

Triage: Setting Tzedakah Priorities in a World of Scarcity

Noam Zion

Hartman Institute in Jerusalem, Israel

The Principle of Scarcity versus Faith in God

Gender Discrimination: Comparative Shame and Relative Vulnerability

Lfi kevdo – “According to one's Individualized Social Status or Honor”

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To Each according to one's Social Needs:

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Noam.zion@gmail.com www.haggadahsrus.com

Triage: Setting Priorities (TB Ketubot 67a-b)

Definition: tri·age

Etymology: French, sorting, sifting, from trier to sort, from Old French —

1 a: the sorting of and allocation of treatment to patients and especially battle and disaster victims according to a system of priorities designed to maximize the number of survivors

1b: the sorting of patients (as in an emergency room) according to the urgency of their need for care

2: the assigning of priority order to projects on the basis of where funds and other resources can be best used, are most needed, or are most likely to achieve success.

IF AN ORPHAN IS GIVEN IN MARRIAGE SHE MUST BE GIVEN NOT LESS THAN FIFTY ZUZ.

IF THE PURSE [of community tzedakah funds] **HOLDS SUFFICIENT FUNDS,** SHE IS TO BE FITTED OUT IN ACCORDANCE WITH THE HONOR OF HER POSITION. (Mishna Ketubot 5:6)

Tzedakah is about triage, about allocating inadequate resources in the face of competing but legitimate demands to meet human needs. The basic Talmudic premise preceding all choices of one beneficiary over another is scarcity. Thus, the key phrase of the mishna that introduces the basic Talmudic discussion of tzedakah is: “**IF THE PURSE** [of community tzedakah funds] **HOLDS SUFFICIENT FUNDS.**” For the Rabbis, the evaluation of sufficiency actually begins with the assumption that we are *not* commanded to give all we have, because first we must take care of our own needs.¹ Rabbinic tzedakah is not based on self-sacrificing altruism as is Christian charity. So in allocating funds to the needy one first confirming the giving capacity of the donor assumes the principle that one’s own needs come before those of others. Subsequently, the next of kin are to be supported. Only when their needs are satisfied, then are donors obligated to make contributions to the communal tzedakah, distributed to orphans and the poor.¹

The sufficiency question also assumes that regardless of our prayers and praises for God as the open-handed source of all sustenance, we cannot rely blithely on God to feed the

¹ Maimonides: “And this is the reason for *let your kin live with you* (Leviticus 25:36), that it is a positive command to keep him alive, and from this verse have we been commanded concerning the preservation of life as a positive commandment.

And from here they said (in the Midrash Sifra): *Let your kin live with you.* Ben Petura interpreted this verse as applying to two people who were traveling on the road, and one had a canteen of water. If he drank, he would [survive to] get to civilization, but if both drank, both would die. Ben Petura interpreted, ‘It is better that they both should drink and die, and the one should not see the death of his fellow.’

[Ben Petura maintained this] until Rabbi Akiba came and taught: ‘*Let your kin live with you, your life comes before your fellow's life.*’ [Ben Petura then] changed his view and stated, ‘*Let your kin live with you* by giving them support and careful attention.’”(citation missing)

people, provide for the weddings of all of God's creatures, and replenish the donor's wealth. For the Rabbis, the individual and the community must make decisions about priorities given the needs before us and based on what we have here and now, and possibly what we think we can collect – without relying on miracles. It would seem to me that charity, understood in the Christian sense as a freely given act of mercy, intrinsically has no hierarchy of preference. Charity is not a matter of duty, nor an act of justice in which there is a potentially wrong choice of preferring someone over someone else. Christian sources – with the exception of the tradition of Aquinas – devote little thought to this question. However the Rabbinic legal tradition devotes lengthy discussions to these issues, as do all public policy bodies today. Many, but perhaps not enough, private donors try to establish criteria in their distribution of available charitable funds as well.

A Personal Quandary: How to Pick My Beneficiaries?

To enter the spirit of the ancient Rabbinic debates on setting tzedakah priorities, we might do well to listen to the personal dilemma of the Protestant philosopher of ethics and theology, Nicholas Wolterstorff. He offers us a quietly gripping and yet humorous portrayal of his annual quandary as a donor. As a philosopher, he tries initially to give a rational account of his choices, just as an Aristotelean thinker might demand of oneself. A few rules of thumb emerge but in the end he is always defeated in his attempt to conduct his charity accounts in fully rational or just ways.

“Suppose one has some good that one wishes to distribute and that there are a number of persons for whom it would be a good. For example: come Christmas, I give gifts to those to whom I am especially **attached - family and friends**. The children on my block are not much different from my own children; nonetheless, I don't give them gifts. And my neighbor is not much different from my friend; but I don't give him a gift either. We all agree that there is nothing unjust in this sort of partiality. When selecting Christmas gifts for my children, my attention is focused entirely on doing my best to insure that they will more or less **equally prize the gifts I give them**; the thought that I am giving presents only to my children and not to the children on my block never crosses my mind.”ⁱⁱ

So far so good. Wolterstorff uses his common sense to prefer his family over others, while not preferring one child over another. He does not want to show favoritism in his gifts as Jacob did in giving his coat of many colors to Joseph. That would be unjust and unwise. Here he has ignored the more radical sayings of Jesus who denies any preference for his biological family over his brotherhood with his disciples:

“While he was speaking to the crowds, look, his mother and his brothers and sisters stood outside, seeking to speak with him. Someone said to him, ‘Look, your mother and your brothers and sisters are outside, seeking to speak to you.’ He answered the one who spoke to him, ‘Who is my mother and who are my brothers?’ Extending his hands to his students, he said, ‘Look, my mother and my brothers and sisters. Whoever does the will of my heavenly father, that one is my brother and sister and mother.’” (Matthew 12: 48-50)

Here Wolterstorff also avoids favoring the delinquent son over the faithful one as the parable of the prodigal son (Luke 15) is usually read. That son is profligate, wasteful, ungrateful and irresponsible, yet when returning to his father, he gets a big welcome

home party like nothing his older, hardworking and loyal brother ever got. Rather, Wolterstorff behaves according to the well-known Roman adage later absorbed into Christian folk wisdom: “charity begins at home.” For him attachment is morally intuitive. His preference for family first is wholly in concert with the rabbinic principle of choosing one's kin first.

However, beyond the circles of attachment how does one set priorities? Obviously Wolterstorff assumes that he does not have sufficient funds in his purse for all the worthy causes:

“Well, suppose that I am seated at my desk, getting ready to write out checks for my end-of-the-year charitable contributions. Over the course of the year I have sorted out the appeals for funds that came my way, filing those from organizations that seemed to me to serve a worthy cause and to be needy of funds, and tossing the others into the wastebasket. Now I open my file and find that I have collected appeals from thirty organizations, to none of which I feel any particular attachment.

As I am wondering how to proceed, the Aristotelian paradigm comes to mind. I conclude that what it tells me to do is rank these organizations in terms of some combination of worthiness and need; and then proportion my contributions accordingly. Then justice [according to Aristotle] requires that one distribute it equally or proportionately among those persons unless one has some morally relevant reason for excluding some or giving some less; and a morally relevant reason will always consist of some morally relevant difference between the included and the excluded. What makes a distribution unjust is that it is a departure from **equality** or proper **proportionality** that cannot point to a morally relevant difference. [Otherwise] there is no reason; the distribution is arbitrary.”

Wolterstorff, now taking the part of the Aristotelean rationalist, turns to a deliberative method that the Rabbis also practice. Justice and tzedakah debates both seek to be judicious, practical and universalizable – moving from particular cases to general principles, rather than deducing from a few rational truths. Wolterstorff begins by raising his standards of rationality to avoid arbitrary decisions:

“But it occurs to me that I have been almost entirely passive up to this point. I have made no attempt to search out needy and worthy organizations. I have simply taken the appeals that arrived in the mail and sorted them into two categories. But surely there are many needy and worthy organizations that happen not to have had me on their mailing list. Is that a morally relevant reason for treating them differently from those that did have me on their list?

I return to asking myself whether I should follow the Aristotelian paradigm for the organizations whose appeals I have kept. Should I rank them in terms of some combination of worthiness and need and then proportion my contributions accordingly? For no particular reason I decide that this year I don't want to spread my charity thin in the way that this would require. I will select just a few, four or five perhaps, and concentrate my charity on them.

Now I have to select those few. I carefully re-read the brochures in my file, this time looking for anything I can seize on as a **morally relevant reason** for tipping my decision one way or another. After several hours of this, I find myself paralyzed; I cannot choose.”

Wolterstorff is now defeated. He abandons rationally relevant reasons and moves to arbitrary preferences based on idiosyncratic connections to himself:

“So in desperation I assign numbers to the various organizations and make my choice by rolling dice. Or perhaps I hit on graphic design as the deciding factor and give my money to the five organizations whose brochures strike me as the most attractive. Or perhaps I notice that a few of these organizations list the members of their board of directors; I find this apparent openness appealing and decide to give my money to them. Or I notice that four of them have their home offices in my state; that tips me toward them. Or I recall that I visited Africa in the course of the year and was very moved by what I experienced there, so I decide to give all my money this year to organizations that work in Africa. It's easy to go on in this vein and imagine other such ways of making my decision.

The Aristotelian principle has surely not been satisfied. In no case did I have a morally relevant reason for choosing as I did. In each case my choice was more or less whimsical and arbitrary.”ⁱⁱⁱ

Wolterstorff abandons the endeavor to set priorities but uses this *reductio ad absurdum* thought experiment to make plausible his larger claim that charity is not rational nor is it about justice in a rational sense, so no one can complain that they deserved but did not receive charity from me. Wolterstorff concludes that when it comes to charity, it is wholly discretionary and need not submit to any rule of justification for choosing one worthy cause over another.^{iv} It is not unjust to prefer one worthy or needy applicant and to pass them over others who are more worthy or needy, as long as they are honest and truly in some need.

While the notion of setting priorities in giving tzedakah may sound self-evident to moderns who are always planning and budgeting their lives in the most minute way, it is not characteristic, for example, of the Muslim principle of *zakat* as interpreted by some traditional schools of thought. *Zakat* in the Muslim tradition is given - **without setting any priorities** - equally² among the eight categories set by the Koran without any flexibility even if one group needs the help more. Obligatory *zakat* has a ritualistic aspect that cannot be modified based on relative need, at least according to the great medieval philosopher and codifier, Al-Ghazzali. While the rationale of *zakat* also has an aspect of rational benefit for the poor, its primary purpose is to express submission to God, not to benefit the needy.^v

In any case, for Rabbinic or Western rationalists, Wolterstorff's arbitrary approach to setting priorities regarding charity is thoroughly inadequate morally. Even if the individual gift may be given without thorough self-examination, certainly public policy set by governments or tzedakah funds cannot avoid these deliberations – hard as they may be. Tzedakah as just giving, unlike Christian charity, is based on positive

² "The payer of the *zakah* should divide the sum which he pays among the different groups of beneficiaries found in his home-town. To include all the different groups of beneficiaries is obligatory, which thing is proved by the words of God when God said, 'But *zakat* (*sadaqa*) is only to be given to the paupers and the poor, and those who collect them, and to those whose hearts are reconciled [to Islam], and those in captivity, and those in debt, and those who are on God's path, and for the wayfarers; - an ordinance this from God, for God is knowing and wise.' (Quran, Surah IX 60).... The payer of the *zakat* should divide it among them in **equal** or almost equal parts, and should allot to each one part. He then should divide each part into three or more equal or unequal portions." (Al-Ghazzali, *Ihya' `Ulum al-Din*, Book 5: *The Mysteries of Almsgiving*, Section II 5)

law and rational and moral criteria for prioritizing human needs. While the rabbinic deliberations devoted to thinking through this task are far from comprehensive, we have no moral right to avoid delving into this confusing challenge. In our Talmudic discussion in TB Ketubot 67-68 and in Maimonides' eight levels of tzedakah, we will learn several rules of thumb for weighing conflicts, though no one system. For example, removing or avoiding shame for the needy is a most crucial consideration in choosing a designee and a preferred mode of tzedakah. Helping the more helpless takes priority, while for Maimonides, helping those who can become independent is preferable.

David Miller, in his book *Principles of Social Justice*, argues that **relative need** is an adequate and applicable principle of justice by which to distribute limited resources rationally. That restates the mishna's notion that the community must try to provide enough for each person's needs, while struggling with the perennial challenge of "not enough" in the communal pockets to go around:

"If the need principle is one of strict priority for the most needy. We distribute according to need by going to the most needy first, helping them until their needs are no more urgent than the next group's, then addressing the remaining needs of both groups, and so on until our resources are exhausted."^{vi}

But is the need principle adequate by itself for those allocations?

"The strict priority view faces a challenge posed by the practice of **triage**. This is the practice, originating with military doctors, of dividing battle casualties into three categories: those who are so severely wounded that their chances of recovery are slight even with extensive medical treatment; those who are badly injured but who with limited medical resources can be saved and returned to active service; and those who will recover in due course without treatment. Under triage the second group is given priority even though their needs are not as great as the first group's (measured by distance from normal functioning). If time or resources run out, the most severely injured are left to die."^{vii}

To complicate these deliberations more, recall that besides the needs of individuals, from limited communal resources, there are other legitimate collective responsibilities: David Miller observes: "Besides meeting needs, we are called upon to recognize desert, or to invest in productive capital, or to protect the environment. It is not obvious that claims of [individual] need must always take precedence over these other demands."^{viii}

Individual need is not an automatic trump card of distribution of limited resources. Thus Wolsterstorff's quandary about settling rational priorities is not so easily settled by appealing to relative need as the Talmud does.

The Case of Ethiopia: Triage and Operation Solomon, 1990-1991

The challenge of setting priorities among disparate criteria for urgent care is notorious since it is so hard to compare apples and oranges in triage work. One of the amazing

conundrums of determining the order of redeeming captives was faced in Communist Ethiopia when the Jewish agency chief of operation Micha Feldmann needed to organize some 20,000 indigenous Jews, Beta Yisrael, who had been waiting for years for permits to make aliyah from Addis Ababa and escape the oppressive regime of the dictator Mengistu. These 20,000 had abandoned their agricultural villages, lost all their means of subsistence and come to the capital city with their whole families. Despite efforts to provide medical care and food, many were ill, and all feared that the Communists would close the gates on aliyah to Israel which they had barely opened in 1990 in exchange for Israeli material aid in their desperate battle against the resistance fighters. Further they all feared that the rebels would soon conquer the city and in the ensuing chaos many would be killed, raped and pillaged.

Micha Feldmann faced this challenge by engaging the local Beta Yisrael leadership in the process even though he reserved the final decision to himself as Israel's representative. He writes in his diary on Oct. 30, 1990:

“After the two meetings today [with Ethiopian government officials], I was brimming with confidence when I entered the schoolroom where we hold meetings every Tuesday with the community's representatives, the *kessoch* (priests) and the teachers. When I went into the round straw structure [a traditional mud hut built for the refugees in the Israeli embassy compound], those present stood up as a mark of respect. After greeting them, I started off by saying in Amharic, ‘Perhaps you know that recently a high-level delegation visited here, that conducted negotiations with the Ethiopian government and even met with President Mengistu Haile Mariam. Today we are seeing the first fruits of that visit and soon hundreds of *olim* will leave every month.’ Applause resounded on all sides. I was careful not to state an exact number, in order not to raise false hopes among those present.

After I told them of the agreements, I asked the community representatives to play their part by setting firm criteria regarding who has **priority to leave first**. For a second, there was total silence among the group. Not one of them had expected us to ask them to be **partners in deciding the order of departure**. After recovering from their surprise, the first to stand up was one of those longest in Addis, and he said, **‘The order of departure must be according to how long people have been in Addis Ababa.’**

Logical.

After him, one of those who had been expelled from Sudan [after escaping on foot hundreds of kilometers to Sudan, suffering hunger and exploitation and then being forced to return to the Ethiopia by Sudanese soldiers]. Rose. He said, **‘Those who expected to make aliyah from Sudan, who suffered there until being expelled and are now waiting here, deserve priority in making aliyah.’**

Logical.

And then one of the elders rose and said, **‘In Addis Ababa there are elderly and sick people, and if they do not make aliyah soon, they are likely to die here and never have the privilege of seeing Jerusalem.** They should have priority.’

Logical.

And then another. **"Many families have lost one of their dear ones [to illness or murder] and there are those who have lost more than one child. Such families should have priority."**

Logical.

But then one of the most respected *kessoch* rose and said, **"We, the *kessoch*, are suffering since we cannot lead the community here and at the same time it is**

difficult for us to keep the religious precepts here [especially the stringent laws of purity kept by Ethiopian priests]. So the kessoch must be sent first."

This claim did not sound particularly logical to me.

I was very disappointed, especially by the kessoch, who are supposed to be leaders of the community. Each one of the speakers only considered himself and so spoke on behalf of the order of priorities that would benefit him.

After a short consultation, we made the gathering an offer they simply couldn't refuse: of the forms that we present to the Ethiopian government in the future, **50 percent will be for families waiting in Addis according to seniority of stay, 30 percent will be for those who arrived from Sudan, 10 percent will be for the sick and elderly, and the remaining 10 percent will be those who have lost a family member** in Addis Ababa. In addition, **every month two kessoch will leave.**"

(Micha Feldmann, *On Wings of Eagles: The Secret Operation of the Ethiopian Exodus*, 241 – 243)

Micha explained that the percentages he proposed were based on the total number for each category in Addis and that he chose not to set one criterion above all the others lest he arouse the political opposition of those with families in the less urgent category. In addition Micha went beyond these criteria to put those mortally ill on planes over and above the regular quota of visas. *Pikuah nefesh*, saving a human life comes first.

In the end as the rebels closed in on the city the Jews of the USA paid a \$35,000,000 bribe to the Mengistu government as payment for the redemption of the last 14,000 Jews left in the city. On May 24-25, 1991, Israeli army planes arrived to perform the greatest airlift in history in one long day. 14,310 people in 40 journeys over 1560 miles within 24 hours – the longest, fastest, largest airlift in human history.

Happily the enormous bribe paid to the dictator of Communist Ethiopia which was deposited in the Ethiopian government bank account in New York did not end up in the hands of these murderous tyrants. Due to the long Memorial Day weekend, even though the money was transferred on Thursday, the officials did not come to claim it until Tuesday morning after the airlift was complete. In the meantime the rebel government liberated Addis on Sunday and then the US froze the assets and refused to pay out the money to Mengistu's cronies. The new government received the cash and in exchange they allowed the rescue of several thousand more Jews still stranded in Ethiopian villages after Operation Solomon.

The Principle of Scarcity versus Faith in God³

³ Since there are twenty-two words in the command to aid the poor, twenty-two years were added to the life of Binyamin HaTzaddik, who fulfilled this mitzvah. "A woman approached the Amora, Binyamin HaTzaddik during a year of famine and said, "Master! I am in need! Help support me!" "The fact is that the public funds are exhausted," he replied. "If you do not help me, a woman and her seven children will die." Binyamin proceeded to support her out of his own pocket. Time passed and Binyamin became ill... The ministering angels said, "Binyamin, who sustained a woman and her seven children, is about to die young..." Therefore, they added twenty-two years to his life. (TB Baba Batra 11)

The mishna's phrase – “not enough in the purse” – manifests one of the most important differences between Rabbinic and Biblical treatment of tzedakah, which is their **attitude to scarcity and abundance**. The world of the Torah offers a Divine promise that if you lend money or leave your land fallow, God will bless you (*bracha*).^{ix} However, the world of “Galut” – exile from Divine blessing, even if one still lives in Eretz Yisrael – is about limited resources, hence the need for triage, for setting priorities. The world of the Rabbis is envisioned as one of limited resources and therefore Rabbinic halakha, as David Hartman has taught, is premised on a **scarcity principle**, that generates **comparative claims regarding access to those limited resources**. Such access is not achieved by invoking absolute rights that trump all others, but by arguing the **relative merits of conditional claims** that must be weighed against each other.^x

Since Divine compassion is limitless, one could conceive of a model in which human beings in their attempt to imitate Divine mercy (*rakhmanut*) would be expected to exhibit limitless altruism, like Mother Theresa. By contrast, it is a **world of scarce resources, an imperfect world, an unredeemed universe**, which is the presupposition of this mishna about the orphan and in fact of this whole sugya as well as much of the Talmud. There is almost never enough time, money or energy to go around, so we must set priorities and indeed the Talmud deals with cruel choices, ultimately determining who will and will not receive, how much and under what circumstances. We have called this typical Rabbinic task “**triage**” which derives as we saw from its use, for example, in Israel by emergency workers prioritizing medical attention among the injured in a terrorist attack, in a large scale accident, or in an emergency room. A less urgent term would simply be "setting priorities in allocations." However the Jerusalem Talmud Peah refers to the laws of tzedakah as "**laws of life and death**," so the term "triage" intimates the seriousness of these decisions about allocations. The larger point made in the introduction to this book is that, in contrast to the Biblical vision of social justice witnessed in Leviticus 25 and Isaiah 58, the Talmud gets down to the nitty gritty of real life – confronting scarcity and setting priorities^{xi} – in order to implement biblical values in a world in which we do not have enough and cannot rely on miracles.

As we have seen, scarcity applies not only to money but to time and all other resources. A particularly unusual example of giving priority to an orphan is reported in the Ultra-Orthodox community in the wake of the Holocaust:

The Roving Suitor: “A young woman who was a Holocaust survivor, with a death-camp tattoo branded on her arm, tearfully told the Hazon Ish that the young man she had been engaged to, suddenly rejected her, and became engaged, instead, to another girl. The Hazon Ish sent for the parents of the second girl, and explained the situation to them: ‘You, as parents of your daughter, will surely find another suitable suitor, whereas the first girl is an orphan, with no one to be concerned for her welfare. Do this kindness, and tell your daughter to reject this young man, so that he might return to his first fiancée. Your daughter will surely find an even more suitable groom.’”^{xii}

This remarkable tale is in many ways atypical, not just because it occurs on the background of the Holocaust, but because who one marries is not often considered a fungible resource to be allocated by the need of the bride rather than by the subjective will of the groom. How can love be divided up in that rationalist way? In other contexts the Hazon Ish encourages trust in God (*bitahon*) especially by

devoting one's life to study and relying on Divine sustenance rather than working or doing business. Yet the Hazon Ish, Avrohom Yeshaya Karelitz, who is a Litvak, a Lithuanian rationalist Talmudist, from the school of Hayim of Brisk, treats the roving suitor case in a way typical of halakha which refuses to factor in reliance on miracles from God or on unpredictable human generosity when deciding this painful dilemma. In this case he does not reassure the rejected bride that she will be blessed with another *bashert* (Divinely-destined one) whose *hesed*, lovingkindness, will lead him to wholly overlook this permanent mark of shame sealed on her body. Instead he takes into account that this groom did like the girl and he would have married her but for this tattoo. It may well be that it is the parents who pushed him to drop her. So he weighs the probabilities of the tattooed bride and the untattooed bride finding an alternative groom. Once determined he determines who is more needy and more easily shamed, he urges the groom's family to help – out of *tzedakah* and *hesed* – the one with less options.

To evaluate *tzedakah* questions about “sufficiency of funds” in the *kuppah* one must confront one's degree of faith versus one's hard-headed realism. What does the mishna mean in saying that *yesh bakis* – there are sufficient reserves? If we never rely on Divine generosity, on our continued health and the economic viability of our current and future business or employment, then how can we ever think we have “enough in the purse” such that we can spend some of our resources on the needy? Does “sufficient funds in the purse” mean there is enough given the projected needs for the society for a year of orphan marriages or enough reserves in case of an unforeseen crisis? Or does it mean the balance in the *tzedakah* account is simply enough right now to pay the whole bill for honorable apparel for an orphan from a noble family, even if that empties the account temporarily? On the other hand, what if there is not even enough for the 50 zuz minimum for every bride?^{xiii} Should one borrow that 50 zuz to give to the orphan now?

What is considered "enough" was discussed by the medieval Talmud commentators who also faced real issues in their communities where they often served on the *tzedakah* fund “boards”. One important collection of medieval commentators is the **Shita Mekubetzet** which brings this view: “There is something in the purse” (*yesh bakis*) means ‘there are presently enough coins to support *this kallah* (bride) and others besides.’ This school of thought proposes that the usual annual budget for needy brides is covered, or at least that a reserve has been set aside if others apply. However, the **Meiri** in southern Provence takes a radically idealistic view with a theological orientation: “We do not cut back on this orphan *kallah*'s clothing allowance out of concern for financing future ones who may come... Let this one consume what she needs and let God provide for later," that is, God will provide for the next occasion.^{xiv}

Can a community build its welfare policy on the Meiri? On the other hand, if one follows the Shita Mekubetzet, can we ever be sure there is enough in the fund for unforeseen events in the future? This same issue is discussed in the Or Zarua who identifies the same debate in the Jerusalem Talmud on our Mishna Ketubot 6:5. There Rabbi Hanina learns from the mishna that the "*gabbaei tzedakah* must take out a loan to cover the needs of the poor when the *tzedakah* fund is lacking” – meaning that when there are no funds at all in the *kuppah*, not even for the basic 50

zuz for the regular orphan bribe, any such need requires taking a loan.⁴ But Rabbi Yossi says that the "*gabbai* tzedakah are not obligated to take out any loan to cover the needs of the poor when the tzedakah fund is lacking." Thus in the case "where a girl came before Rabbi Ammi and the *kuppah* was lacking funds he said: "Take it in its time" (*yishtabkun lmoada*)." That means: "wait until the regular time to collect tzedakah, but do not take out a loan now." However Rabbi Zeira challenged him: You⁵ might lose the mitzvah. In other words:

"If the *gabbai* dies before the time of the tzedakah collection, he will lose his opportunity to do the mitzvah of marrying off this orphan. Rather finish off this mitzvah now by borrowing the money ... From the fact that Rabbi Ammi did not contradict Rabbi Zeira's argument we learn that Rabbi Ammi followed the ruling of Rabbi Hanina and he borrowed the money and married off the orphan immediately. Therefore the halakha is that *gabbai* tzedakah must borrow money now to cover the needs of the poor and that is what appears correct to me the author." (Or Zarua, Laws of Tzedakah #27)

The question of borrowing to cover the municipal expenditures of the *kuppah* for the poor was a live issue in Amsterdam in the Spanish Portuguese *Kahal* (17th – 18th C.) that was famous for its welcoming of Spanish Portuguese refugees from persecution. The *Kahal* (community) had a strict rule: "The Mahamad (council) shall annually never spend more than the revenues raised by the Kahal (community) and the Imposta (import/export taxes). This rule is inviolable." Public expenditures (often 40-70% allocated to support of the poor, who often made up 50% of the membership) were not to exceed income. However the budget was often exceeded due to influxes of refugees (as the number of families supported regularly went from 100 to almost 800) and so communal capital was sold and loans were taken out to cover their expenses.^{xv}

For example, consider the following true story: In Chicago an old group of friends ran a Tzedakah fund called **Noah's Ark** to save people who are "drowning" in need. They once decided to modernize and hire a professional administrator. One man made a request to the *kuppah* and the administrator who felt the request was legitimate still turned him down because in fulfilling his need there would not be enough to cover the expected needs for the year. The board chastised the administrator: "If there is not enough, then it is your job to tell us that and to raise

⁴ "They say that Benjamin the Righteous was appointed to oversee the tzedakah fund. Once a woman came to them during the famine and said: Support, Master. He replied: I swear by the Temple worship that there is nothing in the tzedakah treasury. She said: Master, if you do not support me then a woman and her seven sons will die. He then got up and supported her from his own private funds. After while he grew ill and died. Then the angels pleaded before the Master of the World. Didn't You say: Anyone who maintains the life of one Jew it is as if one had maintained a whole world? Shall Benjamin the Righteous who kept this woman and seven children alive die with so few years [of life]? Immediately God tore up the decree." (TB BB 11a)

⁵ In JT Ketubot 6:5 "Rabbi Zeira says: You are causing a loss to her. But let her take all that is in the pot (*kuppah*). The Master of the festival is yet alive [God will yet provide]" according to Jacob Neusner's translation. Thus following the Meiri, the concern is not for the *gabbai* losing the mitzvah but for the orphan bride losing her husband or at least losing her face at her wedding.

more, not to tell the needy to look elsewhere.”⁶ That is also the view of Rabbi Yosef Karo:

“When the communal tzedakah purse is lacking, the *gabbai* should borrow now and repay the loan when the *kuppah* has funds, and the *gabbai* need not request from the usual donors permission to take this loan.” (Arukh HaShulkhan YD 257:14 citing YD 257:5)

Appendix: "The poor need your help today, not next week."^{xvi}

“Until the 1950s, Catholics continued to frown on the practice of **building charitable endowments**. In their view, funds were never sufficient to address current social needs; it was wrong to set money aside for future good works at the expense of the poor. They preferred to use their collective resources to open new institutions rather than to endow existing ones. Clergy and laity alike condemned as weak in faith those cautious parishioners who urged that charity projects be postponed until funds for their support were in hand. Most subscribed instead to an 1835 maxim of Catherine McAuley, founder of the Sisters of Mercy: **‘The poor need your help today, not next week!’**

The experiences of the 1930s led a few charity leaders to suggest that Catholics build endowments for their charitable institutions, but these proposals garnered little support before the 1950s. Boston's Archbishop Richard Cushing spoke for most Catholics when he counseled the staff of his charitable bureau in 1944:

"All money given for charity in the Archdiocese should be used as it comes along, without undue preoccupation with possible depressions or other future contingencies. Contrary practices ... may be good business; they are not, however, good charity. Money given for charity should be used and used immediately - for charity. The Archdiocese is big enough and generous enough to take care of crises should crises come."

⁶ **Beware of Organized Panhandlers:** In one community the needy collaborate to appeal to clergy for support. They rent a van, arrive in a group of five or six. One person is sent in to tell his sad story and get an allowance. If the compassionate rabbi gives one, say \$200, then the other five come in demanding no less in the name of fairness. Therefore the rabbi has decided to follow the Shita Mekubetzet and find out how many other are waiting in line for a handout before deciding how much to give to any one applicant.

Gender Priorities and Gender Discrimination: Comparative Shame and Relative Vulnerability

Next the Talmudic sugya presents a concrete issue of priorities not illuminated by the mishna. Given that both male and female orphans ought to be helped, who takes precedence when funds are short? Initially, the key criterion appears to be a matter of gender but still deeper assumptions and principles underlie this distinction. For example, how might you respond to a similar distinction:

“Many Americans believe it is worse for a woman than for man to experience relationship problems, but worse for man than for a woman to have career or job troubles.”^{xvii}

Should this gender stereotype serve as the basis for determining who should be supported by the community? Examine the Talmudic sources:

Our Rabbis taught:

If an orphan boy and an orphan girl applied for maintenance, the girl orphan is to be maintained first and the boy orphan afterwards, because it is the way of a man to go begging, but not the way of a woman to do so.

If an orphan boy and an orphan girl applied for a marriage grant, the girl orphan is to be supported so she can marry first and the boy orphan is supported to be married afterwards, because the shame of a woman is greater than that of a man. (TB Ketubot 67a)

In the Talmud very few rulings single out women as recipients of tzedakah, but where they are identified on a gender basis they are singled out for **preferential treatment or affirmative action** because of their greater vulnerability to the collateral damage of poverty and their relative lack of power to remedy their own situation.

The Rabbi taught: **When distributing the poor tithe, give to a woman first. Why? Because of disrespect (*ziluta*).**” (TB Yevamot 100a)

These Talmudic rules of thumb set priorities for distribution of aid between male and female applicants that could be considered controversial in contemporary society, for they involve **gender discrimination**. This term usually implies injustice to women, though it may also include deference to the “weaker” sex, as in “women and children are first to the lifeboats.” However, Nancy Hirschman in “Poverty and Morality: A Feminist Perspective”^{xviii} describes in detail how women have indeed been – in the past and in the present, in both traditional and modern societies – subject to greater social and economic disadvantages. These include: lack of education, primary childrearing responsibilities, lack of civil rights and political power, legal disabilities in property ownership and public appearance, religious sexism, prejudice against their character and intelligence, lower pay for the same job, lack of financial compensation for their essential tasks in child and elderly care and housework, violence and exploitation both economic and sexual, greater loss of economic status after divorce or widowhood. Hand-in-hand with these gendered disadvantages, men were called upon to show them greater care and deference – whether out of chivalry, compassion or paternalism – without giving them more freedom to decide on their own lives. Thus

perhaps when the Talmud suggests tzedakah priorities should take into account the applicants gender, it is out of a belief in corrective justice and empathy towards those individuals who are disadvantaged by the power structures of society.

Regarding tzedakah, women are positively preferred though that preference may be seen as insulting because it marks her as more socially and economically helplessness or emotionally vulnerability in a male society that honors autonomy and emotional stoicism. Thus, gender stereotyping in the Talmud is rightfully suspect. Still, there are positive values to be extricated from the way the Talmud speaks of women. Firstly, Biblical and Rabbinic law demands protection of orphans and widows not out of mercy but out of a strident demand for justice and the condemnation of their exploitation by those more advantaged. It is my view that in the realm of tzedakah allocations the Rabbinic priority accorded to women flows not so much from male paternalism and protection of their own honor manifest in the control of women nor primarily from a concern for doing justice to persecuted women (as in the Biblical and prophetic world) but chiefly from the Rabbinic sensitivity to shame and their realization that women are more vulnerable to shame than men. That principle of priority for women is then generalized to whoever (male or female) suffers greater shame and therefore whoever requires more immediate attention. Distribution of tzedakah is not a mark of honor that defines who is more or less worthy of praise and status but an index of how great one's need is and how helpless one is. Thus the law here recognizes that in response to a woman's greater dependence and vulnerability (as structured by law and society), she ought to be given preferential treatment in the distribution of tzedakah, to avoid her greater shame.⁷

To explore hypotheses about the preference given to women in access to organized tzedakah distribution by the *kuppah*, I will speculate now on the motivations for the Rabbis' prioritization⁸ of female recipients over male ones in two parallel cases presented in the Talmud : competing claims for maintenance payments (*parnasa*) and for a marital grant. Two explicit rationales are presented in the Talmud:

- (1) because it is the way of a man^{xix} to go begging, but not the way of a woman to do so.**
(2) because the shame of a woman is greater than that of a man. (TB Ketubot 67a-b)

⁷ Generally one can take at least four approaches to the controversial positions of the Talmud:

- (a) acknowledge that the sources are historically conditioned by a different era
- (b) raise the use of reverse discrimination or affirmative action that seeks to right previous imbalances by preferring the victims of discrimination
- (c) treat the generalizations not as prescriptive but descriptive, not as what ought to be but as responses to what was and how people saw that difference then
- (d) recall that we are dealing in cruel situations of triage and we need a rule of thumb based on stereotyped generalizations to establish priorities. Gender may be relevant given the kind of society we have, even if one might wish to change it.

⁸ "Three strategic moral priorities for resolving conflicts in the application of economic rights are: 1) The needs of the poor take priority over the wants of the rich; 2) The freedom of the dominated takes priority over the liberty of the powerful; 3) The participation of marginalized groups takes priority over the preservation of an order which excludes them." (based on the Catholic thinker, David Hollenbach, *Claims in Conflict*, p. 47 cited in Darryl Trimiew, *God Bless the Child That's Got Its Own: The Economic Rights Debate* (AAR #89)p. 251

The background for these dilemmas is the simultaneous functioning of two kinds of social welfare: begging at private homes and applying to the central municipal *kuppah*. Some Rabbis would prohibit any begging when there is a central tzedakah *kuppah*. ("One who goes door to door need not be helped" – Tosefta Peah 4:8). However, if the *kuppah* cannot supply all the legitimate needs, then everyone would agree that needy individuals may go door by door to ask individual donors who should give to them even beyond whatever welfare taxes the donors have already paid to the now insufficient *kuppah*. Presumably, both male *and* female orphans deserve to receive tzedakah and to get married, but the methods of tzedakah distribution might be different depending on how they respond emotionally and socially. Some methods, such as *kuppah* distributions by the *gabbai* are more attuned to the vulnerabilities of the recipient than others, such as door-to-door begging. In fact, begging may make things much worse for the poor – especially women – exposing them to exploitation, denigration of their reputations and hence inadvertently contribute to their inability to be rehabilitated through marriage.

These rationales for setting tzedakah priorities may be generalized as across-the-board principles, whatever the changing statuses and images of women may be. The first major principle is that the most accessible tzedakah – from the *kuppah* – should go to those **least able to help themselves**. In the case of gender discrimination, consider a society where men can find alternative means of support more easily than women - whether through employment or begging. Then men would be accorded a lower priority for *kuppah* subsidies, but a higher one at the threshold of the house. By the same token, a private donor faced with a female orphan beggar and a male one might reasonably turn the female away in favor of the male orphan, since she can apply to the *kuppah* where she takes precedence. Similarly in the contemporary West, a private donor may prefer to help the elderly beggar over the younger, healthier, more employable applicant for aid. One might prefer a starving illegal foreign worker who has no right to welfare subsidies from the government over a starving citizen who has recourse to state relief funds. Thus, rather than closer proximity or more serious disability, the key differential might be in preference by accessibility to alternative sources of income. Tzedakah goes first to those with **fewer alternatives**. That is how Judah HeHasid formulated the preference for employment to one with less skills over one with more skills:

“If you are about to hire a Jew to perform some work (*melakha*) for you and there are two candidates standing before you – one who can find alternative employment and one who does not know any other kind of work, then hire the one who does not know another kind of work.”^{xx}

The second principle of prioritization is learned from the second rationale: “**because the shame of a woman is greater than that of a man.**”^{xxi} A woman needs the tzedakah to support her marriage more than the man needs it, because it is a greater shame in society to be an unmarried woman than an unmarried man.

Appendix: A Woman's Greater Vulnerability to Shame: A View from Contemporary Muslim Egypt

While we have little access to the social or psychological world of unmarried women in the rabbinic world, we have a partially parallel phenomenon in contemporary Egyptian Muslim society where the asymmetry of men who can initiate marriage and women who cannot is similar to the halakhic model. Here is an exceptional interview conducted by Saba Mahmoud, a Muslim feminist scholar now residing in America, with Nadia, an Islamist teacher of religion to adult women, twenty and above.

Nadia said, "I don't know how it is in the United States, but this issue is not that simple here in Egypt. Marriage is a very big problem here. A woman who is not married is rejected by the entire society as if she has some disease, as if she is a thief. It is an issue that is very painful indeed.... If you are unmarried after the age of say late teens or early twenties, everyone around you treats you like you have a defect [*al-naqs*]. Wherever you go, you are asked, 'Why didn't you get married?' Everyone knows that you can't offer to marry a man, that you have to wait until a man approaches you. Yet they act as if the decision is in your hands! You know I did not get married until I was thirty-four years old: I stopped visiting my relatives, which is socially improper, because every time I would go I would encounter the same questions. What is even worse is that your [immediate] family starts to think that you have some failing in you because no man has approached you for marriage. They treat you as if you have a disease."

Nadia paused reflectively for a moment and then continued: "It's not as if those who are married necessarily have a happy life. For marriage is a blessing, but it can also be a problem. For there are husbands who are cruel: they beat their wives, bring other wives into the same house, and don't give each an equal share. But these people who make fun of you for not being married don't think about this aspect of marriage, and only stress marriage as a blessing. Even if a woman has a horrible husband, and has a hard married life, she will still make an effort to make you feel bad for not being married."

I asked Nadia if single men were treated in the same way. Nadia replied resoundingly, "Of course not! For the assumption is that a man, if he wanted to, could have proposed to any woman: if he is not married, it's because he didn't want to, or there was no woman who deserved him. But for the woman, it is assumed that no one wanted her because it's not up to her to make the first move."

Nadia shook her head again, and went on, "No, this situation is very hard and a killer, O Saba. You have to have a very strong personality for all of this not to affect you because eventually you also start thinking that there is something deeply wrong with you that explains why you are not married."^{xxii}

The social and psychological pressure on women in such traditional societies is so great that social shame may utterly destroy their self-esteem and hence their ability to function, to maintain their sanity and their moral dignity.

Given the Talmudic assumption that a woman's vulnerability to shame is greater, one may generalize from this case of marriage to poverty in general. Poverty puts one in a vulnerable position, so **whoever is more vulnerable needs priority in receiving help**. For example, the shame of the newly poor is worse than that of the permanently poor who are already used to begging. Thus the Rabbis understood that the Torah gave precedence to an *ani* (poor) over an *evyon*, meaning someone who is "destitute"

(Deut 24:14). Rashi explains that the *evyon* is more persecuted than the *ani*, yet the verse demands support for the *ani*, the poor, first, because the poor are embarrassed to ask for tzedakah even though they are in need, while the *evyon*, the destitute, have become accustomed to shame and do not blush to ask for support” (TB Baba Metzia 111b).^{xxiii}

The refusal to give poor women help through the *kuppah* may drive them, in particular, into ever-more dangerous and humiliating situations. Women in traditional and often in modern societies too are more dependent financially on men in their family and on male social opinions of their behavior, so they might suffer more passively if not helped, yet they often bear greater responsibility for their children or younger siblings which adds to their urgent need for tzedakah or any other income obtained in any way.

Four dangers may be identified:

- (1) Refusing to give tzedakah through the municipal fund means the woman will be forced to beg in the street. While she may be more successful at this than a man since people tend to feel compassion for female beggars, she will also feel greater social shame and therefore we prefer to save her that embarrassment which is greater than that of a man in our society. Greater shame and social dislocation may cause permanent psychological damage and demoralization, so we should prefer to extend the communal funds to the **more emotionally vulnerable**.⁹

Given this emotional vulnerability it is scandalous that some welfare regulations in the USA actually exacerbate poor women's shame rather than lightening the load of their social indignity. For example, some guidelines discriminate against unwed mothers by forcing them to take low paying jobs in order to get welfare supports necessary to care for their children, even though they are then shamed for leaving their children at home unattended when they go out to work. Stereotyping of single mothers as **lazy and duplicitous “welfare queens”** living off the system has redoubled the welfare agencies' requirement that they produce extensive and repeated legal documentation of their dependence though as working mothers they must then miss work and pay additional childcare costs to procure the documentation.^{xxiv} Such stereotypes are also behind women being required to take marriage education courses under the conservative policies of President George Bush, even though men are not subjected to anti-domestic violence training. In short, welfare support can be delivered in ways that aggravate humiliation rather than enhancing compassion for their social shame as needy women.

- (2) If women go out in the streets, they may be exposed to violence and rape. Knowing this, many women cannot or will not beg and as a result they

⁹ “If there are many plaintiffs before the judges – give priority in time to the case of the orphans and the widow, as it says: *Judge the orphan, argue the case for the widow* (Isaiah 1:17). So the case of the widow precedes that of the scholar [on the court docket] which in turn precedes the case of the uneducated people. The case of the women precedes that of the man because a woman's shame is greater (TB Yevamot 100a).” (Maimonides, Laws of Sanhedrin 21:6).

will simply die. Thus the principle of **greater physical danger** applies to the woman forced to beg.^{xxv}

For example, in Megillat Ruth, the classic Biblical tale of aid for the needy, it is women – specifically destitute widows with no property or male protectors – who are forced to rely on male patronage in a dangerous society. The wealthy, powerful, older male landowner, Boaz, sees Ruth, the foreigner gleaning in his field, and he is immediately aware of the danger posed to her welfare by his own unbridled male farm workers. He tells this unattached alien woman that *I have ordered the men not to molest you* (Ruth 2:17). He not only advises her to stick close to his “maidens,” but he also lets her know that he has charged his men to leave her alone. Boaz is proactive, minimizing her vulnerability almost before we the readers are conscious of a threat of violence against migrant women. Boaz meets the problem by preempting it, not by blaming the victim’s exposure as a provocation of young men. He admonishes *his* men, rather than coming on to the scene after something terrible has already happened.^{xxvi} But while the women in the Book of Ruth need men for their political, economic, legal and physical advantages, the women also know well how to rely on themselves and how to get the men to take initiatives for the poor, vulnerable and foreign, those who they would otherwise ignore.¹⁰

- (3) A woman who goes into the streets to find livelihood is also likely to become “a woman of the streets” – a prostitute exploited by a pimp – and then she will not be easily rehabilitated socially even if her economic situation were to improve by an inheritance, say. In other words, a woman is to be preferred in tzedakah distributions because of a **principle of greater exposure to irreversible damage**. Following the same rationale, the Shita Mekubtzet, the early medieval Ashkenazi Talmudic compendium, says that we help the woman to get married first since in the rabbinic world it is men who initiate marriage proposals. Therefore, if the female orphan has received a proposal for marriage, we dare not postpone providing her the necessary funding, lest the husband-to-be change his mind. A male orphan can wait since it is his initiative to propose marriage,^{xxvii} but a woman’s missed opportunity to marry may more likely be irremediable. “Strike while the iron is hot” and don’t delay the marriage grant.

The concern for women by the male establishment maybe paternalistic or then it may be self-protective for the established classes threatened by potentially seductive or anarchic behavior of the destitute. Whether to prefer poor women or poor men would then depends on their relative ability to threaten social stability:

¹⁰ In an approach not hinted at in the Talmud at all, the contemporary social action movement “Girl Effect” recommends prioritizing giving to women in the underdeveloped world because paradoxically they who are most discriminated against, most abuse and least powerful on formal criteria, have the greatest effect as **change agents** with the smallest amount of investment of resources. “Adolescent girls are capable of raising the standard of living in the developing world. Girls are the most likely agents of change,” reports the Girl Effect website. “The Girl Effect is the transformational possibilities that lie in supporting the physical, emotional, and intellectual needs of girls in developing countries.”

(4) On a societal level, streetwalking women who will become an attraction to men pose **a greater danger to society**^{xxviii} since it may lead to a moral breakdown of society, typical of periods of poverty and migration.^{xxix}

In prioritizing the needs of competing applicants, a pragmatic and thoroughgoing socio-economic analysis of society is a *sine qua non*. That principle lies at the root of what we see in the Spanish rabbi, Yisrael el Nakawa's insistence on appointing only experts on tzedakah to the roles of *gabbai* for only they know the realities of the needy within their nuanced economic and societal context:

"Tzedakah may not be distributed by a committee of less than three scholars who are kosher, trustworthy, righteous, energetic and know all these issues and all these types of poor. Otherwise if they do not know all the **conditions** that I have explained regarding tzedakah, then one better reject them for the collection of tzedakah... That is what God commanded - to give tzedakah to each adequate for their lack, but the text did not clarify how much is adequate for their needs, so the transmitters of tradition [oral Torah] received and taught the measures of tzedakah." (Yisrael el Nakawa, *Menorat HaMaor*, Tzedakah Gate #7)

Appendix: A View from Ireland:
The Shame of a Man is Greater
than the Shame of a Woman (*Angela's Ashes*)

Consider this example from 20th C. Irish poverty in which the man has more dignity to protect and therefore more to lose – in his own eyes.

"Dad can't get any work. He gets up early on weekdays, lights the fire, boils water for the tea and his shaving mug. He puts on a shirt and attaches a collar with studs. He puts on his tie and his cap and goes to the Labour Exchange to sign for the dole. He will never leave the house without collar and tie. **A man without collar and tie is a man with no respect for himself.** You never know when the clerk at the Labour Exchange might tell you there's a job going at Rank's Flour Mills or the Limerick Cement Company, and even if it's a laboring job what will they think if you appear without collar and tie?

... That's what he tells Mam by the fire and when she says, Why do you dress like a proper workingman? He says he'll never give an inch, never let them know....

When he's not looking for work, Dad goes for long walks, miles into the country. He asks farmers if they need any help, [and tells them] that he grew up on a farm and can do anything. If they hire him he goes to work right away... Mam knows he had a day of work. She hopes he might think of his family and pass [by] the pub [without entering it] even once, but he never does. She hopes he might bring home something from the farm, potatoes, cabbage, turnips, carrots, but he'll never bring home anything because **he'd never stoop so low as to ask a farmer for anything.** Mam says 'tis all right for her to be begging at the St. Vincent de Paul Society for a docket for food but he can't stick a few spuds in his pocket. **He says it's different for a man. You have to keep the dignity. Wear your collar and tie, keep up the appearance, and never ask for anything.** Mam says, I hope it keeps fine for you." (Frank McCourt, *Angela's Ashes*, 94-95)

Frank's father often drinks up the whole welfare dole, so Mam says:

“She's going to the Labour Exchange on Thursday to stand in the queue to take the dole money the minute it's handed to Dad. He says she can't do that, he'd be disgraced with the other men. The Labour Exchange is a place for men not for women taking the money from under their noses.

She says, Pity about you. If you didn't squander the money in the pubs I wouldn't have to follow you. He tells her he'll be shamed forever. She says she doesn't care.

On Thursday Mam follows Dad to the Labour Exchange. She marches in behind him and when the man pushes the money toward Dad she takes it. The other men on the dole nudge each other and grin and **Dad is disgraced because a woman is never supposed to interfere with a man's dole money**. He might want to put sixpence on a horse or have a pint and if all the women start acting like Mam, the horses will stop running and Guinness will go broke. But she has the money now.” (Frank McCourt, *Angela's Ashes*, 78)

Shame, Social Honor and Human Dignity (*Kevod Habriot*)

In placing the relative need of a female orphan ahead of that of a male one, the Talmud enunciates the criterion that greater shame means greater urgency in access to tzedakah funds. Shame is the obverse side of honor and these two intertwined issues are at the heart of our discussion in this book on tzedakah and human dignity. There are several concepts of honor mixed in this sugya.

[1]. There is **class honor** that belongs only to the social hierarchy and it is unequally distributed along the sliding scale of relative pedigree. The orphan from a “good” family, with a good reputation based on an aristocracy of wealth and social regard has greater shame because of her fall in status. Like other aristocratic societies, most people in the Talmudic period are not included in the social registry of “good families.”

[2]. Further honor is may be defined here negatively as **the class of the more easily shamed** – in our case, women. Most women do not partake of class honor, but they must have some sort of honor or else they could not be shamed. While some say her shame is in fact the shame of her male relations whose honor is tied in to her, I believe the Rabbis are sincere when phrasing certain kinds of honor and shame as belonging to the woman herself. Paradoxically the more vulnerable to shame, the more one is a creature of honor. People without “class” cannot be shamed because in theory they have no self-respect and no sense of behaving beneath their standing.

[3]. There is also a third kind of honor - *kevod habriot*, literally translated as the “honor of creatures.” Often that is understood as “human dignity” as an inborn or, more precisely, “in-created” characteristic of Divinely-fashioned human beings, products of God's Creation. “Human dignity” is often described as objective and universal, pre-social or natural. Everyone partakes of such honor, called dignity. However this dichotomy of pre-/post-social dignity is too sharply drawn and absolute for an illuminating analysis of these texts. “Human dignity” is not good translation of the Rabbis term *kevod habriot* which means they understood the honor of the human

creature to be a particularly *social* concept. For example, indignity is a social disgrace exposed in public. When a man or woman must go begging door to door, they are demeaned by their economic dependence on others for their survival needs. By collecting tzedakah through a public committee and then distributing it with discretion and secret giving, much though not all of the public humiliation of dependence is removed. Even by appearing before the tzedakah committee, a poor person dressed in rags is shamed. Therefore, according to Rav Huna (TB Baba Batra 9a), those shamed by their external dress ought to be clothed immediately even without conducting a background check. Such money not only supplies material needs but obviates the necessity to be socially denigrated by the public collection of tzedakah.

The link between shame and clothing was already introduced by the Mishna Ketubot 6:5 which opened our Talmudic sugya on tzedakah. The mishna describes the vulnerable situation of a daughter engaged to be married and yet still living at home. Here her stingy father refuses to sponsor her clothing allowance, perhaps because she will soon be leaving the family abode following her upcoming marriage. Yet the husband also refuses to buy her clothing, since his material obligations to her only begin after she comes to live with him, and perhaps he is peeved by this stingy father-in-law who shames him by shaming his wife. The father stipulated when arranging the marriage that he would “enter her into marriage naked” – without a clothing trousseau – and her husband replied defiantly: “*Only* when I bring her into *my* house, will I cover her with *my* clothing” even though legally they are married from the moment of engagement (*kiddushin*). The language of the mishna suggests that this male dispute over “covering” the body of a woman - their own daughter and wife - is about her shame, not just theirs. Her public shame is incurred by wearing used clothes while still residing in her father’s home and then moving through the public space into her husband’s house still “naked,” awaiting her husband’s belated clothing allowance.

Her husband’s shame is before his father-in-law who refuses to clothe his daughter properly, so should the husband cover his wife’s shame he will expose his own shame. Here the Rabbis step into the family squabble and coerce the husband to clothe his bride at the expense of his pride in order to alleviate and avoid her shame. This appears in the mishna just before the mishna stipulates the obligation of the community to help marry off and probably clothe the orphaned bride. **Prevention of shame is the subtext of tzedakah from the get-go.** It is contextualized in the mishna within a highly gendered battle of two men contending for their own male status as constructed around and achieved at the expense of a victimized woman.

The Talmud conceives of all human beings as social beings who are therefore intensely concerned with their honor and terrified of being humiliated in social situations. This is especially related to matters of tzedakah and emotional or economic dependence. While human dignity is perhaps universal, human shame and hence human honor are still very social phenomenon and so they are experienced differently by people with different genders and social standings. Those differences can be quantified "objectively" in the social context of a particular society and translated into a legal scale of varying monetary values. Such values were assigned by Jewish law to damages inflicted on one's honor which resulted from demeaning acts such as rape, assault and battery or insulting words. Damages for shame vary by both the victim's and the perpetrator's social standing.^{xxx} So too, one's entitlement to tzedakah is determined by the differential shame factor for unmarried orphan girls and by the

differential social honor factor for marital grants to orphans (*lfi kevdo*). In other words, some people's feelings can be hurt *more*. This consideration, the differential of shame,^{xxxix} which applies to people who have fallen from a higher social status as well as to unmarried women, is a legitimate criterion for setting tzedakah priorities – depending on the resources available.^{xxxix}

Now Peter Berger,^{xxxix} the Jewish sociologist,^{xl} has argued for a seminal distinction between **human dignity** (which is egalitarian and typical of democratic societies) and **social honor** (which is differential and typical of traditional and especially aristocratic societies). He maintains that only in the past was differential social honor considered an objective commodity which varied by the social status and was quantifiable when damaged in cases of insult. That notion is exemplified in the rabbinic texts on shame:

“And the indignity experienced by a great person (*gadol*) is not the same as the indignity experience by an unimportant person (*qatan*), or the child of great-ones who experiences indignity is not the same as the child of unimportant-ones who experiences indignity.”
(Tosefta Baba Qama 9:12)

But Berger also insists that 20th C. Western law does not acknowledge insults as legally actionable forms of objective injury because societal consciousness has changed and dignity is now primarily about human dignity, *kvod habriot*, not social honor. However it seems to me premature to conclude that Western societies are no longer **shame cultures** with differential categories of honor and powerful codes of vengeance for hurt pride. Honor still a social phenomenon differing from one social standing to another, not a merely universal existential one. Therefore tzedakah should still be non-egalitarian in its sensitivity to different social standings. In the realm of gender the differentials of honor are still very much with us

Much feminist thought has shown that women and men are still deeply embedded in shame and honor cultures, each gender with a different code of conduct. Such gender identities are essential to understand how people function, so the Rabbis do us a service by trying to describe shame and gender patterns and then taking into account women's special vulnerabilities in setting tzedakah priorities. Their response is not about reforming society, but about meeting felt needs generated socially conditioned feelings. In my judgment tzedakah is not distributed by the Rabbis in order to shore up honor and class distinctions for systemic reasons, but simply to treat the individual's shame as it is. Men also feel shame intensely, and perhaps their public roles and their competitive situations make them more susceptible to the ups-and-down of social honor in the Rabbinic era. But they also have less capability for remedial action. Women have both more shame and less autonomy to regain their honor by competing with the one who has shamed them.

Therefore the Rabbis have decided on a kind of **affirmative action** for these women whose cumulative shame has evoked their response. They give poor women precedence in access to the most gentle and supportive form of tzedakah delivery – the *kuppah*, while poor men must fend for themselves more. The characteristic innovation of rabbinic tzedakah is to see the need to mollify people on the basis of greater vulnerability to shame, to realize that there is an **economic component both to shame and to honor and make that a basis for entitlement to aid as a recognized human need.**

Lfi k'vdo – “According to one's Individualized Social Status or Honor”

In the Bible there is no legal acknowledgement of the social hierarchy of the needy. One does not receive according to one's former social station. When the Torah says that one should give to the poor according to "their individual needs" (Deuteronomy 15:8), it does not mean that the rich have more kinds of needs or need a higher quality satisfaction of needs to bring them back up to their former social standing. Everyone is brought up to a basic level supplying whatever basic needs human beings have. The Biblical law mandates a **society of brothers** in its legal provisions, even though the historical reality described in the Bible reveals informally delineated classes defined by wealth and later by royalty. While there is no insistence that everyone remain at an equal level of income, there is an ideal of starting with the same starting point (land and freedom, i.e., one's labor is one's own to sell), maintaining a brotherhood of mutual help and taking care of the most needy who are not only neglected but often exploited. However, no one in the Biblical world would dream of defending the “right to a higher lifestyle” of the well-born.^{xxxv}

But rabbinic law, by stark contrast, is founded on a non-idealistic social hierarchy which many legal frameworks recognize in terms of economic worth. In our mishna:

SHE [the orphan to be married off] IS TO BE FITTED OUT IN ACCORDANCE WITH THE HONOR OF HER POSITION [*lfi kevoda*].

The honor of the orphan girl belongs to her in so far as every orphan has a right to a dowry and an opportunity to marry. Any orphan may suffer the shame of being unmarried which implies an injury to her social self-respect, her human dignity. Female orphans suffer more than male ones in this regard. However there is also an added category of honor – differential honor – “according to her honor.” This may refer to her family's status, rather than her achieved status, yet it is still attributed to her as “*her* honor,” and does not seem to be a function of her dead parent's honor. Similarly, the poor male child of a rich family has a claim to honor based on his family, for being connected to a family *is* one's identity.

Marriage law reflects this concern for maintaining social status in public situations according to her traditional "social honor." Our mishna refers to a marriage according to her honor and later mishnayot in Tractate Ketubot refer to clothing allowances^{xxxvi} paid by the husband according to his/her honor.^{xxxvii} In the same spirit, damages for being publicly-shamed are assessed differentially according to the status of the victim, as for example when a chef ruins the food of a wealthy customer at his wedding.^{xxxviii}

In the Graeco-Roman world each person's standing in social honor may be individualized according to their achievements. Part of one's status was ascribed by one's familial honor which may have accumulated over generations. Family in this sense meant lineage or house, rather than the modern conception of a nuclear family. “Although honour was a personal quality, its aura extended over the household and connections by blood and marriage: a man's family was part and parcel of his social persona.”^{xxxix} In the traditional Roman world there was no ideal to stand on one's own as a "self-made man", but rather one sought intentionally to live up to the ideals and the standing of one's family and not to embarrass one's ancestors whose images were

often found in the Roman house. Some of this Roman ideology was shared by Jewish elites whose concern for the orphan's social standing was equally a concern for her whole family maintaining their dignity as well as the dignity of the ancestors who would be ashamed to see how poorly their descendants had maintained their honor, just as they would be honored to see individual descendants marry well and add more honor to their family name.

In the case of women in Rabbinic law, David Hoffman points out that a widow who desires to live in her dead husband's house and does not wish to return to her father's home is entitled to provisions and a place to live – “in accordance with *her* honor” – that is, according to the honor *her* social station dictates (Mishna Ketubot 12:3). Hoffman argues persuasively against the view of “much of the anthropological literature on honor [that] proposes that women do not possess honor independent of the men in their lives. Rather, women simply reflect shame or honor on men by virtue of their chastity. This is not the case in rabbinic sources, nor does it seem to be the exclusive dynamic in Roman sources.”^{xl} This anecdote seems to be the exception that proves the rule:

“Caecilia... a lady of the greatest distinction, who, although she has a brilliant father, illustrious uncles, and a most distinguished brother, nevertheless, so remarkable is her virtue that, as much honor as she draws from their dignity, she, woman though she is, in turn confers upon them no less distinction from the praise bestowed upon her.”^{xli}

Rabbinic literature stipulates that women have a right to the damages to their own honor. David Hoffman notes:

“According to the rabbinic law of damages, a woman who was shamed in the course of an injury was entitled to keep the fine that was assessed for humiliation. It was *her* shame, not her husband's or her father's, and consequently, it was her money.” (Mishna Ketubot 6:1)^{xlii}

Thus, the determination of her social honor may reflect her former socio-economic status^{xliii} as the daughter of a “good family.”^{xliiv} Other hierarchies of honor relevant to Jewish society in this period may be derived from her family's level of sanctity in the Temple-based genealogical ladder of priest-levi-yisrael.^{xlv} Or perhaps the status is one achieved by study of Torah by her male relatives. The Rabbis held that a high priest who is ignorant is on a lower level than a *mamzer* who is a great scholar.^{xlvi}

Rewriting the Social Ladder

Peter Berger has commended modernity where it has dispensed with social hierarchies of honor and replaced it with social equality based on universal human dignity. The Rabbis, however imagined a different utopian solution to the inequities of a social ladder. They imagined in their midrashim on the world-to-come an idealistic hierarchy of honor constructed in direct opposition to the earthly one based on money and pedigree. In one unique midrash the Rabbis imagined honor being paid in diametric opposition to the earthly distribution of honor. In this portrayal of a future, heavenly Garden of Eden, there is still an extremely hierarchal institution for distributing merits and demerits but it is determined on moral merit rather than on

economic or political advantages. The system of the heavenly ladder of **differential honors** is analogized to that of royalty.^{xlvii} This Rabbinic fantasy is not an egalitarian idyll, but it is utopian in that status is not determined by birth or by achieved wealth as in this-world's social life, but by righteousness. In one later midrash^{xlviii} there is an elaborate description of the circles of heaven in which one's honor depends in part on one's performance of tzedakah in this-world. Level two in the midrash is reserved for those righteous who have never taken other's funds; level three, for faithful school teachers; level five for tzedakah officials (*parnasim*) and other community leaders who have acted faithfully and not arrogantly; and **the highest level – seven – is reserved for the poor and for true converts to Judaism**. In this-world the poor lack economic status and often lack the pedigree of "good" Jewish stock, and the converts lack genealogical sanctity as well. But this midrash values inner qualities and the disadvantaged poor and the converts will eventually receive their due, repaid in Heavenly honor. In this futuristic midrash, the hierarchical social order is imaginatively reversed but not leveled.

While that midrash imagines compensating people without regards to social status, the rabbinic law for tzedakah based on one's previous social standing actually reinforces this worldly social hierarchies and even maintains them through public funding. **The function of Rabbinic tzedakah is conservative, non-egalitarian and non-revolutionary** which is itself a radical difference from the social world reflected in and recognized by Biblical law. The rabbinic world reflects not only a different social order than the Bible, but a different understanding of human needs. Differential social status is constitutive of human need and therefore a social welfare system should not be purely egalitarian if it wishes to treat each individual according to their social needs, that is, "to each according to their social needs."

As we complete our analysis of the seminal mishna of our Talmudic sugya on tzedakah, we have already identified three fundamental principles that underlie the Talmudic policies of social welfare:

First, **society must act *in loco parentis* for the needy** unable to support themselves and lacking in natural support systems usually provided by family networks. This extension begins with declaring the court "father of orphans" but often extends to a responsibility to address *all* of the poor's needs under the umbrella principle of *dei mahsoro*, *enough* to cover their needs in a broad definition of the needs of a fully human life.

Second, society seldom has *enough* resources relative to the pressing needs (*im yesh bakis*). **Limited in its resources for welfare, society's ethical task is to set priorities**. Relative vulnerability to shame is a primary consideration in tzedakah entitlement, such that women and those poor with a privileged socio-economic background have a claim to more resources to alleviate their embarrassment and satisfy their social needs.

Third, **tzedakah should be individualized - "to each according to their need" – including their social needs.**¹¹ Egalitarian values as such – equal

¹¹ In Josephus' autobiography we find a remarkable description of his generous and nonjudgmental hospitality which shares the same individualized criterion of tzedakah that we have seen in the Rabbinic world based on Deuteronomy 15:8: *to each according to their needs in that which they lack:*

rights to material resources – are not a Rabbinic concern. The existing social hierarchy and the economic system are not subjected to a critique the way they are in the Bible when the Jews had an independent political-economic entity on God-given land. The prophetic critique has been supplanted by greater pragmatism. Utopian demands for the overhaul of the system have shrunken to local communal structures. The focus is on the destitute individual with sensitivity to their subjective needs and their emotional makeup in a world in which economic dependence threatens human dignity.

As we continue to follow our Talmudic sugya on tzedakah, we will delve in the next chapter into a controversial debate regarding the Rabbis' sensitivity to the lavish "needs" of the formerly rich who are on the dole.

ⁱ All these issues will be further explored in Book Three of this trilogy that deals with the motivations of the donor.

ⁱⁱ N. Wolterstorff, *Justice in Love*, 210-213

ⁱⁱⁱ N. Wolterstorff, *Justice in Love*, 210-213

^{iv} “Our concern here is solely with those cases in which the distribution of some good to one or more parties is not required by justice but is an act of pure generosity - cases in which none of the recipients would have been treated unjustly had no distribution been made. Refusal to make the distribution might reflect poorly on the character of the person who declines the opportunity to be generous; but it would not constitute wrongdoing to anybody.” (N. Wolterstorff, *Justice in Love*, 209)

^v *The Mysteries of Almsgiving Book 5 II 3*

#3. The first purpose of the law is pure devotion not affected by personal considerations or desires.... The main purpose of the law is **the trial of man through action, in order that he may show his servitude and bondage to God by means of acts which [in themselves] have no rational meaning.** For acts which [in themselves] have rational meaning are transacted by the aid of the mind which urges man to do them. Consequently, rational acts do not reveal man's complete servitude and bondage to God. **Real bondage to God, however, is revealed through [blind] obedience to His commandments and not through obedience for some other reason....** regardless of whether or not they are agreeable to him and irrespective of his desire and inclination to obey them. .. The second purpose of the Law is a rational benefit rather than pure devotion.

^{vi} David Miller, *Principles of Social Justice*, 215

^{vii} Miller, *Principles of Social Justice*, 215

^{viii} Miller, *Principles of Social Justice*, 213

^{ix} The superabundance of blessing helps quell the realistic or pessimistic or faithless, as you wish, responses of potential donors to observing laws that put them at financial risks. For example, the three year period of

“At this time it was that two great men, who were under the jurisdiction of the [Jewish] king [Agrippa], came to me out of the region of Traconitis, bringing their horses and their arms, and carrying with them their money also.

And when the Jews would force them to be circumcised, if they would stay among them, I would not permit them to have any force put upon them, but said to them, ‘Everyone ought to worship God according to his own inclinations, and not to be constrained by force; and that these men, who had fled to us for protection, ought not to be so treated as to repent of their coming here.’ And when I had pacified the multitude, **I provided for the men that were come to us whatever it was they wanted, according to their usual way of living, and that in great plenty also.**” (Josephus, *Vita* 112- 113 translated by William Whiston)

(The language though translated from Greek into English represents events that occurred in Hebrew or Aramaic under the Judean cultural domain in Eretz Yisrael. It echoes the Biblical and Rabbinic phraseology of tzedakah and suggests that the norms of hospitality parallel the norms of support for the poor even if they are not physically present in one's home as guests).

the last Sabbatical of the 49 year cycle and then the Jubilee 50th and then the first year of planting which will replenish the storehouses on at the harvest, means one who refrains from agricultural work for two years running must live off their storehouses or the natural produce of the 49th and 50th year for three years. Hence God must promise extraordinary blessing to one's crops (Lev 25:18-22). These two years of nonproduction are also years when the poor have free access to your land to garner what they need and that too is an enormous test of faith to let go of one's possession. Similarly in Deut 15: 1—6 the lender is asked to lend at no interest to the poor and still allow the cancellation of unrepaid debts on the Sabbatical. So God promises the lenders will be blessed by God and besides they can gouge the foreign nations with uncancellable high interest loans that will make up for the loss of profit and the losses from loans to poor Jews.

^x **Order of Priorities in Distributing Scarce Tzedakah Funds:**

Tanna Devei Eliyahu 25

"Is it not to share your bread [with the poor]" (Isa 58:7)

How is this done?

If a person has lots of food in his/her house and wants to make them into tzedakah in order to support others, how does s/he do it?

One supports one's father and mother first, and if there is leftover, one supports one's siblings, and if there is leftover,

one supports the members of one's house, and if there is leftover,

one supports one's extended family, and if there is leftover, one supports one's neighbors, and if there is leftover,

one supports the people on the street, and from then on, one can give tzedakah to all Israel.

Shulhan Arukh Yoreh Deah 251, paragraph 9

If there are lots of poor, and there aren't enough funds to support them all or to redeem them all (from captivity), the order of priority is kohen, levi, yisrael, a profaned priest, one who doesn't know his paternity, a foundling, a child of an illegal union (mamzer), a descendant of the Gibeonites, a stranger, a freed slave.

When does this apply, when they are all equal in wisdom, but if the mamzer is a sage and the kohen gadol is an ignoramus, the *mamzer*-sage takes precedence.

(Rema: Even a sage who needs clothes takes precedence over an ignoramus who needs basic sustenance.

The wife of a sage is like a sage.)

Shulchan Aruch: Whoever is greater in wisdom comes first. One's rabbi, or one's father who is a sage comes before one who is even greater in wisdom.

Shakh 251:11 (Shabbetai Meir haKohen 17th century Lithuania)

"Even a sage who needs clothes"

It seems that this was the law, but in our times... we do not push away the saving of a life, and it is... the one who needs basic sustenance who is given precedence.

Responsa of Hatam Sofer 46

The order of priority in tzedakah:

The poor of your town take precedence over the poor of another town. That is, people who have lived there 12 months and now 30 days even if they were not born here, take precedence over those who were born here but who live in other cities. **For God did not determine this according to birth, but according to the poor who are currently before us.**

The poor of the land of Israel take precedence over poor outside of Israel--explanation: one who has already fulfilled one's obligation with the poor of one's own town and wants to give to the poor of another town, since s/he is sending his/her tzedakah to a different city, Israel takes precedence over the poor of outside the land....

Furthermore, I say, the poor of the land of Israel who have always lived there, or who settled there in their wealth but became poor there, receive precedence. But poor people who traveled there from outside of the land who know that they don't have enough to live on and are depending on tzedakah which is brought there from other places, we are not obligated to give them precedence over the poor of outside the land, even though settling the land is a mitzvah and is considered the equal of all of the other mitzvot.

In any case, if before you there are poor people without bread or clothing and another poor person who wants to fulfill a mitzvah--even tefillin or tzitzit or lulav or the like--it is simple that the **ones lacking bread come before the other one's mitzvah.**

Similarly, the poor outside the land who need support, why should we give precedence to this one so that he can fulfill the mitzvah of living in the land of Israel. Should it fall upon the poor of outside the land to

assist them in fulfilling the mitzvah of living in the land of Israel? (Translated and collected by Jeffrey Spitzer, Gann Academy, Boston, MA)

^{xi} For further exploration of **Jewish orders of preferences**, see: The Pecking and Rescuing Order - T.B. and T.Y. Horayot 3:7-8; Mishna Horayot 3:7-8 and Gemara Bavli, Yerushalmi ; Maimonides Laws of Gifts to the Poor 8:7 and Shulchan Aruch Yoreh Deah 251: 3, 7-12; T.B. Baba Metzia 71a – “the poor of your city take priority”; T.B. Gittin 61a – the poor gentiles and the way of peace

^{xii} *Peer HaDor*, Vol. IV p. 72 as related by Rav Zvi Kagan

^{xiii} In the Jerusalem Talmud Ketubot 6:5 we find the original form of this disagreement which depends on how we parse the Mishnaic text. Rabbi Hanninah explains the Mishna's phrase, "**SHE MUST BE GIVEN NOT LESS THAN FIFTY ZUZ,**" followed by a period. So even if there are not sufficient funds, the tzedakah officials *must borrow* enough to give each at least 50 zuz. Beyond 50 zuz, they do not borrow, but they give whatever they have according to the status of the orphan's family of origin. But Rabbi Yosi puts a period after the word "purse": **FIFTY ZUZ IF THERE ARE SUFFICIENT FUNDS IN THE PURSE** But if there is not enough for 50 zuz each, then there is *no obligation to borrow*. One simply splits what there is among the needy even below 50 zuz per person.

^{xiv} Based on the Ketubot in the Jerusalem Talmud

^{xv} Tirtsah Levie Bernfeld, Financing poor relief in the Spanish-Portuguese Jewish community in Amsterdam in the seventeenth and eighteenth centuries" in *Dutch Jewry*, 64-66

^{xvi} Mary Oates, "Faith and Good Works: Catholic Giving and Taking" in *Charity, Philanthropy and Civility in American History*, edited by Mark McGarvie and Lawrence Friedman., 296-297

^{xvii} Candace Clark, *Misery and Company: Sympathy in Everyday Life*, 113

^{xviii} Nancy Hirschman in "Poverty and Morality: A Feminist Perspective" in W. Galston, *Poverty and Morality*, 134 ff

^{xix} In the Tosefta Ketubot 6:8 the language is different than the Mishna. The Tosefta speaks of "a male orphan that can (*yakhol*) beg door to door in any location, and a woman who cannot beg in any place (incapable)."

^{xx} Sefer Hasidim #1210 cited in Yitzhak Baer, "HaMegama," 210. Note that are different editions of Sefer Hasidim with divergent numbering systems.

^{xxi} When funds are limited, tzedakah priority is given to the needy by gender. However in the judicial system one would expect no admixture of gender preference. Just as the judge is supposed to judge blindly without regard to the economic or social status of the litigants ("*You shall not be partial in judgment; hear out low and high alike. Fear no human, for judgment is God's.*" - Deut. 1:17).(See Maimonides, Mishne Torah, Book of Judges, Laws of Sanhedrin 21:1-3). However the order of inviting the litigants to be heard and judged may take relative shame and degree of need into account as well as social honor. As Maimonides rules:

"If there are many litigants before the judges, give the order of precedence to hear first the case of the orphan before the case of the widow and her case before the case of the scholar and the scholar's case before that of a plain Jew, and the case of woman before that of a man" – for a woman's tears fall more easily and her pain is greater" (Maimonides, Mishne Torah, Book of Judges, Laws of Sanhedrin 21:6; see Isaiah 1:17; see TB Sanhedrin 8a and Tur Hoshen Mishpat 15:1-2, but many commentators can find no Talmudic basis for Maimonides' ruling)

^{xxii} Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject*, 169- 170

^{xxiii} In point of act there does not seem to be consistent distinction in useage between these various terms for the poor in Biblical or Rabbinic literature, even though the insights made by attempting to make distinctions are very illuminating even without their purported philological base.

^{xxiv} N. Hirschman, "A Feminist Perspective," 145-149

^{xxv} J.S. Mill also noted that women were more liable to physical and sexual abuse and that men believe they have "a right to inflict almost any amount of corporal violence upon their wife or their children." Morning Chronicle, The Law of Assault, between 1846-1851 cited in N. Hirschman, "A Feminist Perspective," 134 ff

^{xxvi} Lori Leftkowitz, *Valuing Giving: The Book of Ruth* by, Kolot at Reconstructionist Rabbinical College, 26

^{xxvii} Interestingly the Braita does not give priority to men here as it does in Horayot when it comes to honoring men and rescuing men first. The chief concern of Tzedakah is not to reinforce the male social hierarchy but to help the weak.

^{xxviii} The Rabbis explicitly mention the "greater shame" of the unmarried orphan for her priority status in receiving support for the tzedakah fund rather than in going door to door to beg. One might interpret that as a sensitivity to the emotional need of the orphan or anxiety by society to control the orphan

girl's potentially shameful behavior. Though there is no evidence for such a reading in this Talmudic context. It is curious that in 17th-19th C. Italy that was a major motive for involuntary institutionalizing/incarceration of unmarried or even uncontrollable young women. Even women who had "dishonored their families" could be incarcerated in such poorhouses by their parents. The first institutions for the poor were only for the morally vulnerable poor – orphans and widowed or unmarried women. (Sandra Cavallo, "Charity as boundary Making: Social Stratification, Gender and the Family in the Italian States (17th – 19th C.)" in Joanne Innes and Hugh Cunningham, editors, *Charity, Philanthropy and Reform* (1690s-1850), p.111, 115)

^{xxxix} The Hatam Sofer argues that issues of setting priorities are often so difficult that " they cannot be decided absolutely by strict Torah law or something close to that, rather one must compare and find analogies however partial. May God give us wisdom and reveal the wonders of the Torah so we shall not stumble.."

^{xxx} TJ Ketubot 27d, TJ Baba Kamma 8:3-6

^{xxxii} See Avishai Margalit on *The Decent Society* in the appendix. He define the obligation to one's citizens not by supplying all basic human needs but more minimally by the negative principle - not humiliating people.

^{xxxiii} "The variable of shame, / *bushah* challenges us to realize that efforts at simplification in the realm of suffering should be tempered with a profound awareness of the complexity of this experience. One cannot really translate suffering into quantitative monetary terms even though efforts to alleviate suffering and deprivation are, to a large extent, dealt with in that way." Tzvi Marx, "Priorities in Zedakah and their Implications," *Judaism* Vol. 28:1 1979, p. 83

^{xxxiii} "Modern-day Westerners' dealings with family members incorporate elements of reciprocity with complementarity. Ideally, we believe family members should take care of one another "no matter what." In practice, people weigh their kin's actions and feelings toward them. The tide of public opinion has turned. **Honor, a role-based phenomenon, has given way to respect, an individualized emotional response to another** (Berger, Berger, and Kellner, "The Obsolescence of Honor," 1973). We now question the logic if not the sanity of workers who endure bad working conditions, family members who continue to be loyal to parents or in-laws who demean them, or battered wives who stay with their spouses. Some family researchers have concluded that, on the whole, interpersonal "**bonds of obligation**" **have become less compelling and "bonds of affection" - based on friendship, love, sympathy**, and the like-more important. More unpredictable and fragile than bonds of obligation, bonds forged by genuine affection require constant negotiation. It is not always certain that people will have positive feelings for their fathers, mothers, siblings, grandparents, spouses, and children, let alone for neighbors, co-workers, fellow religious congregants, or other nonrelatives. To receive concern or affection, people must have shown themselves to be likeable and morally worthy. In most traditional societies, family members could usually count on economic support from each other simply because they were family members. **In the Western world today, children are the only family members legally entitled to maintenance.**" (Candace Clark, *Misery and Company: Sympathy in Everyday Life*, 140).

^{xxxiv} Berger was born in Vienna, brought up in Haifa, and settled in the United States

^{xxxv} Moshe Greenberg in his article on capital punishment in Biblical and Ancient near eastern law notes that Biblical law demands a life for life even for a slave, while other ancient near eastern law codes establish financial remuneration for the death of one who is not an aristocrat when killed by an aristocrat. The Bible repeats, as a mantra, that they all are equal before the law (M. Greenberg, "The Biblical Grounding of Human Value," *The Samuel Friedland Lectures*, 1960-1966, JTS, NY, 39-52).

^{xxxvi} TB Ketubot 48a. One view holds than when marrying beneath her family's station a wife is guaranteed that her husband will maintain at her former status level at least when paying for her burial. However on clothing allowances (TB Ketubot 65b) she must be supported at his higher level of status. So a woman should never lose status in marriage but must rise with her husband as long as he has the means. This is parallel to our Mishna which has a clause for maintaining one's former high status and yet that is activated only if funds are available.

^{xxxvii} TB Baba Batra 65a states that God make a huppah for everyone according to their social honor. TB Ketubot 65b stipulates that utensils and clothing reflect social honor. TB Ketubot 48a states the wife's funeral should reflect the social status of her husband, but if his status is lower than her family of origin, then he owes her a higher level of funeral in accordance with her original status.

^{xxxviii} Eicha Rabbah 4 and Mishna Baba Kama 8:6

^{xxxix} J.E. Lendon, *The Empire of Honor: The Art of Government in the Roman World*, 45)

^{xl} J. E. Lendon notes that women's honor in Roman society was also independent of men and that, "Men and women reflect honor on each other mutually." See Lendon, *Empire of Honor*, 46, note 76.

^{xli} Cic. *Rosc. Am.* 147, as quoted in Lendon, *Empire of Honor*, 45.

^{xlii} Hoffman adds: This legal position is also reflected in Mishna Ketubot 6:1 which discusses some of a wife's rights in marriage: "Her *boshet* i.e. damages for being insulted and her *pegam* (depreciation) [belong to] her."

^{xliii} Informally the shtetl Jewish community of Eastern Europe was ranked and exposed to social pressures. Social differences were clear and strong embodied in seating arrangements in the synagogue, *aliyot* to the Torah, and burial sites in the cemetery. Social gradations included: *sheyne yidn* (upper-class Jews), *balebatim* (well-to-do Jews), *balmelokhes* (artisans), *proste* (lower-class Jews). (Samuel Kassow, "Community and Identity in the Interwar *Shtetl*" in *The Jews of Poland between the Two World Wars*, edited by Yisrael Gutman, 201)

^{xliv} "Good family" can mean wealthy and well-brought up, like the city council members called "the good" or well-to do of the town, an oligarchy-cum-aristocracy in Greco-Roman society.

^{xlv} The concern for preferring sanctity in hierarchial relationships continues even after the Temple's destruction and families are recommended to prefer to marry at their level and or above their level of sanctity. Sanctity applies to the nature of the birth – a *mamzer* (bastard born of illicit union) is above a convert to Judaism who was born to pagan parents who did not observe laws of menstruation. (T.B. and T.Y. Horayot 3:7-8; Mishna Horayot 3:7-8).

^{xlvi} Mishna Horayot 3:8

^{xlvii} TB Shabbat 152a Rabbi Yitzchak said: Each and every tzaddik/righteous person is granted a dwelling in accord with their honor. This is analogous to a king who enters the city with all his officials. When they enter they all enter by the same gate, but when they retire to their sleeping quarters each is given a room according to their social honor.

^{xlviii} Otzar Midrashim (Eisenstein) Gan Eden page 84. "Each and every tzaddik wears a crown in accordance with his social honor."