

# A Conceptual Understanding of the Mitzvah of Tzedakah and its Relevance to the Modern Social Justice Movement

## Introduction

Jews have been heavily involved in the social justice movement in America since its inception, and with good reason. There is no question that the Torah and the prophets place tremendous value on taking care of the poor and disadvantaged members of society. Numerous commands adjure us to look after their welfare.<sup>1</sup> Central among these is the *mitzvah* colloquially referred to as *tsedakah*. Its primary source is in the Book of Deuteronomy, chapter 15:

If there be among you a needy man, one of your brethren, within any of your gates, in your land which the Lord your God gives you, you shall not harden your heart, nor shut your hand from your needy brother. But you shall surely open your hand unto him, and shall surely lend him sufficient for his need in that which he lacks. Beware that there be not a base thought in your heart, saying: 'The seventh year, the year of release, is at hand'; and your eye be evil against your needy brother, and you give him nought; and he will cry unto the Lord against you, and it will be a sin for you. You shall surely give him, and your heart shall not be grieved when thou give unto him; because for this thing the Lord your God will bless you in all your work, and in all that you put your hand.<sup>2</sup>

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In addition to the formal commands, reproofs chastising Israel for its treatment, or mistreatment, of the poor is a constantly recurring motif in the prophets throughout Israel's spiritual decline and exile.<sup>3</sup> Amos criticizes the religious hypocrisy of those who meticulously observe the Sabbath and holidays while engaging in dishonest business practices and neglecting the needs of the poor:

Hear this, O you that would swallow the needy, and destroy the poor of the land. Saying: 'When will the new moon be gone, that we may sell grain? And the Sabbath, that we may set forth grain? Making the *ephah* small, and the *shekel* great, and falsifying the balances of deceit. That we may buy the poor for silver, and the needy for a pair of shoes, and sell the refuse of the grain?' The Lord has sworn by the pride of Jacob: Surely I will never forget any of their works. Shall not the land tremble for this, and every one mourn that dwells therein? Yea, it shall rise up wholly like the river; and it shall be troubled and sink again, like the river of Egypt.<sup>4</sup>

Jeremiah explicitly tells us that God will punish us for this sin:

They are waxen fat, they are become sleek; yea, they overpass in deeds of wickedness; they plead not the cause, the cause of the fatherless, that they might make it to prosper; and the right of the needy do they not judge. Shall I not punish for these things? says the Lord; shall not My soul be avenged on such a nation as this?<sup>5</sup>

Ezekiel identifies the abuse of the poor as the cause for which the city of Sodom was destroyed, "Behold, this was the iniquity of your sister Sodom: pride, fullness of bread, and careless ease was in her and in her daughters; neither did she strengthen the hand of the poor and needy."<sup>6</sup> In the second temple era, Zechariah is still chastising them for their neglect of the poor as a cause of exile:

Thus has the Lord of hosts spoken, saying: Execute true judgment, and show mercy and compassion every man to his brother. Oppress not the widow, nor the fatherless, the stranger, nor the poor; and let none of you devise evil against his brother in your heart. But they refused to attend, and turned a stubborn shoulder, and stopped their ears, that they might not hear. Yea, they made their hearts as an adamant stone, lest they should hear the law, and the words which the Lord of hosts had sent by His spirit by the hand of the former prophets; therefore there came great wrath from the Lord of hosts. And it came to pass that, as He called, and they would not hear; so they shall call, and I will not hear, said the

Lord of hosts. But I will scatter them with a whirlwind among all the nations whom they have not known. Thus the land was desolate after them, so that no man passed through nor returned; for they laid the pleasant land desolate.<sup>7</sup>

Indeed, in the *haftarah* that we read Yom Kippur morning, Isaiah connects our concern for the poor with our ultimate redemption:

Is not this the fast that I have chosen? to loosen the fetters of wickedness, to undo the bands of the yoke, and to let the oppressed go free, and that you break every yoke? Is it not to deal your bread to the hungry, and that you bring the poor that are cast out to your house? When you see the naked, that you cover him, and that you hide not yourself from your own flesh? Then shall your light break forth as the morning, and your healing shall spring forth speedily; and your righteousness shall go before thee, the glory of the Lord shall be your rearward. Then shall you call, and the Lord will answer; you shall cry, and He will say: 'Here I am.' If thou take away from your midst the yoke, the putting forth of the finger, and speaking wickedness. And if you draw out your soul to the hungry, and satisfy the afflicted soul; then shall your light rise in darkness, and your gloom be as the noon-day. And the Lord will guide you continually, and satisfy your soul in drought, and make strong your bones; and you shall be like a watered garden, and like a spring of water, whose waters fail not. And they that shall be of you shall build the old waste places, you shall raise up the foundations of many generations; and you shall be called the repairer of the breach, the restorer of paths to dwell in.<sup>8</sup>

Yet, all of the beautiful rhetoric from the prophets offers little to help us choose a specific policy or course of action in the present day. To be sure, the philosophy that blames the laziness of poor for their own poverty and forswears any attempt to help them would not be acceptable.<sup>9</sup> However, in what way is one expected to support the poor? Should Jewish social justice organizations be lining up people to vote for universal health care, or raising money to help people pay for it on their own? Is it better to hand out money on the street and volunteer in a local homeless shelter, or to make donations to the Jewish Federation, or to a soup kitchen? Must a Jew advocate extensive governmental involvement? Is an expansive welfare state a mandate of the prophets? The Bible offers scant evidence to make this decision, yet so often, each organization, with its own agenda, will put forth these same verses as absolute evidence that you must support their cause.

## *Talmud*

Where *Torah Shebikhtav* leaves off, *Torah Shebe'al Peh* begins. While the Bible alone does not provide a clear mandate for how to care for the poor in modern times, a careful analysis of the *mitsvah* of *tsedakah* in the Talmud, through the *rishonim* and *aharonim*, will provide a much broader range of insight, showing that *halakhah*, in fact, has a great deal to say about this question. Indeed, we will see that the tools of *lomdus*, conceptual analysis, often thought to be of only scholarly relevance, will be the key to seeing how the *halakhah* relates to this hotly debated contemporary issue.

The relevant passage in the Talmud is a line that appears in both *Bava Batra* 8b and *Ketubot* 49b, which informs us that “Rava compelled R. Nathan bar Ammi to contribute four hundred *zuz* for charity.”<sup>10</sup> The line emerges in the context of various financial obligations, such as supporting one’s wife and children, which the court has the power to compel one to pay. While court-enforcement of charitable giving ostensibly suggests a predilection for a government-run welfare state, from this one line in the Talmud it is not immediately clear from where the court derives that power and what tools are legally at its disposal to enforce its will on the reticent citizen.

## *Rambam*

The Rambam provides us with the conventional wisdom on what legal compulsion normally means within the Talmudic context:

One who does not want to give to *tsedakah*, or who gives less than is fit for him to give, the court may compel him and give him lashes until he gives that which they have assessed he should give, and they may confiscate his property, and take that which it is appropriate for him to give, and they may take collateral for *tsedakah* even on the eves of the Sabbaths.<sup>11</sup>

The Rambam cites both corporal punishment and confiscation of property—the two tools that would normally be at the court’s disposal in instances they are given coercive power.<sup>12</sup> While the means of coercion have been enumerated, the authority from which they derive them remains unclear. However, it will become elucidated through a question the *Tosafot* pose, challenging the conventional wisdom.

One may ask how he was able to compel him for *Tsedakah*, when its reward is written next to it, as it is written ‘[God] will bless you,’ and it is said in *Perek Kol Basar* (*Hullin* 110b) that any positive commandment whose reward is written next to it, the earthly court may not compel.<sup>13</sup>

## Tosafot

*Tosafot* take note of the fact that *tsedakah* does not seem to fit the rules laid out explicitly in tractate *Hullin* for when the court may coerce and when it may not. In the verses cited earlier, the Torah explicitly stated the reward one received for being engaged in *tsedakah*, and the court may not generally coerce us to follow such commandments.<sup>14</sup>

*Tosafot* in *Ketubot* offer three distinct possibilities to answer the difficulty they pose.<sup>15</sup> We will focus initially on the first and third: “We can answer that he compelled him with words.”<sup>16</sup> And “Another answer is that *tsedakah* [also] has two negative commandments, ‘Do not harden [your heart],’ and, ‘Do not shut [your hand].’ (Deuteronomy 15).”<sup>17</sup> In practical terms, these two answers are radically different. The former challenges conventional wisdom of what compulsion means, and limits the court’s power to that of persuasive argument. The latter challenges how we categorize the *mitsvah* of *tsedakah* vis-à-vis compulsion, but the conventional wisdom of what compulsion means remains intact. However, conceptually, they share a deep similarity. Neither one challenges the basic premise of the question. Underlying each of these answers is the assumption that how the court compels the giving of *tsedakah* must be explained within the same rubric as how the court compels any other *mitsvah*.

## Ritva

The *Ritva*, however, addresses the same question and answers it in a radically different fashion.

The explanation [for the compulsion] is on account of the law of *tsedakah*. Even though it is a positive commandment whose reward is written next to it, and we hold (*Hullin* 110b) that any positive commandment whose reward is written next to it, the court may not compel, that is talking about other commandments like honoring your father and mother and similar things, but with regard to *tsedakah* we compel on account of the needs of the poor people.<sup>18</sup>

*Ritva*’s answer challenges the very premise of the question. He holds that *tsedakah* does not follow the normal rules of when the court may coerce the observance of a *mitsvah*, and it doesn’t need to. The authority to coerce the giving of *tsedakah* does not derive from a general authority to coerce the observance of *mitsvot*, but from a unique feature of the *mitsvah* of *tsedakah*, namely its concern with the “needs of the poor people.”

The Ritva does not spell out explicitly the legal mechanism by which the “needs of the poor people” give the court coercive power. This basic approach was developed in far greater length among the *aharonim*, most notably in the *Ketsot Hahoshen*.

This appears to answer the question of Tosafot regarding the statement in the first chapter of *Bava Batra* (8b) that R. Ammi was compelled to give *tsedakah*, even though it is said (*Hullin* 110b) that in the case of a positive commandment whose reward is written next to it, the court may not compel. . . . As *tsedakah* has a lien on property, and one must give from it to *tsedakah*. It is the money of the poor people that you are holding onto, as if you owed them an actual debt. Therefore, we compel him to return to the poor people that which he owes them. Therefore, even though its reward is written next to it, it is certainly incumbent on the court to compel him to return that which he owes, since his property is mortgaged.<sup>19</sup>

In this passage, he spells out a completely different source of the authority to coerce than we saw in Tosafot. It is not religious coercion, but purely financial coercion. The court may enforce the giving of *tsedakah* in the same way it may enforce the collection of other debts and loans. The money is genuinely owed to the poor people, and the court is merely returning that money to its rightful owner.<sup>20</sup>

Thus far, I have merely summarized the existing opinions, and have not innovated anything in the understanding of this *sugya*. The question of whether *tsedakah* is a *mitsvah* (primarily a religious obligation), or a *shi'abud* (primarily a financial obligation) is a well-known *hakira* in *lomdus*. However, as we analyze further, we shall see that, far from being merely a theoretical matter, this *hakira* that will open the door to understanding how social justice ought to be implemented in the modern context.

If one of the approaches we have discussed in *Tosafot* is the correct interpretation of the Talmudic passage, and *tsedakah* is essentially no different from any other religious obligation, it militates strongly against the notion of Judaism supporting a robust government-run welfare state. Even according to the answer that grants the court powers beyond mere persuasion, it would have no bearing on today's courts and today's governments. It was dealing only with a theocratic government that possessed the power to coerce the observance of any number of religious commands. This no more grants the American government power to coerce us to support the poor than it grants them the power to coerce us to circumcise our sons, keep kosher, or put on *tefillin*. Supporting the poor, in this view, is the responsibility of all those who

feel themselves religiously or morally bound to do so, but it is not within the purview of a secular government.

### *Ketsot Hahoshen*

The approach of the *Ketsot Hahoshen*, however, would have drastically different implications for modern times than the approach of the *Tosafot*. The ability to compel people to pay their debts is a readily acknowledged power of even the most secular of governments. If the Torah is telling us that we owe an actual financial debt to the poor people to take care of their needs, then as Jews we should argue that the government has the obligation to engage in massive wealth redistribution.<sup>21</sup>

On a practical level, both approaches have their advantages and disadvantages. While the approach of the *Ketsot Hahoshen* may ensure that the poor will have their basic needs taken care of, it does nothing to ensure a society committed to altruism and generosity. People under this system have no reason ever to want to give more than what is minimally required of them. On the other hand, under *Tosafot's* system, when working properly, people feel duty-bound to give. There is religious meaning in the very act of giving. While it may lack the safety net for when people fail to live up to their religious responsibilities, when they do, the resulting society will be more ethically virtuous than under the system of the *Ketsot Hahoshen*.<sup>22</sup>

Let us now turn to the second answer of *Tosafot*, which we omitted earlier.

Alternatively, the residents of the city had agreed to give a certain amount per month, and therefore he was able to compel him [physically], as it says in *Bava Batra* (8b) that the residents of a city are permitted to remove someone who does not follow its agreements.<sup>23</sup>

### *Tosafot's Alternative Answer*

This answer also rejects the premise of the question that the compulsion of *tsedakah* must follow the rules for the compulsion of any other *mitsvah*, but does so in a very different way than the *Ritva* did. For this opinion, our passage in the Talmud is not providing us with any deep metaphysical insights about how the Torah structured the *mitsvah* of *tsedakah*. It is telling us about the social contract of a specific town. Societies have a right to collect money to support the things they value, and therefore no further justification for compulsion is required than the prior agreement of the majority of those living in the society. This is the most textually-supported read of the passage, as

the line Tosafot quote about cities having a right to enforce their rules is found on the very same page in *Bava Batra*. In addition, this answer is the most obviously relevant to people living in democracies. In commanding *tsedakah*, the Torah is telling us we need to value supporting the poor, but is not endorsing a specific method of doing so. The latter is fundamentally a political question, not a religious one. It is left up to the individual members of each society to determine for themselves what will work best in their particular scenario. Some cities may be able to get by on purely voluntary contributions. Others may require massive government involvement. In still others, some blend of the two may work best. Any of these systems would constitute a fulfillment of the Biblical command of *tsedakah*, so long as the needs of the poor are actually taken care of.

### *The Role of Lomdus*

From the foregoing analysis, we see that a conceptual understanding of the *mitsvah* of *tsedakah* is crucial to understanding how the prophetic mandate to support the poor ought to be implemented in modern times. The proper agenda of Jewish social justice organizations ultimately rests on whether the *Tosafot* or the *Ritva* has a better read of a Talmudic passage. Alternatively, if the second opinion in *Tosafot* is right, we learn an important lesson that political questions are often meant to remain political questions. To be sure, our politics are informed by our religious values, but vastly different political orientations can all reflect the same basic values. Those values would certainly be better served by setting aside the extravagant claims about which welfare bill or healthcare plan the prophets would have wanted us to vote for, and instead rationally explore the evidence for the efficacy of each particular approach.

## NOTES

1. See Exodus 22:24-26, Leviticus 19:9-10, and Deuteronomy 24:10-15.
2. Deuteronomy 15:7-10. All Biblical translations within this essay are taken from the old JPS translation, with my own minor amendments.
3. In addition to those cited, see Isaiah 3:13-15, Jeremiah 2:34, Ezekiel 22:29-31, and Amos 2:6.
4. Amos 8:4-8
5. Jeremiah 5:28-29
6. Ezekiel 16:49
7. Zechariah 7:9-14
8. Isaiah 58:6-12
9. In fact, this philosophy is rejected almost explicitly in the *Midrash Tanhuma* on

*Parashat Behar* sec. 2:

What does it mean, ‘Do not rob the destitute (Proverbs 22:22)’? How can a person rob the destitute? What would he steal from him after he already has nothing? Rather, if you were accustomed to supporting him, and you would go back and ask, “When will it be enough already?” and you diminish what you give to him, if you do this, know that you are robbing him (translation my own).

10. All Talmudic translations in this essay are taken from the Soncino Babylonian Talmud.
11. Rambam, *Mishneh Torah*, “Laws of Gifts to the Poor,” 7:10.
12. The Talmud does explicitly mention confiscation of property in regard to *tsedakah* on the same aforementioned folio in *Bava Batra*. While corporal punishment is not explicitly mentioned in connection with *tsedakah*, imposing lashes is a power the court is regularly assumed to have. See BT *Shabbat* 40b, *Yevamot* 52a, *Ketubot* 45b, *Nazir* 23a, *Menahot* 70a, and *Hullin* 141b.
13. Tosafot *Ketubot* 49b s.v. *Ahfei Rava*. See also Tosafot *Bava Batra* 8b s.v. *Ahfei L’Rav Natan*.
14. The logic of this seems to be that if the Torah went out of its way to state a reward, it is, on some level, giving us the option to forgo the commandment and forgo its reward.
15. Tosafot in *Bava Batra* offer a fourth possibility—that the Gemara in *Hullin* is dealing with the question of when a *Beit Din* can punish and not with when it can coerce. This answer, as well, presumes that the Gemara in *Hullin*, as initially understood, would create a problem for the simple read of the Gemara about *tsedakah*.
16. *Tosafot* ad loc.
17. *Tosafot* ad loc. 18; Ritva, *Ketubot* 49b.
19. *Ketsot Hahoshen*, 290:3 (translation my own).
20. While this approach is being cited in the name of the *Ketsot Hahoshen* because he wrote about it at the greatest length, he was by no means the first to suggest it. See the commentary of the Radvaz on the aforementioned passage in Maimonides. Indeed, this approach may be already implicit in the *Midrash Tanhuma* cited in note 4, which referred to the failure to give *tsedakah* as “stealing from the poor.”
21. This approach also has a certain theological attractiveness, as it eliminates God’s responsibility for poverty in the world. God created the world in such a way that every person owns whatever he or she needs to survive. The only reason for abject poverty is that rich people hoard money which is not rightfully theirs, thereby, in essence, stealing it from the poor.
22. It is difficult to understand exactly how Maimonides conceptualizes the *mitsvah* of *tsedakah*, and far greater space than I have here would be required to treat it fully. However, it may well be that he incorporates both of these elements. As mentioned earlier, he enumerates two methods of coercion: confiscation of property and lashes for rebelliousness. While confiscation of property is a common means of enforcing financial debts, lashes are applied almost exclusively in the religious realm. It may then follow, that by incorporating both of these into how the court may enforce *tsedakah*, he is telling us that there are two components to the mitzvah of *tsedakah*: a financial debt, perhaps at the level of a minimal safety net, and a religious duty to give beyond that.
23. *Tosafot* ad loc.