this means that the monetary laws of the government are binding on Jews, even when they differ from Torah laws, and the principle applies whenever and wherever there is a non-discriminatory government and an honest method of tax collection.

This legal rationale, while perfectly fine when employed by a benign king, sounds clunky to those of us living in modern democracies. Moreover, the concept of *dina d’malchuta*

dina is subject to manipulation by those who are seeking loopholes or rationalizations for avoiding paying their fair share of taxes. As one contemporary rabbi noted, a non-Jewish government may have the right to levy just and fair

Rabbis wedded to the concept of *dina d’malchuta dina* have lost an opportunity to educate their followers on the importance of participating in civil dialogue and political debate as equal citizens.

taxes, but a Jew does not necessarily have an obligation to pay a debt to a non-Jew. While it is prohibited to lie on one’s tax forms, is it prohibited not to fill out the form in the first place?

The failure to pay one’s taxes can lead to a *chillul haShem* (public desecration of God’s name), as in a recent Massachusetts case, wherein the Internal Revenue Service announced that it was seizing the assets of a local yeshiva for failure to comply with the IRS code. But the threat of being exposed cannot serve as the foundation of our obligation to pay our fair share of taxes.

Ultimately, grounding our obligation to pay taxes in the concept of *dina d’malchuta dina* is problematic, because it assumes that taxes are an external imposition foisted upon us poor Jews by a foreign power. In contemporary rabbinic writings, rabbis wedded to this language describe the secular government as if it is still a medieval theocracy. Such rabbis have lost a significant opportunity to educate their followers on the importance of participating in civil dialogue and political debate as equal citizens. A mature discussion of the seemingly arcane topic of taxes by today’s rabbis might finally provide us with a deep understanding of democracy from within an authentic Jewish law perspective.


Consider the creative view of Rabbi Hershel
continued on next page

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Schachter, rosh yeshiva of Rabbi Isaac Elchanan Theological Seminary (RIETS) at Yeshiva University. “It is important to note that today the basis for taxation is totally different from what it was in talmudic times.” According to a contemporary understanding of Jewish law, we ought to ground the obligation to pay taxes not in the anachronistic notion of *dina d’malchuta dina*; rather, we should invoke the talmudic concept of *shutfim* or partnership. Schachter concludes, “All people who live in the same city, state, and country are considered ‘*shutfim*’ with respect to the services provided by that city, state, and country. The purpose behind the taxes is no longer ‘to enrich the king’ in the slightest.” (Torahweb.org)

In introducing a new metaphor — that citizens of a modern democracy are more like partners than subjects — into formalized Jewish legal thinking, Schachter has taken a first important step in opening up an entirely new vista from which to think about the legitimacy of taxes and the responsibility of partners to participate in public policy discussions. In this alternative view, it is not us versus them, but rather “we the people” who must formulate fair tax rules and just public policies. It follows directly from Schachter’s new formulation that as Jewish partners in this process, we have a unique right and obligation to bring to our fellow citizens the best of Jewish legal and ethical thinking. 

Fooling the Tax Collector: Why the Rabbis Once Approved

DAVID BRODSKY

Rabbi Naftali Tzvi Weisz, the Spinka Rebbe of Boro Park, and the great-great-grandson of R. Joseph Meir Weisz, author of the *Imrei Yosef*, was convicted recently of an elaborate tax evasion scheme that defrauded the U.S. government of millions of dollars.¹ Similar charges have been brought against several rabbis of the Syrian Jewish community in Brooklyn and New Jersey and also against a number of rabbis in Israel.² One might be tempted to try to explain the circumstances, or to point out that even supposedly “holy men” are human and fallible, or to argue that their religious convictions have nothing to do with their actions, or that they assumed they were exempt from paying taxes to the secular state.

In fact, our own tradition offers sources that could be interpreted to support this fraudulent activity. For example, the Mishnah (*Nedarim* 3:4) states that while it is normally forbidden to make a false vow, an exception to this rule is made when it is in the service of fooling tax collectors! As damning as this may seem, a proper understanding of tax collection in its historic context reveals that the rabbis of the Mishnaic period advocated some evasion of taxes, which they considered part of a horrifically unjust tax system. Indeed, they were not alone in speaking out against the evils of the tax collectors of their day. The gospels, for example, consistently associate tax collectors with sinners and prostitutes (Matthew 9:9–11, 11:19, 18:17, 21:31–32; and Mark 2:14–16; and

Luke 3:12, 5:27–30, 7:29, 7:34, 15:1, and 18:9–14), just as the Mishnah associates them with murderers and highway robbers. (*Nedarim* 3:4 and *Bava Qamma* 10:2)

During the Greek and Roman Empires, taxes were imposed without representation and were at times collected by warlords in a manner quite similar to highway robbery, with armed individuals or troops going from town to town and taking from people whatever they could seize. While the methods of tax collection changed over the centuries and were reformed under Augustus in the first century BCE, the perceived injustice of these systems runs through rabbinic literature; the Mishnah, for example, describes the hypothetical case of a tax collector seizing someone’s donkey and replacing it with someone else’s donkey. (*Bava Qamma* 10:2) Such cases were likely commonplace as the Romans reserved the right to seize animals or people for labor, returning them as they saw fit. For this reason, the Mishnah considers property possessed by tax collectors to have the status of stolen property, grouping these tax collectors together with highway robbers. (*Bava Qamma* 10:2) Most egregious to the rabbis must have been the use to which this money was put: the maintenance of the imperialistic governments and their domination of the region. The Romans used the taxes they collected to support the military operations that put down Jewish rebellions (three in the span of 70 years — from 66 to 135 C.E.


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¹ *New York Post*, Aug. 4, 2009; *Los Angeles Times*, Dec. 22, 2009; *The Jewish Week*, May 4, 2010; ² *The Star Ledger*, June 2, 2011; *The Seattle Times*, July 13, 2012

— the general time period from which the Mishnah's statements derive), bringing a great deal of death and destruction to the Jewish communities throughout the empire. It was these taxes and this system of tax collection with which the rabbis took umbrage.

On the other hand, especially in the talmudic and medieval periods, the rabbis were clear that taxes that would benefit the people (as opposed to supporting a foreign military occupation) were just and obligatory. Thus, the rabbis mandated that Jews pay taxes for infrastructural maintenance of the city — specifically, for the upkeep of the walls and gates of the city (Mishnah *Bava Batra* 1:5 and BT *Bava Batra* 7b–11a) — and for the maintenance of the poor. (*Bava Batra* 7b–11a) While some have viewed such taxes as intended for Jews alone, the upkeep of the town is clearly beneficial to all residents, and not all towns were comprised of a single ethnic group. And while charity for the poor was particularly geared toward poor people within the Jewish community, poor gentiles seem not to have been excluded. (Mishnah *Gittin* 5:8) Moreover, when it came to taxes owed to the Persian Empire, the Babylonian Talmud undermined (and, one might even argue, countermanded) the Mishnah's apparently permissive stance toward tax evasion, with the prominent third-century Babylonian Rabbi Shmuel declaring, "*dina d'malchuta dina*," "the law of the land is binding." (BT *Nedarim* 28a, *Gittin* 10b, *Bava Qamma* 113a–b, and *Bava Batra* 54b–55a) When it came to governments that were not putting down Jewish rebellions, killing tens of thousands of inhabitants, or collecting taxes in a manner the rabbis associated with highway robbery, it would seem that the rabbis of this period were less lenient toward tax evasion.

In the Medieval period, particularly in the twelfth and thirteenth centuries, sages such as Rabbi Solomon b. Abraham Adret (known as the Rashba) instituted a complex scheme of taxation modeled loosely on the more rudimentary system delineated in the Babylonian Talmud. The new system, which held Jews liable if they evaded paying taxes, went well beyond the Talmud's more basic provisions for maintaining the city's walls and gates and feeding the poverty stricken. It included "anything that is for the need of the city." (Rosh, *Responsa*, 6:22, cf. Mordekhai, *Bava Batra* 478 [on *Bava Batra* 7b]) In a responsum, Adret asserts that tax laws are a civil matter based on local customs, and, in matters of taxes, "custom nullifies the halakhah." (*Responsa*, 4:260) His point is that the system of taxation instituted by the Babylonian Talmud is meant as a historical example of the kind of obligation owed by citizens, rather than a declaration that defines or limits the purposes for which taxes may be levied.

Today, we must recognize that our tax system no longer operates in ways or for the purposes that attracted the ire of the rabbis of the Mishnah. On the contrary, our taxes pay for the very essentials for which the rabbis advocated. Therefore, unless a person is withholding taxes as an act of civil disobedience (as did Henry David Thoreau) to protest the militaristic and imperialistic uses to which one could argue a percentage of U.S. taxes are used, tax evasion today seems not to be in keeping with rabbinic ethics and is a gross misapplication of the Mishnaic tenet. The involvement of rabbis with tax evasion is a dirty secret, and it is time we denounced it. It has no valid basis in Jewish law or ethics. 

Wolves and Sheep: Jewish Tax Collectors in Yiddish Literature

JULIAN LEVINSON

One of the very first sounds heard in modern Yiddish literature was a cry of anguish over the injustice of arbitrary taxation. The year was 1869, and the pioneering Yiddish and Hebrew writer Sholem Yankev Abramovitsh (aka Mendele Mocher Seforim) wrote a play denouncing corrupt Jewish tax collectors whose sole purpose in life was to squeeze the lifeblood out of their fellow Jews in the *shtetl*. He called the play "The Tax" (*Di Takse*), knowing

this word would evoke a compelling dramatic situation: Readers knew that taxes typically meant exploitation, providing a way for wealthy Jews to prey upon their hapless, poorer brethren. A recurring image in Abramovitsh's play is that of wolves devouring sheep.

The system of taxation that occasioned the play was one that made corruption virtually inevitable. According to this system, the Russian

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government would compute the amount of money it expected from each Jewish community. This amount would be paid up front by a specific individual, who leased the right to collect taxes from his fellow Jews on candles and kosher meat, two indispensable items for religious life. From 1844 onward, a percentage of this tax would also filter back to communal institutions, such as the local school and burial society. Since tax collecting was considered a form of livelihood, the collector could extract more than he had originally paid. But since this “salary” was not regulated, the collector could set the taxes at whatever rate he determined, leaving the community at the mercy of a potentially brutal master.


Abramovitsh’s play underscores the triumph of self-interest over charity. The tax collectors meet over sumptuous feasts to lament the plight of the poor, all the while increasing their own profits. “Surely, God will help these poor Jews,” the rapacious Wolf Spaudik remarks (note the first name). “But in the meantime, it won’t hurt to raise the tax on a piece of meat by a few kopeks.” As the poor get poorer, a ray of hope comes from the young scholar Shloyme Veker, who decries the tax collectors’ corruption. But though the scholar’s name means “awakener,” his efforts at reform come to naught. He finally abandons the town in desperation.

The burdens of *shtetl* taxation continued to be documented in the next generation by the Yiddish realist Dovid Bergelson. In his 1914 story, “In a Backwoods Town,” Bergelson envisions the *shtetl* elite as a decadent class on the verge of extinction. The kosher tax monopoly is held by Elisha, a man devoid of charitable impulses, whose wealth was inherited from his grandfather. Elisha is so loathed by the local

butchers that they organize a work stoppage, depriving him of hundreds of rubles. When he uncovers a plot to smuggle in meat from a neighboring town, he is fatally beaten by a ruddy-cheeked butcher boy.

Both Bergelson and Abramovitsh construct moral fables pitting innocent *shtetl* Jews against corrupt tax collectors. These ordinary Jews preserve their moral instincts and feelings of solidarity, suggesting that a world of *tzedakah* might one day displace the cynical rule of the “town benefactors.”

In the United States, the possibilities for this kind of moral fable diminish, since the direct presence of the tax collector is lost in an abstract, impersonal system. This new arrangement is palpable in Isaac Bashevis Singer’s novel *Enemies: A Love Story* (1966), which moves Yiddish narrative from the context of moral conflict to that of existential quandary. Herman Broder, who managed to avoid the Nazis by hiding out in a hayloft in Poland, earns a living in America by ghost writing speeches for a sham rabbi. Having made hiding a way of life, he never pays any taxes. For this freedom, he pays a heavy price: He is constantly beset by fantasies of the Internal Revenue Service one day demanding its due.

Singer’s novel presents the hitch in the American system of taxation, a system that ostensibly draws its legitimacy from the will of the people. By concealing its face behind three impersonal letters, IRS, the agency has become an abstraction. And the rage expressed by the old-world victims of corrupt tax collectors has become, in the person of Herman Broder, a pervasive paranoia, a form of anxiety that has lost its target. The scourge of the tax collector has disappeared, but so, too, has any hope for charity. 

Selective Government: Can a Consensus Emerge?

LEONARD HAUSMAN

Lawrence Summers, who served as Secretary of the Treasury under President Clinton from 1999 to 2001 and as President Obama’s top economic adviser from 2009 to 2010, has been commonly understood to be a liberal voice. However, after the death of leading conservative economist Milton Friedman, Summers saluted Friedman in an op-ed piece in *The New York Times*, praising him for a life of politically powerful and beneficial research and policy work. Summers’ article was both bold and politically risky in such contentious times. More

important, he revealed implicitly that economists — liberal and conservative — use accepted, if sometimes general, criteria when suggesting how and when a government should intervene in a market economy. Though they use the same analytic criteria, they do not always reach the same policy conclusions.

There are several reasons to keep taxes low and government intervention in the lives and businesses of citizens minimal. Higher taxes negatively affect incentives to save, invest, or work to the extent that one would work in the


absence of higher taxes. Economists are trained to be selective about government intervention. They can't simply assert the need for collective action through government. When addressing the economic behavior of individuals or companies, economists will ask questions about whether there is significant "market failure" and, if there is, whether a specific intervention is sufficiently beneficial. This intellectual starting point may lead many economists to conclude that government intervention should be kept to a minimum, and that government should carefully consider the impact of any intervention. Regulation may be needed, but will a particular regulation — and the lobbying that will ensue around its specification and implementation — yield a better or a worse outcome than the imperfect market? The market can fail — and yet government may worsen the mess through intervention. One might infer that this selective approach, coupled with the distorting effects that taxes usually impose on economic behavior, inclines economists to support smaller rather than larger government.

For example, almost everyone will agree that the United States needs a military organized by the federal government, though its size and form can be debated. Once that debate is concluded, the question is whether to staff the military by a draft, by voluntary service, or by some combination of the two. In the early 1960s, Friedman promoted the idea of a volunteer army to replace the draft. He liked giving eligible people a choice as to whether to serve, and he saw the efficiencies involved: The economy would not be deprived of having people work at their most productive option. In 1973, the U.S. government suspended the draft and implemented a program of voluntary conscription. In this case, most people accepted the need for collective action and the method of paying for it: government using taxes, and people choosing to serve. This example illustrates that economists want a smaller government imprint on the economy, but in a very special way: Limit the role of government, even where government intervention is unavoidable.

With respect to health care, it appears that the public may be approaching a consensus that every American citizen should have access to health care, although the method of granting access remains hotly debated. Assume the consensus. Assume that this consensus is reached not on the basis of market failure alone but also on redistributive grounds — that is, not on the basis of free markets working imperfectly in produc-

ing things efficiently, but on the desire to bolster the income of those who emerge as needy from the efficiencies of the market economy. The poor and those with modest incomes should be given access, which they would otherwise not be able to afford, via some form of subsidy. The question, then, is how to offer the subsidy. Here again, we can consider how economists would limit the role of government, even as they join others in wanting to redistribute income. Thus, some begin to address the matter of method with an orientation — should a voucher be used? Similar to the thinking of Friedman, many economists want to give people the opportunity to choose their health care providers. They want consumers to choose, for example, between a health insurance policy that offers large deductibles and co-payments and one that does not, or, for example, between a policy that covers only traditional Western medicine and one that also covers alternative therapies. Notably, economists such as Martin Feldstein, a conservative, and Victor Fuchs, a liberal, both seem to favor vouchers, with the value of the voucher declining as family income rises, and with significant deductibles and co-payments. President Obama's Affordable Health Care for America Act provides vouchers for those who will obtain their insurance on an insurance exchange; this allows families to choose their preferred plan with deductibles and co-payments being introduced, with the blessing of the Obama administration, into state Medicaid plans.

Perhaps a consensus will arise on the methods of providing Medicaid and Medicare, just as one has arisen on methods of staffing the military. And beyond the matter of method, we see emerging a shared view that the size of the government-financed health plan must be contained: People must be encouraged to reduce their consumption of health care; the nature of government action in health care should be minimally intrusive, and there should be a deft mix of regulation and deregulation; and insurers and providers should be forced to compete and set prices, openly, for consumers.

In sum, economists, as such, are not directly concerned with the size of the government. They are directly concerned with taxes. Taxes are to be raised only to finance necessary spending, and so the government must always keep spending as low as possible, subject to the country's needs; taxing the people and their firms is costly, because taxes, depending on their form, stand a good chance of reducing savings, investment, or work — all socially undesirable outcomes. 



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Leonard Hausman founded the Institute for Social and Economic Policy in the Middle East at the Kennedy School of Government at Harvard University, which he directed from 1988 to 1998, and the East Asia Management Studies Center at the Sloan School of Management at the Massachusetts Institute of Technology, which he directed from 1988 to 1992. He held the Hexter Chair in Social and Economic Policy at Brandeis University, where his expertise was in the economics of social protection. Currently, he is developing University Central, a company dedicated to serving international students who migrate abroad for their undergraduate and/or graduate education.



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Kim Carter, a longtime labor union activist living in the San Francisco Bay Area, is a member of the Regional Council of Bend the Arc (benthearc.us), whose mission is to engage Jews in work to heal and repair the world, and to create a powerful, widely recognized Jewish voice championing equality and justice for disenfranchised residents of the nation.

¹ The Sacramento-based Howard Jarvis Tax Association cites this figure.

Jewish Values and California's Budget Woes

KIM CARTER

This past November, disaster was imminent in California and it wasn't going to be the result of an earthquake. After years of spending more than it was bringing in, the state was on the edge of financial collapse. The state was unable to sustain its spending on education and public services, and schools were facing a \$6 billion decrease in funding that would cause massive layoffs, program cuts, increased class size, and a shortened school year. The passage of Proposition 30, a temporary change in the state's income and sales tax, staved off a disaster that had been growing since 1978, when Proposition 13 changed California's ability to collect revenue forever.

Proposition 13 decreased property taxes by assessing a property's value at its 1975 level, with any increase in assessment value tied to a rate of inflation not to exceed 2 percent. That rate, of course, did not keep pace with the Consumer Price Index. As a result, Californians have paid \$528 billion less in taxes than they would have paid without Proposition 13 over the course of the past 34 years.¹ The bill also asserted that properties could be reassessed only if there was a change in ownership, or if new construction was completed, and it created obstacles to any future tax increases.

In early 2012, Gov. Jerry Brown warned Californians of the impending crisis in the state's revenue. Then he put together a ballot initiative to begin to address some aspects of the crisis. At the same time, another measure was underway: A coalition of education advocates, elected officials, and community and labor groups began to work on an initiative that would raise income taxes on Californians making more than \$250,000 per year. Both groups realized that it would be hard to get the public to pass two measures, so they collaborated on a modified measure. The result was Proposition 30, which mandates:

- Increasing California's sales tax from 7.25 percent to 7.5 percent by restoring a recently expired increase, and
- Creating additional tax brackets on the top 3 percent of Californians. The rate for those making more than \$250,000 increased by 1 percent; more than \$300,000 by 2 percent; and more than \$500,000 by 3 percent.

After months of campaigning, Proposition 30 passed with more than 55 percent of the

vote; it will bring in new revenue of about \$6 billion to \$9 billion each year until 2019. Some campaigned strenuously against the measure, including Charles Munger, vice chairman of Berkshire Hathaway, and the California Chamber of Commerce. Proposition 30 also beat out Proposition 38, put on the ballot by Molly Munger, Munger's sister, which would have raised income tax on all Californians — including the poor, with incomes as low as \$7,400 a year. It is worth noting that the increase to the top three tiers of income tax brings the highest tier to 13.3 percent — close to the highest in the nation. In a state where the high-tech and entertainment industries have created many millionaires, Proposition 30 was still able to pass, despite the increased burden it put on the state's wealthiest citizens.

Recognizing an opportunity to impact the ballot, the Jewish nonprofit Bend the Arc, which focuses on economic opportunities and social justice, decided to allocate resources in support of Proposition 30. Having had positive experiences organizing communities through their religious institutions, the group reached out to the San Francisco Bay Area Jewish community to work on this measure for progressive taxation (a form of taxation that takes a larger percentage from those earning higher incomes than others). A campaign committee designed curricula specifically for Jewish house meetings and set up more than 20 such meetings around the area. More than 850 people over the course of three months discussed core Jewish values that address taxation and paying one's fair share. Conversations were built on texts such as Deuteronomy 16:18-20, "*Tzedek, tzedek, tirdof*" ("Justice, justice, shall you pursue"), and on the writings of Rabbi Abraham Joshua Heschel: "In a free society, few are guilty, but all are responsible." Discussions in the house meetings focused on how to build a just society wherein all inhabitants contribute to and share in the society's obligations.

Much needed relief has arrived in California, at least for the next seven years. The coalition that helped pass Proposition 30 continues — now strategizing about how to dismantle California's inequitable tax structure. With partners collaborating for a common good, California may once again provide the quality education and public services its citizens deserve.



Subsidize Undocumented College Students

DOUGLAS HAUER, ARI STERN, AND ADRIENNE DARROW

The debate over whether undocumented students should be granted in-state tuition rates at state colleges has been a particularly sensitive topic for the Jewish community. As the book of Exodus teaches, “You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt.” This lesson is pertinent to this particular facet of the immigration reform debate for two reasons: First, as a society, we should not wrong individuals who entered the United States for reasons beyond their control; and second, undocumented students are children who grew up feeling as though they were Americans. They are part of the American family.

The public debate concerning undocumented students has many subissues, one of them being the use of tax dollars to subsidize in-state tuition rates. Today, approximately twelve states make in-state tuition rates available to undocumented students, provided that specific criteria are met.¹ Detractors of these state policies claim, in part, that the policies burden citizens with higher taxes and do not result in any economic benefit for the state. How solid is this claim? What are the facts?

Since the earliest of these state policies was passed in 2001, there is limited data to determine the validity of this criticism. Indeed, any data produced is an estimate, given that it is impossible to determine the exact size of the undocumented population. That said, the economic argument in favor of in-state tuition policies rests on the sound economic concept that college graduates have higher productivity, and thus, contribute greater tax revenue to state and federal budgets. Accordingly, tax dollars allocated in support of these policies are likely well spent.

College is Cost-Prohibitive

Officials who support in-state tuition policies argue that the difference between in-state and out-of-state tuition is a prohibitive barrier. Currently, in-state students at the best American public colleges pay, on average, \$13,000 less than those from out of state.

Multiple analyses suggest that the introduction of in-state tuition benefits positively affects college attendance rates, and that colleges incur little or no added cost by enrolling qualified undocumented students. For example, a study published in 2008 estimates that as many as 31 percent more undocumented stu-

dents would attend college if in-state tuition were offered. The potential exists, therefore, that public universities will take in more tuition revenue if an in-state tuition policy is instituted. This is a win-win situation for schools and their students.

College Graduates Pay More in Taxes

A college degree is a key to economic and social advancement in this country, and becoming a taxpayer is a sign of such financial success. Research indicates that average earnings increase measurably with higher education. A study published in 2010 concluded that an individual who only completes high school will contribute roughly half as much in incomes taxes as someone with a college degree.

Accordingly, if more undocumented students are able to obtain a higher education, then there will be a larger population of people from which to grow the tax base. A recent study by the Maryland Institute for Policy Analysis and Research Institute in Baltimore

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¹Texas, New Mexico, California, Utah, Washington, Nebraska, Kansas, Oklahoma, Illinois, Connecticut, New York, and Maryland allow undocumented students to pay in-state tuition.



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²The IRS issues ITINs to individuals who are required to have a U.S. taxpayer identification number but who do not have one, and are not eligible to obtain a Social Security Number.


estimates that Maryland, which recently passed legislation granting in-state tuition to undocumented students, will ultimately earn \$24.6 million in savings and tax benefits. The study also found that private businesses will ultimately earn \$42 million in yearly benefits as a result of the policy. If this analysis is accurate, then it reflects positively on Maryland's tax-and-spend priorities.

Revenue Increases

Americans should appreciate that undocumented individuals already contribute to federal and state tax revenue. A review of analyses performed by the Congressional Budget Office and Social Security Administration suggests that between 50 percent and 75 percent of undocumented immigrants pay at least a portion of their required federal, state, and local taxes. Furthermore, a study conducted by the Institute for Taxation and Economic Policy estimates

that households headed by undocumented immigrants paid \$11.2 billion in state and local taxes in 2010. Many undocumented immigrants choose to pay their taxes utilizing Individual Taxpayer Identification Numbers (ITINs).²

With the recent passage of the Obama administration's program known as "Deferred Action" — which allows qualifying young, undocumented immigrants to remain in the country and apply for work permits — more young people stand a chance at becoming significant taxpayers in the future. Thus, allowing undocumented students to pay in-state tuition rates may lead to increased tax revenue and greater economic growth.

Support for these in-state tuition policies is in step with American and Jewish values regarding advancement through education. Ultimately, however, the larger immigration dilemma facing these undocumented students can only be solved through comprehensive immigration reform. 

A Grand Bargain: Why We Must Encourage Charitable Giving

WILLIAM DAROFF

In the aftermath of Hurricane Sandy, which devastated the Northeast last fall, the Jewish community, as it often does in times of crisis, responded with great generosity and charity. In the two months after Sandy, Jewish federations across North America raised more than \$6 million in donations to rebuild devastated communities. The response reflected not only the Jewish values of *tikkun olam*, but also a basic American value. The numbers of American charities, both religious and secular, that have blossomed over the past century is testament to the generosity of our country. Essential to that generosity is a tax deduction for philanthropic giving. Since 1916, when the first federal income tax laws were enacted, a deduction was included that created an incentive for Americans to make charitable contributions. By lowering the after-tax cost of giving, the charitable deduction encourages Americans to give to so-called section 501(c)(3) organizations that pursue the qualified philanthropic goals of promoting charity, education, religion, science, or similar activities. As important, the tax code exempts such organizations from any income tax liability.

The charitable deduction and the income

tax exemption for charities are part of a grand bargain formed between the government and individuals that serves to enhance civil society. The law also grants individuals the freedom to support organizations of their choice and allows these organizations to thrive without undue government interference. Over the past century, the Jewish community has used this arrangement to support vital causes in America and abroad. The rise of federated philanthropy as a means to aggregate individual support for religious and welfare agencies has its roots in the Jewish tradition of "caring for the vulnerable among us." The nascent tax system in the 20th century gave Jewish philanthropists the opportunity to claim tax deductions for contributions to qualified Jewish charitable organizations and allowed nimble and resourceful Jewish charities to thrive.


Many believe that the 21st-century philanthropic landscape is changing or needs to be changed. Before the economic downturn in 2008, a number of academics and several Washington politicians began to question whether certain charitable institutions, including those in higher education and the arts, really deserved tax-exempt status. A 2007 article that asked

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rhetorically, “Is Harvard a Charity?”¹ noted that the university had an endowment in excess of \$35 billion. Similarly, a senior member of the House Committee on Ways & Means, the panel that writes the tax laws, questioned the efficacy of a tax deduction for contributions to opera houses when so many children in his congressional district lived below the poverty line.

Beginning in 2009, the Obama Administration unveiled a proposal to limit the value of itemized deductions for “higher-income taxpayers” (defined as families with more than \$250,000 of income per year). To date, the proposal has received little or no support in Congress, in part due to the active lobbying efforts of national charitable groups, including the Jewish Federations of North America. At the same time, a number of presidential panels, commissions, and think tanks are trying to reform the tax code as part of a balanced approach to reducing the ever-increasing federal deficit. So far, these panels propose only to tinker at the margins, maintaining the strong incentive for charitable

giving and recognizing its unique place in the tax system. While some believed that the New Year’s Day 2013 agreement that avoided the “fiscal cliff” would sketch out a broad outline to lower the federal deficit and achieve real tax reform, the agreement is much narrower in scope. It did, however, reinstate a top tax rate of 39.6 percent, and experts predict that it will lead to an increase in charitable giving.²

Over the next several years, the Jewish philanthropic community will face a number of challenges. In an effort to tap revenue lost in the form of foregone tax dollars, Washington lawmakers are likely to continue to examine the charitable deduction and the definition of a charitable organization. The Jewish federations will continue to fight to ensure that tax incentives such as the charitable deduction remain intact. Jewish charities will face the challenge of appealing to a new generation of donors to ensure that the communal infrastructure that we have known continues to attract tax incentivized gifts in the 21st century. 



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¹ Robert Reich, “Is Harvard a Charity?” *Los Angeles Times*, October 1, 2007

² Please see “What Does the Fiscal Cliff Deal Mean for Nonprofits?” by Joseph Rosenberg, C. Eugene Steuerle, and Katherine Toran, a study by the Urban Institute Center of Nonprofits and Philanthropy, January 2013.

It’s Not ‘Tzedakah’ If We Get a Tax Break

SHAUL MAGID

We often conflate “charity” with the mitzvah of *tzedakah*. But while charity is something we all do, it often takes a form that distinguishes it from *tzedakah*. In contemporary American society, giving and charity are discretionary rather than intrinsic values. They are neither required nor viewed as an obligatory part of citizenship. And they are rewarded through tax incentives. In Jewish terms, *tzedakah* is far from discretionary — even though many of us who give *tzedakah* do so from a discretionary frame, if not in principle, then in practice.

Before exploring how charity is prescribed in Maimonides’ legal code, let’s take a look at a recent study that appeared in *The Chronicle of Philanthropy* by Emily Gipple and Ben Gose, “America’s Generosity Divide.” The article states, “Middle-class Americans give a far bigger share of their discretionary income to charities than the rich.” Wealthy people who live in wealthy neighborhoods give less than wealthy people who live in mixed neighborhoods. Red states give more charity than blue states. States with tax incentives for charity give more than states without them. What is surprising is that households even in the lower

income brackets give more of their discretionary income, proportionately, than wealthy families.

While these numbers must be analyzed from various angles, a few preliminary thoughts can be deduced that may inform how we in the United States (Jews and non-Jews) view charity. Wealthy people (“wealthy” is not defined in the article) want to keep more of their money and want to retain the power to decide what to do with it. The study also shows that among the wealthy, where one lives matters a great deal. Those who live in wealthy neighborhoods and who do not come in contact with people of less means on a daily basis give less than those who live in mixed neighborhoods.

Finally, let’s take into consideration the notion of tax incentives that, according to the study, foster increased giving. When we receive a tax deduction based on a charitable donation, we lower our taxable income and tax burden. This is a governmental reward for giving charity and a basic part of our economic system. However, this kind of giving may actually diminish charity as defined by classical Judaism. Why? Because, if I receive a tax deduction for a gift of \$10,000 to the Lincoln Center, I will

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pay less in taxes. As a result, there may be less money for government programs for the poor. And *tzedakah* is precisely *about* the poor, which is why Maimonides titles his laws on *tzedakah*, “Laws of Gifts to the Poor.”

Although I should have the freedom and right to give where I choose (for example, to the Lincoln Center rather than to a homeless shelter), I may be inadvertently withholding important tax dollars that would pay for programs that fall directly into the category of *tzedakah*. And tax incentives create a benefit, an incentive, to giving, which is antithetical to the obligation of *tzedakah*, as Maimonides codified it.

Maimonides’ “Laws of Gifts to the Poor” is the first systematic discussion on how Judaism views charity/*tzedakah*. It is founded on the unambiguous statement: “It is a positive commandment to give charity to the poor according to their needs.” (7:1) Further, anyone who sees a poor person in need and who does not give aid transgresses a negative commandment. (7:2) This is not limited to people of means; the commandment of *tzedakah* also applies to those who receive charity. They are still obligated to give to those below them on the economic spectrum. (7:5) *Tzedakah*, as opposed to charity, is not discretionary. Refraining from the mitzvah is actionable. “If a person refuses to give charity, the courts can force him and even beat him until he gives what is fitting. (7:10) This is not the case with, say, one who refuses to put on *tefillin*. The apparent reason for this difference is that, according to Maimonides, *tzedakah* is more than simply a mitzvah; it is the very foundation of a just society. (9:1)


A few other relevant points: For Maimonides, *tzedakah* is not limited to the needs of a Jew. The obligation of *tzedakah* applies to Jewish *and* non-Jewish causes. (7:7) Moreover, one should not investigate if the poor person is as poor as he or she says; one must give regardless of the truthfulness of the need. Regarding the tithes for the poor, Maimonides writes that if the produce is in the field or barn, the owner has little power over how it should be distributed. The poor person may come and take as he or she wishes, even against the will of the owner. (6:9) Maimonides makes this mitzvah so foundational that he allows the courts to enforce it and strips the giver of the power to decide to whom and how the produce is to be distributed. Finally, on a psychological level, he writes: “Anyone who gives *tzedakah* resentfully, even if he gives a thousand gold coins, will have no merit from that act of giving.

Rather, he must give joyfully and with an understanding of the gravity of his actions.” (10:4) There is a significant distinction here between perfunctory giving that makes us feel righteous and the religious act of *tzedakah*.

There seems to be a divide between how we give charity and how Maimonides defines the mitzvah of *tzedakah*. Regarding philanthropy, we choose how much to give, to whom to give, and how the gift is to be distributed. We want to give, but we also want to benefit from that giving, i.e., through tax deductions. Maimonides says that if the goods are in the barn, the proprietor has *no control* over who comes and takes what is set aside for charity. In Maimonides’ rendering of *tzedakah*, it is the one receiving and not the giver who should be empowered.

We consider ourselves a giving community, pride ourselves on being charitable, and view that act as part of religious life. But we are also very much a product of the society in which we live, a society that rewards financial success by protecting financial success. We live in a society that is constitutively suspicious of people’s failures and claims of need, and wary of an individual’s ability to overcome odds and move from one class to another. This, I submit, also bleeds into our giving *tzedakah*.

For Maimonides, the mitzvah of *tzedakah* requires us to lift the veil that separates the “haves” from the “have-nots,” and to resist the values that teach us that success is akin to goodness, that the poor are somehow responsible for their poverty. Whether they are or not is not the issue. For Maimonides, the true giver doesn’t even ask the question; the question itself invalidates charity as an act of *tzedakah*.

Many feel that when we give “charity,” we are fulfilling the mitzvah of *tzedakah*. *Tzedakah* is an act of obligation, of sacrifice, of responsibility to the society in which we live. It is not an act of discretionary generosity; it is, according to Maimonides, an act of redemption. The prophet Isaiah says, “Zion will be redeemed in fairness (*bemishpat*), and will return to its glory with *tzedakah*.” (Isaiah 1:27) *Tzedakah* may be understood as either justice or charity. Maimonides deploys the verse in the tenth chapter of his “Laws of Gifts to the Poor” to suggest that it be rendered as charity. “Israel will only be redeemed through *tzedakah*.” (10:1) *Teshuvah* (to turn or repent) is the internal act of self-awareness; *tefillah* (prayer) is the external act of appreciation; *tzedakah* is an obligatory social act of justice. These are the liturgical pillars upon which Jewish society stands. 

Upcoming in Sh'ma

- Leaders-by-Choice
- Active Covenanting
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- Annual Rosh Hashanah Issue
- Humility
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- Networks of Jews
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What Jewish conversation would you like to have? Send suggestions for future *Sh'ma* topics to SBerrin@shma.com.

Death, Money, Legacy: Three Conversations

ANDRÉS SPOKOINY

Legacy planning is never easy. In my role as the head of the Jewish Funders Network, I try to facilitate conversations about how to approach it thoughtfully as a deeply meaningful and Jewish act.

Accountants, lawyers, and philanthropists have been discussing estate tax and charitable giving quite a bit recently. The recent signing of the American Taxpayer Relief Act of 2012 (signed into law on January 2, 2013) codifies federal estate, gift, and generation-skipping transfer laws. It increases rates (from 35 percent to 40 percent) but it maintains exemptions at the \$5 million level. It also contains changes to federal income tax laws that relate to charitable giving. Many welcome the passage of this act because, without it, the estate tax rate would have reverted to its previous level of 55 percent, and the exemption would have shrunk to \$1 million. The law makes “generation skipping” easy and enables deductions between spouses to be portable. It also extends the “unified treatment,” which allows exemptions to become lifetime gifts or bequests at death. This provides affluent families with tremendous flexibility to transfer wealth to children and grandchildren in a tax efficient manner. Besides the technicalities, and despite the slight increase in rates, these regulations are generous toward taxpayers and — according to many — will have a positive impact on philanthropic and charitable giving.

There are, of course, ethical questions surrounding estate taxes. Many ask what sort of tax is “fair” and what will contribute more to the society as a whole. While the *halakhot* on the issue of inheritance are not always compatible with civil law, technical details of civil law and certain legal pirouettes have helped make the two legal systems more compatible. Biblical Judaism doesn’t dictate estate taxes as such, but it is concerned with fairness and exaggerated accumulation of wealth, and it seeks to ensure the protection of the family.

Giving is complex, and planned giving — what happens to a family’s wealth after death — is even more so. So I would like to focus on the connection between estate planning, philanthropic giving, and Jewish values. Add in the differences and challenges of each family — made up of unique and complex members, and you get the idea. Done well, it raises questions that

are intertwined with values, ethics, and identity. In the end, the exercise — and especially thinking about the complexity legacy planning involves — provided unmatched opportunities for several deep and meaningful conversations in a few not-so-minor areas.

Death

The first conversation is probably the deepest and scariest. Delving into legacy issues inevitably touches on the issue of death. When we talk about legacy, we’re talking about mortality — that of those near to us, and our own. A conversation about a family’s legacy is nothing less than a conversation about the meaning of life: our intrinsic limits and deepest needs to transcend physical existence through actions and symbols that express our values and commitments to others. Instead of confronting these important questions, we often ignore them.

But legacy planning can be the subject of a critically important family conversation. Almost any serious reflection on the meaning of life refers as well to death. Overwhelmed and distracted by the technical and mechanical aspects of estate planning, we sometimes overlook the richest aspect of the conversation. By tackling the scariest issues straightforwardly, we can convert the process into a springboard to more meaningful and deeper relations with those around us. In the context of estate planning, a conversation about philanthropy is more than a way to look for fiscal efficiencies; it is a conversation about transcendence.

Money

The second conversation skirts an issue many of us have been conditioned to avoid. Out of “politeness,” we don’t discuss money. Talking about money, for many, raises an array of anxieties, traumas, and cultural baggage.

Our different approaches to money influence our thoughts about philanthropy. Legacy planning means having conversations that make meaningful decisions possible, and our traditions offer a wealth of ideas (pun intended) about how to approach money. Judaism has never been an ascetic culture; rather, wealth can be viewed as a sign of blessing. At the same time, Judaism teaches us about the transient

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nature of material possessions; we're taught to use everything — including money — as a vehicle for sanctity and for the improvement of the world. Our sages cautioned about excessive materialism and about disconnecting wealth from ethics.

Values and Goals

Legacy planning needs to be, first and foremost, a vehicle to transmit values, which should be the essence of a third conversation. Judaism is obsessed with the transmission of values. Thoughtful philanthropy is not about fiscal efficiencies; rather, it creates an avenue for transmitting values and fulfilling value-laden goals.

For values to be translated into action effectively, they must be understood as a specific set of goals. This conversation is twofold: What are my values, and what do I want to achieve? My values may dictate that I want every child to have a free education; but what specific philanthropic goal shall I set? Shall I ensure access for all children to a Jewish education in a specific city? Shall I focus on disadvantaged children?


At JFN, we're often asked to give advice on the best legal and financial structure for a family's future giving: a private foundation established as a corporation, a donor-advised fund, a charitable trust, etc. Legacy planning begins before answering these questions about the financial structure; it guides the answer. The most important element to consider is what vehicle of giving — or,

more commonly, what combination of vehicles — is best aligned with the values of the family and the goals they want to accomplish.

Legacy as Memory

Will my children and grandchildren share my values? Will they identify with my philanthropic goals? The ultimate goal of these conversations is alignment within the family and between the family's values and goals. Rather than impose an agenda or structure on the next generation or restrict their freedom of movement through bylaws and "donor intent letters," it would be much better if the next generation followed the values of their elders because they share them.

While it's never too late to have a meaningful conversation, the deathbed is certainly not the optimal place to have a calm and thoughtful conversation about these issues. Ideally, the legacy conversation is not an isolated one, but rather one that follows a lifetime of conversations that flow through regular rituals and daily practices. It is not an event but a process.

Every family situation is unique and there are no universal recipes. Approaching decisions about legacy and estate planning offers opportunities to address meaningful questions and begin meaningful conversations. As Elie Wiesel said, questions are more important than answers, because only the questions can be shared. Indeed, it is for each of us to find our own answers. 

A Paradigm for Dues

STEVEN C. WERNICK

In a few months, the United Synagogue of Conservative Judaism (USCJ) will be celebrating its centennial celebration. As we plan our "Conversation of the Century," an open and dynamic forum for sharing and seeding discourse about the future of synagogue-based Judaism, we anticipate that one of the compelling topics of conversation will concern the payment and collection of synagogue dues. Several questions will be addressed: Should synagogue dues be a prerequisite for attendance? Is the membership model of collecting dues sustainable or even desirable? If the current paradigm of dues collection were to be abolished, how would synagogues manage to keep their doors open? Does a voluntary dues payment model work?

This conversation neatly mirrors a wider discussion within the USCJ — and perhaps in

movements generally— about the collection of annual dues from member *kehillot* (communities). On many levels, the questions are the same. Just as individual Jews are called upon to support their synagogues, so, too, synagogues have a responsibility to support the collective. This responsibility is akin to the civic duty to pay taxes to local and federal governments. And our tradition is clear about the obligation incumbent upon individuals to pay taxes according to their means.

Yet one of the features of contemporary life is that a religious movement must provide sufficient "bang for the buck" for its member synagogues in order to earn their support and loyalty. *Kehillot* that don't experience the value of membership will not continue to pay dues. The value can be something tangible, such as services, or something difficult to define, such as a feeling of belonging or kinship.

Rabbi Steven C. Wernick is the executive vice president and CEO of the United Synagogue of Conservative Judaism.

After so many decades of functionality, the membership model that synagogues and Jewish institutions have relied upon to collect a large portion of their revenue from individuals and families has suddenly been rendered creaky, if not outright broken. While this issue is not pressing for all communities (for any number of reasons, such as an affluent membership or an innovative management), the problem is timely and transcends denomination; indeed, it afflicts the institutions of our sister religions as well.

In a recent essay in *ejewishphilanthropy.com*, Rabbi Dan Ehrenkrantz, president of the Reconstructionist Rabbinical College (RRC), detailed how the decision to close the Reconstructionist Jewish Federation was based on the acknowledgement that “Jewish organizations that let people choose how to participate and that leverage their members’ diversity for creative results will be the leaders in this environment.”

Consolidating the branches of the movement under the roof of the RRC arose from the decision to “shape a denominational structure on the same principle.”

Our colleagues in the Reconstructionist world are surely responding to the *Zeitgeist*. Making such a dramatic change is more difficult, however, when dealing with an organization as large as the USCJ, and with longer historical identities and relationships among the organizations that make up Conservative Judaism.

Still, we would be fooling ourselves if we were to deny the fact that affiliation has taken a hit. Attitudes toward membership have shifted radically as we’ve become integrated into secular society and become secure in our American rootedness. For generations, people viewed synagogue sponsorship as an obligation that was part of their identity. From the 1920s through the 1960s, the American synagogue was the focal point of the religious and social life of the Jewish community.


But clannishness is out. “Inclusivity,” “fusion,” and “mashups” (hybrid Web applications that combine two or more sources) are the buzzwords of the day. In this new social landscape, the function of the 21st-century synagogue is as a repository of meaning and purpose, a place where life is elevated from the mundane to the sacred. What will inspire people to attend and support their synagogue now is an organic feeling of connection and loyalty for the institution that has infused their lives with purpose and meaning.

And just as synagogues must adjust, so

must centralized denominational institutions like the USCJ. Tapping into the *Zeitgeist*, the USCJ has been trying to imagine a different revenue model, one that gradually reduces its dependency on member dues from 49 percent to about 41 percent or 43 percent. At the same time, we’ll increase our philanthropic investment to about 17 percent or 20 percent of the budget, and look to book and media services, direct mail programs, and other program fees for additional revenue. Our leadership has endorsed our intention—articulated in our strategic plan (available on uscj.org)—to reduce our dependency on dues.

In many ways, the evolution of institutional dues as taxes is already occurring. Many communities that feel they cannot afford to pay have become disaffiliated. But, more significant, those that are struggling but that want to remain affiliated are receiving assistance. Some of the most innovative of our programs have been supported by our microgrants, which focus on nurturing Jews, learning Torah, and building community. Labels are not important; we are taking a long view into the future.

As Ehrenkrantz’s essay demonstrates, colleagues at organizations that serve as an “umbrella” are all challenged in the same way. It is bracing to hear their stories.

One of the challenges today is to provide choice and flexibility as we strive to be the epicenter of purpose, meaning, and communal ingathering—to balance independence and affiliation, and to recognize the fiscal responsibilities at both ends. As we look toward our second century, we see ourselves in spirited conversation and relationship with our *kehillot*, jointly committed to revitalizing synagogue-based Judaism for the 21st century. 



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Discussion Guide

1. Should charitable donations be tax exempt? Do charitable donations fulfill the mitzvah of *tzedakah*?
2. How do conversations about Jewish values inform your decisions about philanthropy and about creating a legacy for your family?
3. Is the rabbinic parsonage tax allowance fair and appropriate today?
4. Should undocumented students attending public universities or colleges be allowed to pay in-state tuition?



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Rabbi Mordechai Liebling is director of the Social Justice Organizing Program at the Reconstructionist Rabbinical College.

Alexander Smith is a practicing Certified Public Accountant at Landsman, Frank, & Bloch, a boutique firm in Beverly Hills, Calif. He specializes in tax compliance and planning for high-net-worth individuals, closely-held businesses, trusts, and estates.

Dara Weinerman Steinberg, project director of Lippman Kanfer Family Foundation, is the daughter of an accountant; her birth announcement read that her parents were pleased to announce their first tax deduction. She holds degrees from Smith College and the Deming Scholars MBA Program at Fordham University.

Rabbi Sam Feinsmith is co-director of the Center for Jewish Mindfulness in Chicago, and a Jewish studies instructor at Chicagoland Jewish High School.

¹ B. Talmud *Bava Kama* 38a, 87a, and *Avodah Zarah* 3a.

² Abraham Joshua Heschel, *Man's Quest for God: Studies in Prayer and Symbolism*, New York: Charles Scribner's Sons, 1954, pp. 64-68.

The fiery discourse about tax reform that weighed so heavily on last year's presidential race raised questions about both the scope and nature of one's "obligation" to society and the medium through which that obligation should be satisfied. One of the more commonly debated ideas among the electorate was whether our tax dollars represent compulsory charity (*tzedakah*) or the fulfillment of a social contract that precedes voluntary contributions made within our communities.

Rabbi Mordechai Liebling's commentary on the text suggests that we should distinguish among our responsibility to comply with taxes that may be levied to ensure the social welfare, our commandment to provide some amount of unsolicited support in the form of *tzedakah*, and the concept of philanthropy as discretionary kindness above and beyond one's cumulative obligation. The IRS code allows *tzedakah* and philanthropy to be used to pay (or offset) one's taxes, which has become a critical incentive for many to fulfill their charitable obligation. However, this provision should not diminish the moral imperative of both honoring one's obligation to society by paying taxes and voluntarily donating to one's community through the channels of *tzedakah* and philanthropy.

— Alexander Smith

Obligations of *tzedakah* and taxes are an important concept to explore after the somewhat inconclusive avoidance of the "fiscal cliff." The discourse around this issue involves two questions. The first is: to tax or not to tax? The second is: What is our obligation to our fellow citizens? What is an appropriate tax rate to provide funds that will aid the poor in fulfilling their needs? What are their needs? In an age where we are used to picking and choosing, to what extent should we

as taxpayers decide what programs are worthy of support? Active participation in our democracy can be a way of exercising *tovat hana'ah*.

Rabbi Mordechai Liebling's distinction between philanthropy and *tzedakah* is important. The obligation to give *tzedakah* and pay taxes teaches us that we can and should give in different ways, for different purposes. We should also be philanthropic. Each type of giving fulfills a different need. In different ways, we grow from an opportunity to contribute to something we personally value and from a choice to contribute to those things that, as citizens, we must support to keep our community strong.

—Dara Weinerman Steinberg

"It seems to me that one cannot use *ma'aser* money (one's obligatory tithe, or assigned funds, for *tzedakah*) as a gift for the poor on Purim. A rabbinic enactment, such as *ma'aser*, is a binding obligation, and so the 'giver' would be paying a debt from *ma'aser* that does not belong to him. He has only the right of disposal (*tovat hana'ah*). Some rabbis rule that *tovat hana'ah* is not considered a monetary asset. But even those who agree that it be considered as such would not agree that a binding obligation can only be met from unassigned funds."

— Jacob b. Moses Moelin, the Maharil

Giving *tzedakah* — setting aside a minimum of 10 percent and a maximum of 20 percent of one's income — to help those who are disadvantaged is a Jewish obligation. It is a requirement to take care of others for the sake of justice. Eating a Purim *seudah*, the special meal on the afternoon of the holiday, is an obligation. In order that all can partake, the rabbis levied a "tax" — not to be confused with the obligation to give *tzedakah* — on members of the community. Even though both *tzedakah* and this tax go to feed hungry people, they are separate obligations; one cannot use money set aside for *tzedakah* to pay the tax.

Philanthropy is the act of voluntarily giving to promote the common good; it differs from both *tzedakah* and taxes, which are mandatory. Philanthropy is the money that one chooses to give away beyond *tzedakah* and taxes.

Although the Internal Revenue Service defines a donation as a charitable deduction, the donation does not necessarily count toward one's *tzedakah* obligation. Traditionally, synagogue dues are not *tzedakah*; neither are they philanthropy, because we are required to maintain communal institutions. Giving *tzedakah* is providing for the legitimate needs of those who are disadvantaged. —Mordechai Liebling

upon ourselves the full force of obligation in making that vision a reality through acts of *tzedakah* and the unceasing pursuit of justice.

— Sam Feinsmith

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Yehudah Mirsky, Brandeis University


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Ethics continued from page 20

recent Israeli election campaigns were a blur of counterclaims about the supremacy of certain sets of values over others, all while trying to attain a delicate balance between desired outcomes and political demographic realities.

Now we are faced with the most important challenge of modern Jewish life — at least as complex as that of defending and sustaining Israel in its first 65 years: ensuring that the next generation witnesses the fulfillment of the promise of Israel. Israel must now fulfill its internal and external responsibilities as a Jewish democratic society. This may be possible if the conclusion that Yair Sheleg draws in his February *Sh'ma* column is correct: “Many secular Israelis, therefore, are adopting vestiges of religious Judaism, and many religious people are adopting new linkages to a more modern — and democratic — world.” If we also engage courageously in an internal critique, we may have the possibility of reaching the next stage of the messianic vision: an ethical society worthy of being called both democratic and Jewish — one that fulfills and exceeds the dreams of its founders. 

Further Reading

1. Cecil Roth and Menachem Elon, “Taxation” Encyclopaedia Judaica, eds. Michael Berenbaum and Fred Skolnik, 2nd ed., Vol. 19.
2. Daniel Sperber, “Tax Gatherers” Encyclopaedia Judaica, eds. Michael Berenbaum and Fred Skolnik, 2nd ed., Vol. 19.
3. C. Eugene Steuerle, *Contemporary U.S. Tax Policy*
4. Joel Slemrod, *Taxing Ourselves: A Citizen's Guide to the Debate over Taxes*

Upcoming April 2013

Leaders by Choice

- **Rachel Cowan** and **Vincent Cheng** on authenticity and boundaries
- **Leah Jones** and **Lior Bar Ami** on the impact of new media & globalization
- **Scott McGrath** on the values he brings to his new perch
- **Yitz Jordan** (Y-Love) on cultural appropriation and leadership
- **Christopher Noxon** on leadership as a fellow traveler
- **Charlotte Fonrobert** on passing
- **Lydia Kukoff** on changing the “Who’s a Jew” debate
- **Daniel Kirzane & Brandon Bernstein** exchange “letters” on the HUC-JIR policy not to admit intermarried students.
- **Mamie Kanfer Stewart** on welcoming “fellow travelers”
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Ethics
Sigi Ziering

This year, our Sigi Ziering column focuses on the ethics of democracy. Each month, an esteemed guest columnist will wrestle with what Jewish texts and our interpretive tradition teach us about democratic imperatives: How are we to reconcile Jewish law and Israeli law? What happens when democracy fails? What are the limitations of democracy? What is the relationship of money to the democratic process? Must citizens accept all decisions set by a democratically elected government? This column is sponsored by Bruce Whizin and Marilyn Ziering in honor of Marilyn's husband, Sigi Ziering, of blessed memory. Visit shma.com to view the series and responses.

Rabbi **Rachel Sabath Beit-Halachmi**, a senior fellow at the Shalom Hartman Institute and director of the Christian Leadership Initiative, also teaches at the Hebrew Union College-Jewish Institute of Religion in Jerusalem. Sabath Beit-Halachmi, who earned a doctorate at the Jewish Theological Seminary, writes a monthly column in *The Jerusalem Post*.

The False Messiah and the Future of Democracy

RACHEL SABATH BEIT-HALACHMI

Among the greatest revolutions of human existence is the possibility of creating an ethical society. The authors of Deuteronomy fantasized about it and the leaders of post-Enlightenment Western cultures were convinced it was possible to legislate it. The early Zionists not only believed that it would redeem Judaism and the Jewish people, but some, like Martin Buber, believed that a Zionist democracy — what he called Hebrew humanism — would redeem humanity. Historically, for Jews, modern democracy meant the possibility of full emancipation, survival, and integration. Religious freedom and protected minority rights would signal the fulfillment of many Jewish yearnings. A democracy ostensibly allows for the voice and needs of individuals and minorities not only to be heard and protected, but also to have influence in the public sphere. Modernity's premise was that a true democratic society — a society created by the people for the people — would inherently be an ethical one.

Jews completely embraced the potential of democracy. It was as if this aspect of modernity was the historical equivalent of the long awaited arrival of the Messiah. Truly democratic societies — one might have argued — could solve all the difficult problems of Jewish existence. But the 20th century taught us the awful truth that democracy — and modernity, for that matter — is a false messiah. It hardly solved the problems of Jewish existence; in fact, it created as many difficulties as

it solved. It may have allowed for more participation, but it did not protect us from the consequences of assimilation. As we were increasingly welcomed into the broader secular culture and society and found our way into the hearts of non-Jews, many Jews no longer saw a reason to remain committed to Judaism or to the Jewish community. After all, modernity allowed us to become “citizens of the world.” Most horrifying, though, the false messiah of democracy failed to protect Jews from the possibility that a democratically elected government would adopt policies aimed at our annihilation, forcing us — in the millions — into the gas chambers of Auschwitz-Birknau.

And yet, democratic principles, post-Holocaust realities, and international politics also allowed for and formed the core foundations of and the declaration of the State of Israel. A Jewish democracy, then, could be a response to the consequences of the atrocities committed against the Jews. The promise of what Israel could and should be still animates the Jewish people in the face of both its successes and its failures.

At every moment in every part of Israel, dilemmas emerge from the apparent oxymoron of the two terms, “Jewish” and “democratic.” The conflicts of values are constant. Should marriage and divorce be regulated by civil or religious law? How much influence should Judaism have in the public sphere, and how much room should be made for minority cultures? The most

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