Just Balances, Just Weights:
Essays on Jewish Business Ethics in a Modern World

Uri L’Tzedek Publication
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It is a commonly, though quietly, acknowledged fact that the civil laws within Jewish law have not been the focus of the same kind of inspired and intense commitment that has been showered on the more ritual laws within Halachah. In a world in which more and more items of food now need more and more items of technology to permit them for Jewish consumption, it seems that what goes on behind the scenes, those who produce and process the food we eat, what goes into the proverbial sausage, has not become the focus of that kind of attention.

R’ Ya’akov ben Asher (1270-c.1340), the author of the Arba’ah Turim, in his homiletical prologue to the Choshen Mishpat (Civil Law, lit. “The Breastplate of Justice”), began his introduction with a bold citation from Pirkei Avot:

Rabban Shimon ben Gamliel said, “On three things is the world sustained: justice, truth, and peace (M Avot 1:18). Rabbeinu Yonah (Gerondi, d. 1263) interpreted [this as meaning]: This does not mean that the world was created for these things, since that was already [taught] at the beginning of the chapter (M Avot 1:1). “On three things does the world stand [on Torah, service, and acts of loving-kindness].”... Rather, once the world was created, it is sustained by these matters, by justices who judge interpersonal matters, for without justice, might would be right... (Arba’ah Turim, Choshen Mishpat, Laws of Justices, 1:1)

To the Ba’al ha-Turim, justice is one of the three elements that keep the world functioning. Fascinatingly, kindness, though for it was the world created, is not enough to keep it running. Perhaps this belief is modeled after the well-known midrash found in Bereishit Rabba 12:15, that the L-rd had to create the world with both love and justice for it to be sustained.

It is justice that ensures that the world that G-d wants continues to function. After all, as the Ba’al ha-Turim writes, “This is the intention of our Rabbis, when they said, “Every justice who judges truly, it is as if they become a partner with the Holy Blessed One in the act of creation. For the Holy Blessed One created the world to be sustained...” (Ibid, 1:2) While kindness, love, and mercy are righteous virtues, the foundation of creation, and our aspirations for a redeemed world, it is justice that maintains the world as we have it, the world we must live in now.

The theme of this journal is business ethics, and perhaps in this topic we can detect a hint as to why Jewish civil law has not been met with the kind of fanatical enthusiasm we on the editorial board dream it would. Ethics is often seen as a matter of personal commitment and virtue. To act ethically is to overlay a principle atop the basic level of functioning to which we have been expected to commit. Today’s available options of “ethical” consumption, in which corporations have presented the purchaser with more ethically sourced merchandise furthers this understanding, since the more ethical option is presented side by side with that sourced through methods we would prefer not to know.

It is precisely this reduction of the ethical to the personal which troubled the Ba’al ha-Turim as well. This is why kindness and love are the ideal, but justice must be the real. Halachah maintains a virtuous level which transcends that which is legally compulsory, namely, middat hasidut (quality of piety), in which one goes above and beyond what could be reasonably expected. But that which is just and right is not merely a virtue; it is law. Philosophers and teachers cannot be the sole proponents of the right and the just; judges, too, must have that role. As the Ba’al ha-Turim writes, “It is the case that the justice, who [institutes the] breaking of the wicked’s treacherous limbs or seize their prey from their hands to return it to its owners; [they] sustain the world and cause the will of the Creator to be fulfilled, that the world should be sustained, and they are made like partners in the act of creation.” (Ibid) To institute justice is a matter of law, which has a real effect in the world. The justices, those who are called partners with G-d, are permitted to utilize force to fulfill the accomplishment of their holy task, ensuring that the injustice perpetrated by the wicked is not allowed to remain unaddressed. This is an uncomfortable text to encounter, since it condones the use of physical violence for the sake of the good, which is a theme that is rightly disturbing. However, perhaps our discomfort also stems from how our own commitment to ethics is belied, that we have allowed injustice to fester for too long, consigned only to the realm of personal preference.

In this editorial, I hope it needs no assurance that I am not arguing for the physical enforcement of the halachot surrounding business ethics. However, what I think the Tur is stressing is the compulsion we have, as Jews who are compelled by Halachah, as Jews who take Halachah seriously, to not allow our commitment to a fair and just economic reality be restricted to the merely theoretical. I hope that each of the articles printed below will be both provocative and inspiring. But I also hope that they will challenge you, the reader, to not let them to remain on the page but rather to incite in you a greater commitment to a world of justice. These are the laws of the everyday; let us bring them into our lives.

Joshua Schwartz
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Introduction

Halachic business ethics primarily rest on a biblical tripod.

One leg is a set of laws regulating employer-employee relationships, with the primary goal of maximizing worker dignity and autonomy while enabling employers to make a reasonable profit. The second leg is a mixed set of prohibitions and obligations aimed at maintaining an honest market without eliminating the profit motive. The third leg is a two-pronged prohibition that both forbids taking advantage of ignorance and imposes responsibility for the effect one’s words and actions have on others’ ethical and spiritual choices. Each leg of this biblical tripod generates a dense web of interpretation, legislation, and practice.

This essay focuses on the third leg, which we can describe as “concern for one’s spiritual environment.” The central biblical passage for this ethical aim is Leviticus 19:23-24.

You must not oppress your peer, and you must not rob.

You must not keep your worker’s wages with you until morning.

You must not curse a deaf person and before a blind person, you must not place a stumbling-block.

You must be in fear/awe of your G-d.

I am Hashem.

The Rabbis interpreted “before a blind person you must not place a stumbling block” (henceforth referred to by “lifnei iver”) metaphorically. In their interpretation, “the blind” does not mean the visually impaired but rather refers to those who lack relevant practical or spiritual knowledge, and “stumbling blocks” is interpreted to mean words, actions, or circumstances that make that lack of practical or spiritual knowledge consequential.

The law of lifnei iver, as applied, prohibits giving self-serving advice, i.e. taking advantage of someone else’s practical ignorance, as well as being an accomplice to sin, i.e. abetting someone else’s spiritual ignorance. Each of the applications of this statute has broad and immediate relevance for commercial practice.

Self-Serving Advice

The primary source for understanding the law of lifnei iver as banning self-serving advice is found in the Sifrei, the Rabbinic halachic midrash on Leviticus:

“... And before a blind person you must not place a stumbling-block.”

- [This means] before one who is blind in commerce, or in any other matter, and you gave him advice that was appropriate for your interests but not his.

What is the boundary of “advice appropriate for your interests but not his”? Read most broadly, this might prohibit taking advantage of any information inequality. This interpretation could bring large swaths of contemporary marketplace regulations, such as insider trading laws, under this halachic prohibition. It could compel advertisements to be truthful and ban what the Tammany Hall wardheeler George Washington Plunkitt memorably called “honest graft”. Note that deliberately taking advantage of an information imbalance may also violate the prohibition against “mental theft” (g’neivat da’al).

On the other hand, information imbalances often lie at the heart of conventional commerce, and halachah imposes a duty of complete disclosure on sellers only where the buyer could not reasonably be expected to make an effective inspection. Moreover, halachic marketplace regulations can generally be cancelled by either a specific contrary agreement between parties, or by general marketplace practice. In other words, some halachic rules are only default settings, not imperatives, and the Torah has no objection if parties to a contract or market agree to different terms. Default settings are not the same as statements of value, and it would be a mistake to claim that Jewish ethics mandate following the halachic defaults.

The ideal of a fully transparent market— in essence, a world without salespeople—works well for some people, but others enjoy bargaining and will risk occasionally overpaying for the joy of “getting a steal” at other times. One can create a reasonable argument for the immorality of a CEO selling off their stock the day before a bad earnings report and yet think it perfectly fine to buy a stock because one’s brother in-law, working in human resources, gives you a favorable report about staff quality at his company. The law of lifnei iver does not require us to criminalize every action taken as the result of an information imbalance.

I suggest the following values formulation of this prohibition: It is forbidden to use the trust engendered by or endemic to a relationship to create and take advantage of an information imbalance with another party in the relationship.

Perfect examples of such violators include: salespeople or traders who talk clients into buying
securities against which their company was betting, repairmen who advise the purchase of unnecessary parts, insurance agents who persuade buyers into purchasing larger policies than needed, or work mentors who give career advice that aids the employer rather than the employee. In each of these cases, X comes to Y for advice because Y represents himself as an expert whose knowledge is used to benefit advisees, and Y abuses the trust created by that self-representation. This is a clear violation of the kinds of fair relationships advocated for by the Torah precept of lifnei iver.

Being an Accomplice to Sin

Almost every action we take as members of an imperfect society can be seen as violating lifnei iver, by supporting or participating in sinful activity. We are always entering into situations where acting for the sake of one value brings us into real conflict with other values and principles we hold dear. This is true even before we touch on the array of Rabbinic prohibitions related to lifnei iver, such as encouraging or assisting transgressors, or the Rabbinic obligation to prevent others from sinning. Each of these extends the boundaries of responsibility past the scope of the biblical law of lifnei iver.

Understood most broadly, the lifnei iver legal complex makes almost any interaction with the non-halachic world fraught. Every sympathetic interaction encourages transgressors; every helpful interaction enables their transgressions, however indirectly. Every choice we make privileges one value and eventually contravenes another. Such a maximal understanding of lifnei iver would require Jews to be hermits and would preclude their participation in such an imperfect society.

However, the Talmud recognizes the value and necessity of belonging to society, even if the society you perform belong to does not completely share your values and commitments. Lifnei iver does not always take priority over darchei shalom, “the ways of peace”, or mishum eivah, preventing hatred. Understood most narrowly, the lifnei iver and its ancillaries:

A) obligate you to prevent only the accidental sins of only halachically observant Jews;

B) forbid only actions that will directly cause someone else to sin;

C) apply only if the other person could not sin without your help

D) allow you to participate, and

E) cannot prevent you from engaging in normal commercial and personal life. You do not need to give in when someone else threatens to sin unless you surrender to their demands.

I do not, however, see the consistent adoption of the law’s narrowest interpretation as a compelling or even plausible reading of the evidence. The Talmud’s examples of lifnei iver strikingly focus on the “blind” who are outside the halachically observant community, such as Sabbatical year violators, or even outside the Jewish people, including genuine idolaters! It is therefore clear that lifnei iver is not an outgrowth of areivut, the guarantor responsibility all Jews have for the actions of other Jews. The law of lifnei iver is an environmental rather than a relational obligation – it is about one’s responsibility for the context in which every other human being makes decisions.

The nature, extent, and practical expression of that environmental responsibility may vary by society and area of human activity. Moreover, the halachah of lifnei iver may express the particularistic obligations of Jews rather than a universal obligation binding on all human beings. Using halachah as the basis for ethics requires translating the legal framework binding on Jews into universally binding ethical standards.

I propose the following set of ethical standards as a step toward a full translation of the laws of lifnei iver into the realm of commercial ethics:

A) You must create accountability for misbehavior, rather than simply appealing to the best in human nature. This includes effective anti-harassment policies, independent oversight of financial transactions and salaries, and close attention to the power dynamics of hierarchical relationships. This translates the Talmud’s prohibition against lending significant sums of money without a receipt, lest the borrower be tempted into not fulfilling the biblical obligation to repay.

B) You must clearly state and act on the principle that values are not subordinate to profits. This translates the Talmud’s prohibition against saying encouraging words to those who are violating the Sabbatical year.

C) You must not enable the behavior of firms that you know behave unethically or illegally as a matter of course. For example, you may not buy products from firms that egregiously maltreat their workers, or that keep two sets of financial records. You may not provide advertising services to manufacturers who misrepresent their products. This
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ERICA BROWN

I said to him: ‘My son, what purpose does this torch serve for you?’

He said, ‘While I have the torch in my hand – people see me, and they save me from pits, brambles, and briars.’

_Lifnei iver_ and associated halachic categories provide a useful basis for a powerful, practical, and sophisticated Jewish framework for commercial ethics. In the Jewish (and hopefully) ethical market or workplace, advice-seekers can safely call attention to their ignorance, and maintaining norms of integrity and justice is a collective responsibility rather than a task delegated to enforcement officers. We must light torches for those who cannot see, not take advantage of the darkness.

Conclusion

The Talmud (Megillah 24b) records the following story:

Said Rabbi Yose, “All my life I was troubled by the verse (Deut. 28:29) ‘And you will feel your way at noon the way a blind man feels his way in the darkness’ – why would a blind man care whether it is noon or darkness? Until once, when I was walking in the darkest of night, I saw a blind man walking with a torch in his hand.

We all know the Abba song. In it, the word “money” is repeated almost as a mantra. For those who dream of wealth, the need for money repeats itself over and over again, reminding us of another song line, this time from Bob Dylan, “Money doesn’t talk. It screams.” These lyrics prompt us to ask a question about our own tradition that underlines Jewish laws and practices related to business: What role should money play in our lives generally? Is there a Jewish attitude to money?

The scholar Meir Tamari, in his book _With All Your Possessions: Jewish Ethics and Economic Life_ provides an answer to this question by creating a portrait of financial moderation:

_Judaism acknowledges the legitimate satisfaction of man’s basic needs, provided that these needs are fulfilled within the framework of morality and justice set up by religious law. Man’s economic desires are treated by Judaism in exactly the same way as all other basic human needs: as legitimate, permissible, and beneficial, but restricted, educated, and sanctified by observance of God’s commandments._

At the same time, Tamari recognizes that this perspective has its complications because fulfilling financial needs within moral and just boundaries is not always simple in the universe of business. In another book, _The Challenge of Wealth: A Jewish Perspective on Earning and Spending Money_, Tamari contends that,

...free markets and planned economies, while each solving certain moral problems, seem to create others. Planned economies have provided basic services for everybody, reducing mass hunger, ignorance and economic insecurity. However, centralized economic power fosters corruption and restricts individual liberty...free markets appeal to the egoism and selfishness of the human being, making the acquisition of wealth the primary ideal.

Different economic structures aim at different societal benefits and come with different anticipated costs, so to speak. These costs are often ethical in nature. Even when an economic system is designed to optimize conditions for society’s most vulnerable, every centralized mechanism inevitably leads to some form of corruption. This seems to stem from the fact that although moderation is a desideratum, it is rarely achievable when it comes to “addictions” such as wealth.

This statement is a variation of one of our most famous collection of aphorisms on Jewish attitudes to money from _Kohelet_, or Ecclesiastes. In _Kohelet_, chapter 5, verses 9 and 10, we find this addiction described baldly: “Those who love money will never be satisfied with money. One who loves abundance will never be sated. This is also vanity.” The verse hones in on one of the many conundrums of wealth. Since there will always be someone wealthier, there will never be a time when an individual achieves de-
Money is a guarantee of desired success. The financial goalposts keep moving.

It is not hard to understand why abundance can never be sated. Money, by its very nature, seduces us with possibilities, but the possibilities are endless because consumers are sold not only items, but also the lifestyles that accompany them. Consequently, there seems to be an end to that which you can purchase to create an idealized portrait of status and success. A car can always go faster. A house can have more rooms and a more refined location. A yacht can be a few feet longer than the neighbor’s. When the neighbor trades up for a larger boat, the competition is on, and it is fierce.

Today’s economy has also created a tyranny of choices so it is not only the neighbor we compete with but ourselves. We are drawn to one option and then pulled to another. We spend too much time making material decisions that may be trivial in nature at the expense of spiritual self-discovery or investment in others.

Ecclesiastes continues by charging that not only will money never satisfy the one who desires it, money costs money: “When goods increase, so do the number of those who eat them. What advantage is there to the owner, therefore, except for beholding them with his eyes?” (5:10) When you have more money then more people want your money so there is hardly an advantage in having it. Throughout Ecclesiastes, many similar messages about money are potently mentioned, including:

- The rich have more power, even if they do not deserve it. (10:20)
- The poor never get a fair hearing. (9:15-16)
- Rich people do not know who their friends really are. (5:10)
- Money is very hard to manage well. (5:12-13)
- What is the point of toiling all one’s life to save for the next generation if they will squander it? (4:8)
- Money is not a guarantee of happiness, but it may be the alternative. (6:1-2)
- Money cannot buy everything, but it can buy you a good time. (2:3-11)

These statements do not belittle the importance of financial security, but they do prompt us to reflect on the uses and abuses of money.

A rather different “Jewish” text presents what we might call “shetl envy.” The poor Jew believes that all his problems will be solved by money. Tevye, our most famous milkman, creates a picture of happiness in “If I Were a Rich Man.” A careful study of the lyrics offers Tevye’s own sense of the ridiculousness that wealth can purchase. Nevertheless, he wants it all. He would build a big house with dozens of rooms in the middle of town with the most elegant and sought after materials. “There would be one long staircase just going up, and one even longer coming down, and one more leading nowhere, just for show.” The staircase to nowhere is emblematic of wealth as status and power and nothing more.

Tevye’s amusing song draws us in with its absurdity and then offers a more compelling Jewish view of money: instrumentality. Money allows us to “purchase” a life of meaning. When used thoughtfully, money can facilitate a life of prayer and study.

If I were rich, I’d have the time that I lack/
To sit in the synagogue and pray. /
And maybe have a seat by the Eastern wall. /
And I’d discuss the holy books with the learned men, several hours every day. /
That would be the sweetest thing of all. /

To Tevye – to us – spending hours immersed in our values is the “sweetest thing of all.”

Tevye asks us, those who love his song, what role money plays within our own lives since every source here posits that all wealth is relative to need and perception. How much is enough for us? How much allows us to live a life of comfort and charity? To answer, we turn to another contemporary Jewish thinker, Rabbi Lawrence Kushner in The Book of Words.

After all, when do we have enough? Wealth cannot be measured in absolute dollars. It is the highly subjective sensation of having more than enough, so much that there is money to give away. For this reason, wealth is a function of generosity: The more you give, the richer you feel (p. 76).

Wealth as a function of generosity of spirit helps us understand a Talmudic dictum (BT Eruvin 65b): “Rabbi Ilui said: “A person is recognized through three things: his cup, his purse, and his anger. Some say also his laughter.” If one of the ways we achieve distinction and uniqueness is through the purse, then it’s time to think about our finances from a spiritual perspective.

What does the way you spend money say about you?
Beyond Tilling and Tending: Halachic Obligations
toward the Natural World and its Inhabitants | RABBI ELIEZER DIAMOND, PH.D

Our planet and its inhabitants are in trouble because we fail to realize the seriousness of the present environmental crisis. Our rivers, streams and oceans are polluted. Deforestation and extensive use of fossil fuels have led to global warming, which in turn has wreaked havoc with our weather. We endangered the continued existence of many species, including fish, such as salmon, that serve as a major food source. The North Pacific Gyre churns endless amounts of discarded plastic, spinning off debris that, besides being fatal to marine life when ingested, absorbs toxic organic pollutants, which then enter the digestive systems of marine animals and the humans who eat them. How can we galvanize ourselves and others to respond to the threat of climate change and environmental degradation?

To address this challenge we must first understand why it has been and continues to be so difficult to initiate an effective response to a crisis that threatens the continued existence of the planet. There are a number of reasons, some of which are specifically Jewish:

I. General

A. Environmental degradation is overwhelming. We often have the sense that nothing we do will make a difference, or at least enough of a difference, and so we throw up our hands in despair.

B. We are victims of the “boiling frog syndrome.” Like the frog sitting in a pan of gradually heated water ignoring the eventually fatal rise in temperature, we allow ourselves to ignore or explain away the gradual increase of pollution and its worsening effects. There are still many who claim that it is uncertain whether climate change is taking place, although the day is swiftly approaching when this assertion will no longer be tenable.

C. Without question, corporations and businesses are the major contributors to environmental damage, and they often use their financial and legal power to avoid taking responsibility for the destruction they cause. However, it is also true that in focusing exclusively on the role of these entities we fail to acknowledge our own role in creating the environmental crisis. This is true for two reasons:

i. Our own positive or negative contributions seem infinitesimal. This allows us both to excuse our wasteful use of resources and to despair of a more careful use of resources ever making a difference.

ii. The problem of environmental degradation is largely a zero sum game. We cannot reduce pollution without reducing consumption and consequently changing our lifestyle; conversely we cannot continue to live as we do now without bringing nature to its knees.

II. Jewish

A. We are a highly urbanized community. Appeals to our identification with and concern for the natural world are unlikely to spur us to action.

B. As a largely middle class/upper middle class community, we are often unaware, or unconcerned, that water, air, and land pollution have a disproportionate effect on lower class and poor neighborhoods where garbage incinerators and other pollution producing facilities are often located.

C. The androcentric and hierarchical nature of Halachah often results in the supersession of our obligations to care for the rest of God’s creation by actual and perceived human need. Thus, despite the prohibition against felling fruit bearing trees, known as bal tashchit, which is derived from the biblical injunction against utilizing fruit trees to construct siege-works (Deuteronomy 20:19-20), this prohibition does not apply to trees whose wood is worth more on the market than their fruit (BT Bava Qamma 91b-92a). Moreover, other religious imperatives generally take precedence over the bal tashchit proscription. As an example of this trend, branches of fruit-bearing trees may be used to provide sechach for a sukkah (Responsa Yecheved Da’at Vol. 5, Responsum 46 and others). As a consequence, natural resources are, de jure, almost entirely denied the protection theoretically inherent in bal tashchit.

D. The sense of being in galut may create some psychic and emotional distance from the surrounding environment (although Israelis generally don’t treat their environment with any more care and consideration than do we).

How, then, to respond? Attitudinal and behavioral modification are in order. A meaningful attitudinal shift begins with rethinking our place and role in God’s world. Maimonides reminds us that “the Universe does not exist for man’s sake, but that each being exists for its own sake and not because of some other thing.” (Guide of the Perplexed, 3:13) We should not interpret God’s charge to humanity to be masters and rulers over the earth (Genesis 1:28) as limiting the role of the natural world solely to serving human need and desire. The world, in its fullness, was created by God and continues to exist in accordance with God’s inscrutable will and for reasons beyond our comprehension. We must respect divine will and design by respecting and protecting all of creation.

Changing our behavior begins with the understanding that our obligation toward the world around us, which Jeremy Benstein has characterized as a mitzvah bein adam la-olam, is also a mitzvah bein adam la-chaveiro as well as a mitzvah bein adam la-Makom. When we pollute the environment we sin against both God
and humanity. We are engaging in me’lah, the misappropriation of the holy, by misappropriating and defiling God’s creation; and gezel, theft, by degrading resources such as water and air that belong to all of Earth’s inhabitants.

The bein adam la-haveiro component of environmental responsibility is delimited in the second chapter of the Babylonian Talmud’s Masechet Bava Batra, which articulates the details of what Rambam later calls hilchot shekheinim, laws concerning neighbors. The halachot in this chapter are animated by the proposition that our rights as landowners are not absolute; they may not be exercised, entirely or in part, when they create a nuisance for or damage to our neighbors. In some cases – for example, a sesame oil press that weakens the foundations of an adjacent dwelling (BT Bava Batra 25b) – at issue is the potential destruction of property. In others, such as the instance of an oven or furnace emitting thick smoke (BT Bava Batra 23a), there is the possibility of endangering a neighbor’s health.

Living, as we do, in a global village, we are all neighbors. Pollution emitted from smokestacks in the Midwest causes acid rain on the East Coast. The life expectancy of inhabitants of northern China is five and a half years less than their fellow citizens to the south because of the extensive use of coal in that region. On a much smaller scale businesses that generate waste and do not dispose of it properly are despoiling the reshit ha-rabin, a domain belonging to everyone (see BT Bava Qamma 50b). Even if we choose not to concern ourselves with our own wellbeing – a choice that halachah forbids (see BT Berachot 32b) – we are still obligated not to endanger the lives and property of others. This implies a halachic obligation to decrease the amount of environmental damage caused by corporate enterprise and personal use by using the most advanced and efficient forms of pollution control and the use of clean fuels whenever and wherever possible.

The aspect of bein adam la-Makom implicit in our obligations to the world can be framed midrashically through reference to halachot concerning conditional forms of ownership. One such gift is a matanah al menat le-hazir, a gift the validity of which depends retroactively on the eventual return of the gift to the giver. Whatever gifts we are given in this world, we relinquish when we die. It is God’s intention that we return these gifts without having wantonly damaged or diminished them. Another relevant ownership model is a gift made with the condition ve-acharecha lisloni, “and after you (i.e. after your demise) ownership of the gift will be transferred to x.” Each generation is given the use and benefit of the world and its fullness, but God grants this gift trusting us to remember that others will follow us seeking the same pleasure and benefit that was granted to us. Despoiling nature is a violation of that trust.

The obligations we bear towards God and humanity are grounded not only in Torah values but in specific normative obligations informed by those values – in short, they are halachic. Thus, for example, the Talmudic prohibition against using fuel inefficiently by creating less than ideal conditions for the economical use of an oil or kerosene lamp (BT Shabbat 67b) implies that halachic considerations should be part of our deliberations about what kind of car to purchase. And we cannot shirk these obligations by arguing that our actions are so insignificant as to be irrelevant. Halachah insists on the importance of individual action, both in the belief that individual acts have cumulative effects and because the value of mitzvot is judged not only by its external effect but by its effect on the doer as well (see Bereishit Rabbah 44:1).

True, the passage in Masechet Shabbat and similar statements in the Talmud are not codified by any halachist. This was the same reality confronting the Chofetz Chayim regarding the obligations concerning lashon ha-ra (gossip, lit. “evil speech”), a topic left to the less structured and less obligatory realm of mussion (ethics). His response was to codify the laws of lashon ha-ra, thereby concretizing this obligation for the Jewish community, in all its practical forms. In our time, there is a need to codify and thereby reify the halachot she-bein adam la-olam. To be meaningful and effective such a code would need to acknowledge, as halachah always does, that there are competing imperatives in this realm. Halachah must weigh the respective claims of different constituencies, including nature itself, regarding the use and preservation of natural resources. Ultimately, though, it should, and hopefully would, assign much greater significance to bal tashchit and related prohibitions and obligations than has been the case heretofore; this is inevitable if halachists acknowledge that environmental degradation is gradually becoming – in some cases already is – a threat to all of humanity and therefore an issue of pikuach nefesh.

One final aspect of the environmental crisis ought to be framed halachically. We often speak of the environmental degradation caused by manufacturers; we need to remember that what they supply is in response to our demand. The more efficiencies we seek and the more numerous our acquisitions, the more pollution is generated. For example, we have gone from sacks of coffee beans to bags of ground coffee to pods to single-serve K cups. At each step there is a tradeoff between greater convenience and increased pollution and waste. We need to ask ourselves whether by constantly increasing our level of consumption we are in violation of lo tachmod, the com-
mandment prohibiting coveting, which is the misappropriation of that which belongs to others. In light of contemporary realities we need to see that by generating increasing levels of pollution we are using more than our share of the world’s resources while fouling land, water, and air that are the common inheritance of all humanity. Moreover, intensive involvement in consumer culture turns our energy and focus away from a life of \textit{mitzvot} in which the enrichment we seek is the betterment of ourselves and the world.

Our rabbis classify one group of commandments as \textit{mitzvot aseh she-ha-zeman gerama}, positive commandments that are temporarily generated and restricted. In a very real sense, the obligation to halt and, if possible, reverse environmental degradation is a time-bound \textit{mitzvah}. We have a limited window of time in which to fulfill it. Failure to do so will mean the permanent diminishment and perhaps endangerment of human existence around the globe.

Consumers today want information about how the products they purchase were produced. “Fair trade,” “cruelty-free,” and “sustainable” are only a few of the types of certification known as eco-labeling that are becoming increasingly popular. Unfortunately, private certification is not always reliable. Market competition among certifiers sometimes leads them to lower their standards in order to reduce the cost of their services and ease the demands that they place on their clients. The result is lower ecological standards in the food produced. In eco-labeling, this problem is known as “greenwashing,” a process in which companies present themselves as environmentally responsible to consumers but, in truth, betray ecological concerns wholesale. Reliable private certification must harness market demand for certification without succumbing to competitive pressures to cut corners.

Kosher certification illustrates how a mix of market incentives and moral commitment can produce reliable private certification. Indeed, kosher certification has become so successful that over twelve million American consumers purchase kosher food simply because it is marked as kosher. Surprisingly, only eight percent of these kosher consumers are religious Jews who eat only kosher food. The rest choose kosher for reasons related to health, food safety, taste, vegetarianism, and lactose intolerance, or to satisfy non-Jewish religious requirements like \textit{halal}. Today, kosher food is a twelve billion dollar market in the United States, and more products are labeled kosher than are labeled organic, natural, or premium.

The success of kosher certification has led some to call for kosher certifiers to include environmental and ethical criteria within their certification standards. Efforts to expand the purview of kosher certification in this way have been met with mixed reactions. Kosher certification agencies have responded positively to consumer demand for kosher-certified organic food. Many products now carry both kosher and organic certification, and some smaller agencies, such as Kosher Organics and Earth Kosher, specialize in the kosher certification of organic foods. Star-K, one of the “Big Five” U.S. kosher certification agencies, has developed a partnership with Quality Assurance International (QAI), a leading international organic certifier, under which Star-K personnel are trained to conduct both kosher and organic inspections.

By contrast, kosher certification agencies have been dismissive of...
efforts to incorporate ethical concerns into kashrut. OU rabbinic administrator Rabbi Menachem Genack argues that enforcement of environmental and labor standards should be left to the government: “We at the OU do not have the expertise to develop standards in those areas. If the company is found to be criminally liable, we will withdraw our certification.” Critics also believe that mixing kashrut and ethics is impractical, since companies that allow inspectors in for the purpose of kosher certification are unlikely to allow these same inspectors to examine their facilities and records for labor or environmental violations that could subject them to significant civil and criminal liability.

Even without the support of the mainstream kosher agencies, however, the success of kosher certification offers a model for developing a reliable system of private certification. Proponents of eco-kosher would do well to leave aside efforts to influence mainstream kosher certifiers and instead focus on how to emulate them.

Several features of the kosher certification system account for its success. First, sufficient consumer demand makes companies willing to open up their operations to kosher inspectors and to pay for reliable certification.

Second, a core of vigilant and active consumers scrutinizes products for certification mistakes, such as items that are mislabeled pareve but list dairy ingredients on the package, or items that bear counterfeit certification symbols. These consumers provide valuable feedback to agencies and share information about the reliability of different certifications through extensive social networks and online.

Third, fierce brand competition based on reliability among kosher certifiers vying for food company clients counteracts incentives to cut corners. An agency caught lowering its standards risks damage to its reputation among consumers and the value of its brand.

Fourth, interdependence among certifiers creates incentives for interagency oversight. Within industrial food supply chains, the reputation of finished-product certifiers depends on the reliability of ingredient certifiers who, in turn, require the trust of finished-product certifiers for acceptance of their certification downstream in the product production. The result is that finished-product certifiers scrutinize the operations of ingredient certifiers, who are eager to satisfy any concerns they may have. Since all of the major agencies certify both ingredients and finished products, this creates a network of interagency oversight.

Fifth, concentration of market power in the hands of a few large certifiers makes companies willing to open up their operations to kosher inspectors and to pay for reliable certification.

Sixth, certification agency personnel are motivated by a shared sense of mission that counteracts conflicts of interest and promotes cooperation between competing certifiers, sometimes referred to as an industrial morality. There is no denying that kosher certification is a business. But it is not just a business. For the rabbis who staff certification agencies, it is also a sacred trust.

Finally, social networks provide a medium for trust and reputation that supports reliable private certification. At trade association meetings, participants from different kosher certification agencies socialize and pray together. The rabbis who manage these agencies also frequently hold positions of authority in their local Jewish communities, many as congregational rabbis or respected teachers, interacting closely with community members, who are also kosher consumers. Agency personnel form personal bonds with their food-industry clients, many of whom they have been working with for decades. Personal ties also exist among religiously observant kosher consumers, ranging from close connections between congregants to more extended Internet exchanges carried on through postings on kosher-food websites. These various relationships constitute a complex network that enhances the regulatory performance of the kosher certification system by increasing social pressure to conform to industry standards and facilitating the diffusion of reputational information and consumer alerts.

The success of kosher certifica-
Conservative and liberal economic ideologies tend to split in a morally problematic manner. One side views the world as a place of necessary competitive survival in which campaigns to help less productive people are power grabs by demagogues (e.g. Hayek). The other side views the world as a place of possible equality in which economic disparities and evils are the result of selfish parties’ grabbing for wealth (e.g. Marx). As is usually the case in such ideological debates, both approaches have identified real problems. However, as is always the case with ideological debates, neither approach recognizes that the human animal, like other animals, is both drawn to cooperate and compete. This essay presents an alternative, non-ideological, pragmatic approach. Below, I will present examples of halachic rulings that attempted both to provide poorer people with access to resources, to survive and even improve their lives without destroying themselves or society, as well as provide the wealthy with opportunities to improve their conditions by sharing resources with the poor without destroying their economic production and society. Below, we will examine a High Medieval, an Early Modern, and an Early Contemporary halachic discussion on the biblical injunction against collecting interest.

Before we examine Halachah, however, a background step is required. Since halachic sources seek to ameliorate the human condition instead of overcome it, a student of Halachah must replace the fearsome mirror images of economic self-interest hidden in the language of pragmatic realism and of personal emotional issues hidden in the language of values. He or she must adopt an approach of ethical responsibility in the face of G-d. In living with G-d\(^1\) (not necessarily an easy psychological stage to reach), an individual should not focus on what he needs to control in the reality around him in order to meet his psychological needs (whether economic or emotional). Rather, she focuses on what good she can truly accomplish for other human beings without endangering herself. In the words of Pirkei Avot (1:5):

1 In writing “living with G-d,” I am not championing a theology. One can believe in G-d but not live with G-d in which case one is inevitably an idol worshipper who conflates something else with G-d. One can have no theistic belief and yet experience the unity behind existence in which case one is a yerei Hashem (fearer of G-d) who is drawn to existence and to doing the good. However, as a person who has been raised to hear and encounter the soft commanding voice from the low mountain which brings forth hidden springs in the barren desert of life, my natural language is to speak of living with G-d.
There are four types of people:
One who says: mine is mine, and yours is yours. That is the average type, and some say the Sodom type.
One who says: mine is yours, and yours is mine – [is an] am ha-aretz.
One who says: mine is yours, and yours is yours – [is a] Hasid.
One who says: mine is mine, and yours is [is] wicked.

To restate the mishnah: To be self-focused but fair is the basic minimum of human conduct (although it can also be callous, as in the case of Sodom). Being willing to give of one’s self to others is piety. However, being unable to live without reality conforming to one’s own avarice or sense of dependency is either wicked or destructive.

Once we adopt a healthier approach to ethics that neither “realistically” surrenders ethics nor “idealistically” imposes values, we can learn from the history of the halachic injunction against interest. We can learn from these texts with the belief that halachic positions in all periods attempted to address the issue of debt as an ethical issue that calls for a pragmatic response. We will be open to recognizing that sages did not struggle with deducing the halachic law, but rather they attempted to best (sagaciously) address the mutual problem of and need for mutual investment of resources for the sake of survival and even sustainable economic growth.

1. Introduction to the Benefit of Loans for Borrowers and the Problematic of Loans for Borrowers

Since the first step in thinking morally yet realistically (halachically) is to try to address inescapable problems realistically instead of either ignoring them or trying to solve them, we must first identify the inescapable conflicting considerations that underlie this issue. In regards to the issue of interest, that includes the tension between: (1) limiting the situations in which people end up in destructive debt and (2) motivating richer people to transfer some resources to people who face economic difficulties too costly to repair, or to people who even face opportunities for economic growth. Obviously, these two considerations are in conflict. On the one hand: the easier we make it for a “lender” to regain the resources she handed out and even make a profit and the greater the profit allowed to a “lender,” the more easily a “borrower” can suffer destructive debt. The relationship between resource and risk is inescapable; the degree of correlation can differ under different conditions, but the direct relationship will always exist.

2. The Talmudic Background to Our Examples

The Tanna’im attempted to do more than protect the poor from excessive abuse by profit-minded lenders. They attempted, in addition, to create conditions that would motivate a profit-minded lender to lend large sums only where he evaluates that the borrower will succeed, instead of lending wickedly to a desperate – and risk taking – borrower in order to profit from the borrower’s default. They attempted to accomplish these goals in three ways that are relevant to this essay’s examples:

1. Aside from expanding the biblical agricultural charity tithes to include an obligation on urban people to give charitable gifts and helpful loans, Tanna’im attempted to protect the landless worker. Without discussing all of the tanna’itic employment regulations, the one tanna’itic norm that is directly relevant to our later analysis is as follows: A richer person who offers a poorer person (non-perishable) goods to sell on commission must pay the poor person wages (M Bava Metzia 5:4). No matter how poor the worker is, the richer person who patiently waits to recover profits cannot take advantage of free labor and desperate hopes of the needy poor. That is rightly considered a form of taking interest even if the poor person is offered 50% of whatever sales occur. The worker must be paid. Obviously, the worker’s daily pay need not be so high as to price him out of the market by paying him as much as it costs to support an indentured servant who is daily available to his employer throughout the day and for various work needs. Nonetheless, the poor person cannot be placed at the end of the day in a possible situation of hunger and exploitation (T Bava Metzia 4:11).

2. Aside from ruling that all citizens must oppose interest loans – witnesses, guarantors, scribes who draw up loan con-
tracts, and even poor borrowers and refusing to enforce such an contracts in their courts (M Bava Metzia 5:11), the Tanna’im tried to protect a borrower against the destructiveness of any loan. The Tanna’im granted him the right to retain funds for food, clothing, shelter, and minimal tools necessary for a person of his trade (M Arachin 6:3-4).\(^3\)

3. The Tanna’im responded in several ways to the opportunity for exploitation allowed under Roman Law, namely, to acquire permanent ownership of another’s land (M Kiddushin 1:4; Sifrei Bemidbar 2:36; Sifrei Devarim 112:2), which is the income-generating resource that only desperate people forsake, always more valuable than its price at sale. One approach they proffered, was their ruling that when the borrower has enough land, a lender cannot collect a debt from the borrower’s best farmland. This protected a rich lender’s ability to regain the value of a defaulted loan after he finally sells off the land to poorer farmers but provides him little motivation to exploitatively lend to a borrower that he thinks will default (T Ketubot 12:2). Moreover, it secures for the borrower their more efficient resources, the most productive land.

In short: the Tanna’im sought to protect borrowers from destructive defaults. They were able to accomplish the latter to only limited degree. They forbade interest loans and refused to enforce collection of such loans. They offered legal protection of a borrower’s minimal survival assets (roof, clothing, etc) and attempted to protect his income producing assets. Last, they fought against hidden forms of indentured servitude by forbidding abusive “partnerships” with landless laborers.

A problem with the tanna’itic solutions in a thriving city economy, however, is that they do not provide opportunities for landless people to rise above being workers, to get hold of investment capital themselves. While propertied people could mortgage their land, landless people would end up stuck in poverty and dependance. The advantage of these laws is that they protect desperate borrowers from worsening their predicament. The disadvantage of these laws is that profitless loans are not afforded freely in the face of competing opportunities for profitable investments. Accordingly, the Amora’im of the commercial city of Nehardea came up with another option. They expanded the model of a “partnership” between an investor and a worker who sells on commission to a real partnership between an investor partner and a working partner:

The Nehardeans said: An ‘iska (partnership) is partially a loan and partially a deposit (an investment), the Rabbis having made an enactment which is satisfactory to both the debtor and the creditor.\(^4\)

In this arrangement of “partnership,” both the lender and the borrower benefit. Namely:

1. The lender extends the money only to a project that he believes will succeed. Otherwise, he stands to lose the half of the money that was invested. However, by offering half of the money as a loan, the lender both risks only half of the money needed for the project and knows that the borrower will act responsibly. Otherwise, the borrower will have to repay half the money out of pocket.

2. The borrower, on his end, gains by risking a debt worth only half of the money that he needs for the business project.

The interesting point for our discussion is that this solution neither ideologically ignored the problem of usurious loans for the sake of acquiring seed money for poorer people’s economic advancement (and society’s economic growth) nor ideologically opposed a lender making profit from another person’s need for investment money.\(^5\)

3. Post-Talmudic Halachah

Now that we are familiar with the talmudic background, we can now approach examples from High Medieval, Early Modern, and Early Contemporary periods, which stem from times in which Halachah is viewed as formal and deductive. Even scholars who discover “new” values among later rabbis still read the post-talmudic as having struggled to fit new values into deductive law. We will see, however, that post-

\(^3\) If the borrower did indenture himself due to debt, anyway, the Tanna’im also still recognized the biblical release into freedom of indentured servants at the end of the contract and at the Jubilee (mKiddushin 12).

\(^4\) BT Bava Metzia 104b

\(^5\) This position was similar to a tanna’itic position that had permitted making a profit in an opportunity partnership – a business loan of a commodity to a borrower that had the commodity in hand elsewhere to repay the lender later (M Bava Metzia 5:1; T Bava Metzia 4:8); Tanna’im recognized that such arrangement was no more than a situation of sharing profits. It is true that in the Tanna’im’s case, the borrower was not risking his income and basic assets but rather “joining” his existing commodity (found elsewhere) with another person’s commodity for mutual profit while in the Nehardean arrangement the borrower risks a debt for half the money invested. Nonetheless, the Nehardean arrangement is similar to the tanna’itic arrangement in combining risks and profits as opposed to attempting to gain greater wealth from non-producing money (such as in a pawn) or from a borrower’s failure (as in collecting a defaulting borrower’s high quality farmland).
In a society in which no adverse direct relationship is created between the two fellows of the same community, the lender and the borrower. Such an arrangement is permitted only if an intermediary – even a servant – is used. He writes,

“It appears to me to be completely permitted and [even] a superior mitzvah to provide sustenance to [fellow] members of the covenant – [that the following arrangement] is permitted] to a borrower and lender: A borrower may provide a Gentile, including his own servant or maidservant, with an object to pawn with interest from a given Jew for any sum of interest as long as the pawn covers the whole debt [including the interest] as is the normal pawnbroking practice... The borrower will accordingly have no business with the lender because the Gentile is the only one who can reclaim the pawn... This is not a deceit[ful circumvention of the law] but rather valid, for the lender has no claim against the borrower[’s person], and the borrower and lender have no business with each other. Thus one who wishes to act kindly does so, while the cruel person [who upholds these minimal legal requirements] does not pity.”

Rabbeinu Tam ruled that since it is most important to provide (opportunities for) sustenance to fellow Jews, pawnbroking between Jews is valid “as long as the pawn covers the whole debt as is the normal pawnbroking practice,” so that the “lender has no claim against the borrower[’s person]” and “the borrower and lender have no business with each other” because “the Gentile is the only one who can reclaim the pawn.” Moreover, Rabbeinu Tam never lost sight of the moral nuances of the issue. He conceded that this arrangement was not ideal from an ethical perspective, concluding that one who utilizes this arrangement is a “cruel person [who] does not pity,” but argued that it was sufficiently moral. Such an arrangement was both helpful in “providing sustenance” without being excessively harmful in its consequences should the borrower’s business project fail, since “the lender has no claim against the borrower” beyond the pawn. Additionally, this arrangement was not characterized by two Jews who know each other created a face-to-face relationship of exploitation, since the borrower and lender have no business with each other.”

One need not agree with Rabbeinu Tam’s evaluation. His own brother, R. Shmuel b. Meir (Rashbam, c.1085 – c.1158), pointed out that this arrangement violates the injunction against interest since the Jewish borrower will eventually either forfeit the whole pawn due to default or will regain the pawn by paying interest to the lender through said Gentile. Thus, in practice, the Gentile intermediary paying is no more real than the Jew paying – “the Gentile is considered as if he were the Jew’s agent.” (Responsa Maharam [ed. Lemberg] §144)

What is important to notice is that Rabbeinu Tam and Rashbam bound themselves neither to the earlier talmudic law of pawn...
nor to abstract values. They did not confine themselves to legally explicating semantic or conceptual points, or struggling with defining technical terms, such as redefining what “interest” really means. Rather, they each evaluated how to apply the biblical and talmudic concern regarding interest to their own context, in the High Medieval period, of a pawn with its inherently limited interest when the contracting parties do not meet in person at all in regard to the pawn. They evaluated whether Jews should avoid risk hurting other Jews economically and should only help or invest with each other to whatever degree they are willing to be kind (Rashbam) or should be allowed to be hard-hearted because the risk is worthwhile and the risk is limited to the pawn (Rabbeinu Tam).

3b. Early Modern Polish-Lithuanian Jewry

Inasmuch as Rashbam’s restrictive opinion limited credit for Jews, it is not surprising that Rabbeinu Tam’s permissive opinion became the one accepted as halachah le-ma’aseh. Accordingly, it was ruled permissible to pawn with interest as long as no payment could be demanded beyond the pawn. Along those lines it is also not surprising that a similar solution arose in mercantile 15th–17th century Eastern Europe for business loans that were extended on contract instead of merely against pawns. Hence, early modern Polish and Lithuanian rabbis followed Rabbeinu Tam’s evaluation that there was little motivation for a moneyed Jew to invest and risk money with a fellow Jew when the moneyed Jew could acquire risk-free profits through a non-Jew. Accordingly, these rabbis adopted an existent general Christian European model of fictitious “partnership,” an agreement in which the contract states that it will be assumed that the working partner/borrower succeeded in his venture and so must repay the capital and a specific sum of profit to the investor.

The problem with the aforementioned Christian “partnership” model, however, is that, legal fictions aside, it was clearly an interest-generating loan. Although lenders justified this blanket expectation on the grounds that they had no means of determining whether the borrower’s venture has truly failed or the borrower had simply diverted and hidden the profits, it was a loan with interest; loans on interest were re-structured as investments. For that specific reason, such business relationships were viciously attacked by Martin Luther, calling them evil and even sinful. It is true that this fictitious “partnership” model limited interest loans to business loans and still forbade interest on consumption loans. It is true that it provided motivation for lenders to lend seed money to people who wished to improve their lives economically. (For that reason, Martin Luther’s attack failed to have any impact.) Nonetheless, this model still provided some motivation for lenders to lend for risky endeavors for the sake of the guaranteed “profits” and, more importantly, could still ruin borrowers.

To take one example, the renowned R. Shabbatai ben Meir ha-Kohen (Sha”Kh, 1621-1662) noted a critical modification to this prevalent Christian arrangement. The presumptive “partnership” (heter iska) had to be structured so that only the capital would be absolutely guaranteed; payment of the assumed profit in case of the venture’s actual failure depended on the borrower choosing to pay it (in order to maintain a good credit rating):

If the lender does not trust the borrower’s word regarding loss of capital or even of [projected] profits, he may add a clause to the contract that the borrower will not be believed regarding

- the loss of the capital, except through two renowned and reputable witnesses

NOR
- [the loss] of the profits, except through a severe oath.

One may not write that the borrower will not be believed regarding the profits except through witnesses – for that is actual usury.

According to this model, the borrower whose venture failed but could not prove that fact through “two renowned and reputable witnesses,” as was almost always the case, needed only return the capital. He could swear to the failure in order to free herself from paying the interest, i.e. assumed “profits”. Naturally, the borrower who wished
to maintain a good credit rating would attempt to pay the interest, the “assumed profits,” as well. However, she was not required to do so by contract or law.

The model articulated by the Sha’Kh provided potential debtors with the opportunity to borrow money from moneyed people who were not inclined to risk their funds since they had other (Gentile) avenues of lending at profit. According to the Sha’Kh, a successful borrower would not attempt to avoid paying the investor his previously set share of the profits by swearing falsely since there was little reason for him to choose to ruin his credit while both repaying the capital and having to hide the evidence of profit. Moreover, the failed borrower who could afford to pay would also likely to return not only the capital but even the interest, lest he not find any willing lenders in the future. However, inasmuch as the interest was not absolutely guaranteed, there was both less motivation for the lender to lend money for ventures that were likely to fail, or to borrowers who could not eventually repay in the case of failure, as well as a fail-safe for any overwhelmed borrower to extricate herself from trying to pay off the pre-set profits on top of the lost capital.

5c. Late Twentieth Century American Capitalism

These last two models, medi eval and early modern, in twentieth century America, were expanded by R. Moshe Feinstein (1895-1986). Situated in the very center of market capitalism, Rav Moshe permitted an economic transaction in which the borrower may lose her business in repaying capital and even the interest (but not lose personal assets necessary to continue to both live decently and practice one’s trade).15 Rav Moshe permitted this arrangement as long as the borrower’s liability was limited to assets that he owned up to the collection date. Under this arrangement, the borrower could lose her company due to interest charges but would be free of future debt after becoming bankrupt.

Rav Moshe’s discussion revolved around a Jewish-owned bank in the USA whose owners were in essence borrowing money from and paying interest to the depositors, which surely included Jews. Rav Moshe argued that such payments are permitted since the injunction against interest does not apply to loans with limited liability:

I have a novel interpretation of the injunction against interest, which is absolutely correct, in my humble opinion. The overwhelming majority of people in this country who deposit their money in banks, including Jewish-owned banks, [and receive interest] do not violate the injunction of lending [to the Jewish shareholders with] interest; a standard loan devolves into a personal debt from which the borrower is not exempt although he be penniless; he must work in order in order to pay the debt and a sinner if he does not pay....

Ergo, interest is forbidden only as regards a loan that creates a personal obligation on the borrower. However, as regards a type of “loan,” which creates no personal obligation to pay – just a lien on assets – there is no issur ribbit (forbidding of interest). Thus, there is no sin in Jewish-owned banks paying interest since the owners carry no personal liability.

However, this reasoning does not permit an individual, who incurs personal liability, to borrow from a Jewish bank.16

Rav Moshe ruled that although interest on loans is biblically and talmudically forbidden, and a limited-liability loan, which carries no personal debt beyond current assets, is indeed a loan, interest is permitted on a limited-liability loan because it carries no perpetual lien. Since Rav Moshe redefine interest to mean a kind of loan in which an individual borrower incurs a personal ob-

ligation, Jewish-owned banks could stay competitive in the credit industry.

At first glance, his ruling appears flawed. The Tanna’im had already forbidden pawnbroking, although the debt and its interest is contained in the value of the pawn (once the borrower stops paying the lender to hold on to the pawn for him). The Tanna’im had also already forbidden interest loans against land, in which the full value of the debt by its due date would be found in the land.

However, his ruling makes sense if we recall that Franco-German rabbis allowed a borrower to pay interest through a pawn since the loss was limited to a pawn and there was no direct contact between the lender and borrower on the matter. Rav Moshe ruled similarly. He permitted interest loans that were both essential to the borrower’s business and could ruin a defaulting borrower in a capitalist culture – in a culture of alienated economic relations in which corporate stockholders/partners have no kind of religious/moral personal obligation to repay their corporate debts, where even a corporate borrower whose assets are all invested in the corporation

15 ReM”A YD 168:9 and Hагалית מימות (Ed. Constantine), Laws of Loans 5:3.

16 Iggerot Moshe, Yoreh De’ah 2:63
is free to attempt to continue her life after the corporation fails.

5d. Summary

In our discussion of post-talmudic Halachah, we have seen that leading rabbis understood that “the reason for monetary laws is clear and that is to be the measurement of the Good for the necessary dealings between people, for dealings should be mutually beneficial instead of one side intending to gain exclusively.” Although the Tanna’im and Amora’im had forbidden interest loans, Rav Moshe permitted interest loans as long as the borrower’s legal and moral liability is limited to assets and does not block his ability to rebuild his life free of the failed obligations. 18

6. Conclusion

In this article, we have seen a number of different approaches to the problem of maximizing the spread of resources over society without harming the poor, so that economic success depends both on the contribution of the less successful as well as on rules of games that harm those who might have fared better under different rules. Nor did these approaches fight to concentrate all resources in the hands of those who have succeeded economically (while ignoring basic human sympathy and the fact that economic success can range from the Bible to the modern day). These halachic approaches sought to guarantee each rich person her investment and even provide profit opportunities and each poor person both economic protection and economic opportunities.

A reader accustomed to popular halachic works might now ask: what are the halachic conclusions for current American society? She may be accustomed to a halachic discussion resulting in a definitive, objective, even factual conclusion. That expectation, however, would reveal a misunderstanding of Halachah in general and economic Halachah in particular. As this article has illustrated, Halachah is a living and dynamic cultural tradition of attempting to fulfill the Divine Will by learning from the wisdom present in earlier precedents, which can range from the Bible through the literature of the late twentieth century. It is impossible for any person, despite deep and broad expertise in Jewish legal sources, cannot “discover” the correct halachic conclusion. In measuring one’s conclusion, one can only make sure that no underlying considerations and no model examples are not ignored. One can only try to evaluate the current economy and social arrangements, through the tradition’s nuanced lens, in order to provide a wise and judicious ruling. Accordingly, I hope that this short article has provided you, the reader, with some short reminders of both the moral-economic issues related to interest and the halachic model examples for grappling with these issues. From you yourselves, I hope to see varying and wise p’sak.

17 See Maimonides, Guide to the Perplexed 3:42.

18 Leading rabbis, including R. Shlomo Zalman Auerbach, argued that the injunction against interest applies even when one borrows against his or her assets without personal liability – albeit to a lesser (i.e. rabbinic) degree (Shul'han Arukh, Choshen Mishpat Sif. 21).

Rabbeinu Tam permitted pawn-brocking loans, early Modern European rabbis faced a reality in which individuals could not acquire venture funds except via interest loans. To accommodate this social reality, the Sha’Kh permitted such loans as long as the borrower could choose to withdraw from paying interest if he had really lost on the investment. Although the Tanna’im and Amora’im had forbidden interest loans, Rav Moshe permitted interest loans as long as the borrower’s legal and moral liability is limited to assets and does not block his ability to rebuild his life free of the failed obligations.
The Jewish tradition includes a varied and complex set of perspectives on the pursuit and disbursal of money, and the fulfillment, or sublimation, of desire. In this variety, we can discern a balanced view that teaches us to strive to elevate our mundane existence through our spiritual values and ideals rather than for the quenching of all physical desire.

Rabbi Bahya ibn Pakuda, the eleventh century Jewish philosopher, illustrates the complexity of Jewish thought on this subject. As evident by the quotation below, he propounded the value of extreme asceticism, in which one must avoid desire and pleasure at all costs:

The [material] world rules them, stopping up their ears and closing their eyes. There is not one among them who occupies himself with anything but his own pleasure—whenever he can attain it and the opportunity presents itself. [Pleasure] becomes his law and religion, driving him away from G-d (Chovot Ha-Levavot, "On Deprivation," 9:2).

Recognizing the extremity of the lifestyle described above, ibn Pakuda acknowledges that we all cannot live a completely ascetic existence, so he offers a middle path (similar to that of the Rambam), designed to be easier to attain:

The first [way to partake of the permitted] is partaking [only] of food that is not consumed for pleasure, without which one could not live or continue to exist. The second is partaking of permitted food in a [more] liberal fashion, aiming for moderation in pleasure without extravagance or profligacy... The same applies to dress, living accommodations, and other needs. The third is overindulging in permitted pleasures purely for the sake of luxury. This leads one to forbidden pleasures and keeps him from performing the duties he owes G-d... (Ibid, 9:5).

Ibn Pakuda provides an important alternative path for those whose constitution cannot tolerate extreme abnegation, however, it must be admitted that, in his philosophy, the ascetic position is weighted far more strongly. Nonetheless, different individuals with varying needs can tolerate different levels of abstinence. Maimonides also, at times, promoted asceticism and disapproved of bodily pleasures in contrast to the more noble developments of the mind and soul. Of course, ibn Pakuda and Maimonides lived and wrote nearly a thousand years ago, when resources were more scarce and the average age of mortality was much lower. The ascetic path would have been a more realistic lifestyle at that time. Today, most people live past the age of seventy, and those approaching retirement must contend with the prospect of supporting themselves possibly for decades without an income, which necessitates accumulating wealth during the active working years.

Modern needs, including the high expense of health care or even air conditioning, would not have been relevant to people in previous centuries (sadly, even in the modern world, replete with available resources, there are still swaths of subsistent people left to starve).

Wisely, Judaism has never primarily been an ascetic religion and has tended to embrace the belief that humans need resources to survive and thrive. Voices in the tradition forbid certain pleasures but also encourage many others; many human pleasures are understood as means to attain a greater end. The Rabbis recognized that, on a number of levels, self-interest and physical pleasure must be present for the practical world to function.

The Anshei Kenesset ha-Gedolah [Men of the Great Assembly] said: since it is now a time of Divine favor, let us pray for the [evil] inclination to be subdued before us. They prayed and it was delivered into their hands. [Then the evil inclination] said to them: See that if you kill [me] the world will become desolate. They imprisoned it for three days. [Over those three days] they sought a freshly laid egg throughout Israel and it was not to be found. (BT Yoma 69b)

Without the desire for pleasure and self-gain, there would be no reproduction in the world, which would lead to the end of Jewish continuity, as well as human existence! The Midrash (Bereishit Rab-
the greater good, but by incentivizing this type of work the government sees the utility in the profit motive and channels it towards the greater good. Yet we must also acknowledge that the need for profit, tragically, has killed many people because people are unable to see beyond their own short-term need. Quite frequently, we see how immanent responses to human selfishness require some degree of moral and pragmatic compromise.

Similarly, throughout America we find hospitals that feature a new wing or department endowed by wealthy businessmen, and many of the Jewish community’s own charitable and cultural organizations owe their survival to contributions from such wealthy corporations and citizens. Of course, these contributions (about $300 billion annually) are deemed tax-deductible, which enables the wealthy and corporations to pay less in taxes. While many decry the current inequity in tax policy, others worry that a new tax code that eliminated such tax deductions might lead to the destruction of symphony orchestras and museums, deters the creation of new medical facilities and dry up funds for charities. Additionally, we must develop a more robust public trust in the welfare system, which would eliminate the need to cater to the profit-motive in private interests.

The 12th century Spanish poet-philosopher, Yehudah ha-Levi, described the value of wealth quite positively:

Nor is the decreasing of wealth an act of piety if such wealth happens to have been gained in a lawful way and its further acquisition does not prevent him from occupying himself with Torah and righteous deeds, especially for one who has family and dependents and whose desire is to spend his money for the sake of G-d...For you are, as it were, enjoying the Lord’s hospitality, being invited to His table, and should thank Him for His bounty, both inwardly and outwardly. (Sefer ha-Kuzari II:43-50)

The balance is precarious. In order to thrive, capitalism needs continuous expansion, which necessitates progressive increase in consumption. Mass marketing techniques, perfected in the second half of the last century, have succeeded in convincing millions of people that the latest fad or gadget will solve all their problems and give them lasting happiness. However, just as many have discovered that, after filling their attics and closets with these “treasures” so assiduously marketed to them, a life consumed with gain and consumption merely for one’s own personal pleasure leads down a dark and scary emotional and spiritual path. Capitalistic mass consumption may be justified as the right to enjoy G-d’s world; however, it may also be understood as an abuse of creation and an interference with G-d’s majesty. Lewis Hyde explains this phenomenon of insatiability well:

The desire to consume is a kind of lust... But consumer goods merely bait this lust, they do not satisfy it. The consumer of commodities is invited to a meal without passion, a consumption that leads to neither satiation nor fire. He is a stranger seduced into feeding on the drippings of someone else’s capital without benefit of its inner nourishment.... A paradox of gift exchange: when the gift is used, it is not used up. Quite the opposite, in fact: the gift that is not used will be lost, while the one that is passed along remains abundant. (The Gift, 8, 26)

Hyde explains how the philosophical benefit of giving gifts outweighs that of pure consumption. Rabbi Abraham Isaac ha-Kohen Kook, the great first Ashkenazi Chief Rabbi of Israel, was so concerned about the spiritual and moral pollution of personal over collective gain that he came out against capitalism and private property altogether.

Without determining the economic system envisaged by the Torah, it is evident that a consistent application of the Torah’s socio-economic norms is incompatible with the tenets of Capitalism. The Torah’s statutory insistence in “thou shalt do that which is right and good” harbors such severe limitations upon private property as to render it virtually untenable and unprofitable (Vision and Realization, p. 194).

Modern economic trends have tended to justify Rav Kook’s revulsion; our society is clearly doing a poor job in caring for its most vulnerable. From 1983-2004, the top 1 percent of Americans took in 42 percent of the new wealth generated, versus 6 percent of new wealth going to the lowest 80 percent of Americans. By 2010, in terms of non-home financial wealth, the top 1 percent of Americans possessed 42 percent of the total while the bottom 80 percent owned less than 5 percent of this wealth.

Even if we were to institute a more equitable distribution of wealth, ethical production and consumption is not just what or how much we buy or make. It’s also about what we do with those things. The rabbis of the Talmud evocatively explored this issue:

In times to come, the Holy One, blessed be He, will take a scroll of the Law in His embrace and proclaim: “Let him who has occupied himself herewith, come and take his reward.”...the Kingdom of Edom (Rome) will enter first before Him... the Holy One, blessed be He will then say to them: ‘Wherewith have you occupied yourselves? They will reply,...’we have established many marketplaces, we have erected many baths, we have accumulated much gold and silver, and all this we did only for the sake of...Torah.” The Holy One, blessed be He, will say...
in reply: “You foolish ones among the peoples, all that you have done, you have only done to satisfy your own desires. You have established marketplaces to place prostitutes in them, baths to revel in them, [as to the accumulation of] silver and gold that is Mine. (BT Avodah Zarah 2b)

Is American wealth today used more for pleasure and individual gain or for bolstering our cherished values? How can we shift economic activity to further our collective moral pursuits? Centuries later, the Rambam sought to articulate the correct priorities and their consequences:

One should not aim first at accumulating wealth and then devoting time to the study of the Torah. Rather, one should see one’s study as permanent and dominant and one’s economic endeavors as marginal and temporary. This study is not meant, however, to be a means to economic or personal profit... Torah study, which is not accompanied by economic activity, is liable to end in sin, and those engaged in this form of study will end up by robbing their fellow men. (Hilchot Talmud Torah 3:7, 10)

According to the Rambam, we must, first and foremost, concentrate on spiritual and moral pursuits and not be overly consumed with wealth. We must also, on the societal level, de-incentivize the acquisition of mass wealth and mass production where harmful. While we must be responsible and meet our societal and familial financial obligations, we dare not fall into greed. The desire to disregard the true purpose of life is not a novel or modern problem. The Abarbanel, a 15th century Portuguese Jewish philosopher, explains that this dilemma actually has its origin in the beginning of time,

The sin of this generation (the builders of the Tower of Babel) is similar to that of Adam, Cain, and his sons. The latter were not satisfied with the munificent bounty bestowed on them by a generous Deity and the material plenty available through natural means. Instead of using their status of being created in G-d’s image for the perfection of their spiritual aspects, they devoted themselves to the perfection of crafts, animal husbandry, and agriculture. All of these were attempts to improve and exploit the natural order of things, which the Deity, in His wisdom, provided as sufficient for the needs of mankind. To this “sin,” the builders of the tower of Babel added that of urbanization and political organization. They created a kingdom ruled by Nimrod which supplanted their previous egalitarian society and built cities which destroyed their rural environment. In addition the greed and aggression following the introduction of a class system of ruled and ruling, they pitted men against each other by their rules of private property. It is this absolute view of private property which led men to declare, “What is mine is mine and what is yours is yours.” By traveling from the east, the builders of the Tower of Babel separated themselves from G-d by their desire for business and artificial goods. (Abarbanel, Commentary on Genesis, Chapter 18)

The Abarbanel reminds us that political and economic realities we often view as inevitable are not a necessary element of the human condition. Rather, many societal structures were often developed due to the selfish and evil motives of the economically powerful, not for the sake of the welfare of the world. Each generation inherits anew the task to combat the refreshed desire for self-worship, the immersion in self-pleasure, and the neglect of supporting the vulnerable while attaining as much property for oneself and one’s family.

The prophets teach us that the paradigmatic wicked society is one that collectively neglects its poor. “Behold, this was the iniquity of your sister Sodom: pride, fullness of bread, and careless ease was in her and in her daughters; neither did she strengthen the hand of the poor and needy” (Isaiah 16:49). Further, the rabbis teach that one who embraces private ownership at the expense of the poor living by a principle of, “Mine is mine, and yours is yours” is like the paradigmatic evil Sodomite. (M Avot 5:10) A model of capitalism that allows for significant wealth accumulation but doesn’t also enforce mechanisms of wealth redistribution is not a model Judaism can promote. Economic equality and care for the poor are Jewish values to be defended, and Jews should be on the front line advocating for a more ethical system of taxation.

There are many ways to commit financial wrongs, not only through indiscrete stealing. In the 18th century, the Ramchal, Rabbi Moshe Chayim Luzzato, claimed that the Torah asks much more of us than simply not to steal:

Most people are not outright thieves, taking their neighbors’ property and putting it in their own premises. However, in their business dealings most of them get a taste of stealing whenever they permit themselves to make an unfair profit at the expense of someone else. (Meisillat Yesharim, chapter 21)

This lesson has fascinating and highly demanding implications for how we think and act with regard to our spending and even our philanthropy. Almost all of us take more from the world then the amount we give back. What if we were to radically reverse this trend? What if we could subversively create a new generation that was willing to stand up and reject these norms through challenging the power structures at place, refusing to embrace a marketplace devoid of care for the other side, curbing the infinite desire for comfort and security, and demonstrating a much higher commitment to giving.

Rabbis today even think how we
invest our personal funds is of crucial significance. In a new study by Jewish Jumpstart, a philanthropic research and design lab based in Los Angeles, on Impact Investing, upwards of 90% of rabbis surveyed agreed that the Jewish community should align its investments with Jewish values, that social and environmental values must be considered along with financial gain, and that there is a moral obligation to avoid investing in companies that cause societal harm; 58% - more than half! - even argued that one should be prepared to have lower financial gains in order to align investing with Jewish values. These rabbis believe that investors must avoid states that sponsor terrorism and permit or abet in child labor, predatory lending, mass pollution, animal testing, worker's rights violations, as well as trafficking in tobacco, gambling, adult entertainment, non-military firearms, etc. On the positive front, the rabbis counseled prioritizing support for Israel, education, alternative energies, diverse workplaces, etc., in investing.

Investment to slow climate change is essential, and represents the upward struggle for ethical investment. According to United Nations data, investment for renewable energy hit $257 billion in 2011. Nevertheless, renewable energy (excluding hydroelectric power) was still only about 6 percent of energy generated in 2011, and China has now surpassed the United States in renewable energy investment, while many Americans tax incentives for these investments have expired. Fossil fuels continue to be subsidized worldwide at a rate six times higher than renewable energy. Clearly, there is a need to greatly increase this type of investment.

Overall, sustainable and responsible investing has grown significantly from $639 billion in 1995 to 3.744 trillion in 2012. We have a long way to go to continue to move the community from traditional investments to socially responsible investing to policy-determining investments, to create a permanent investment philosophy where values are prioritized over profits.

In his work *Or L’Yisrael*, Rabbi Yisrael Salanter, the great founder of the *mussar* movement, in which ethical and spiritual development were prioritized above all, taught that one must first do *kibbush hayetzer* (conquest of desire) and only then can one engage in *tikkun hayetzer* (repair of desire). To Rabbi Salanter, the goal is not to destroy desire altogether but rather to have control over it and to repair it toward the noblest purposes. In the end, the goal is not to look for satisfaction and life fulfillment through physical desire but to elevate one’s existence in pursuit of the grand noble ideals of our tradition. Rabbi Joseph B. Soloveitchik articulated this well:

With the birth of the norm, man becomes aware of his singularly human existence which expresses itself in the dichotomous experience of being unfree, restricted, imperfect, and unredeemed, and, at the same time, being potentially powerful, great and exalted, uniquely endowed, capable of rising far above his environment in response to the divine moral challenge. (*Lonely Man of Faith*, p. 59)

We have severe limitations as humans but also immense potential for noble pursuits. Rabbi Soloveitchik further taught an important point about emotions relevant to our understanding of human desire:

The worth of a particular emotion must not be measured by some intrinsic quality it possesses, but rather by the relevance and significance of its correlate object. There are neither bad nor good emotions; instead there are bad or good emotional objective references. (*A Theory of Emotions*, p. 182)

Feeling desire is natural and not problematic, according to Rabbi Soloveitchik, as long as its objects are right and good. It is the job of government to regulate industries. It is our job to regulate our hearts. One of the classic rabbinic teachings is that *nachman l’hu bu’er*, that the Compassionate One, i.e. God, desires heart and not just deed, intention and result (Rashi on BT Sanhedrin 106b). Jews are asked first and foremost to be aware of this conflict and engage it in their lives; pursue justice, the Torah implores – what we find at the end of the pursuit may end up being less important.

Today, many aspects of economic systems, day-to-day commerce, and human greed have gone unchecked. The Torah requires that we balance freedom with regulation and human desire with human limitation. This must be achieved on personal, communal, societal, national, and global levels. The Jewish people, inspired by the wisdom of our tradition, should be at the forefront of modeling this at work and home and of advocating for change at the office and in legislation. We must leave society stronger and more equitable for our children. As the great sage Honi taught, “I myself found fully grown carob trees in the world; as my forebears planted for me, so am I planting for my children.” (*BT Ta’anit* 23a)
In 2011, Bar/Bri and Kaplan agreed to settle a class action lawsuit brought by law students for allegedly conspiring to limit competition in the market for full-service bar review courses. According to the complaint, Bar/Bri and Kaplan purportedly agreed that Bar/Bri would monopolize the bar preparation market and Kaplan would monopolize the Law School Aptitude Test (LSAT) market, thereby inhibiting free trade and coercing student consumers to pay exorbitant charges for such courses. The Central District of California initially rejected the $5.2 million settlement and only recently approved a $9.5 million revised settlement.1

By contrast, in 2010, Rabbi Michael Taubes authored a p'sak halachah that a grocery store in Washington Heights should not be opened because it would compete with a grocery store that already existed. In a public statement, Rabbi Taubes wrote, “If the pre-existing store loses significant business to a competing store, the result will be that his store will no longer be a viable operation and he will eventually be forced to close it down.” While the owners of the new business had argued that there was a need for two grocery stores in Washington Heights, Rabbi Taubes argued that the competition would cripple the long-time grocery store of Washington Heights and therefore that a new kosher grocery store should not be opened.2

The American and Talmudic system thus come to squarely different positions on the question of economic competition. The American theory of laissez faire embraces competition as the epitome of capitalism and the backbone of a successful economy. Government interference is only warranted to insure free competition and a level playing field and prevent such producer conspiracies as the purported Bar/Bri-Kaplan agreement. This philosophy is in accordance with Adam Smith, who wrote, in The Wealth of Nations, “Every man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man or order of men.”

Talmudic law, on the other hand, maintains just the opposite - a man cannot open a store that will compete with their fellow, as evidenced by the ruling regarding the Washington Heights grocery stores. Without focusing on the potential consumer benefits to a free market, Jewish law looks down on competition as an interference with another person’s right to earn a livelihood. Judaism’s censure of economic competition - particularly as contrasted with its exaltation in the American economic theory - elicits the question of whether the Talmudic legal system is unfairly pro-producer, at a potential cost to the consumer and society, or whether it indeed has it right and should be a source of insight in American economics.3

The Talmud itself contains both positive and negative statements about economic competition. The mishnah, in BT Bava Metzia 60a, states:

רבי יוחנן אמר אל שלהם:
המכים קולות ולהם תולים.
ם שלifiers aren’t to sell below the market price.
Now that the permitted has been determined, let the one who wishes to sell.

R. Yehudah says: A storekeeper may not distribute toasted grain or nuts to the children because he customizes them to come to him. But the Sages permit this. And he may not lower the prices of his goods below the market price. But the Sages say: He is remembered for good.

The Gemara explains that the rationale behind the first half of the mishnah is the provision of a level playing field; while a storekeeper can distribute nuts and grains to children, her competition can distribute prunes, which are presumed to be a superior enticement. The first half of the mishnah, therefore, focuses only on the question of fair play between producers. There is seemingly no concern for the consumer children, who, with the appeal of sweets, are being lured, unwittingly, into the store, as long as both store owners have equal access to the bait.

The second half of the mishnah, however, is the key source for the assertion that Talmudic society embraced a positive view of economic competition. The majority opinion in the mishnah is that someone who lowers the price of goods below the market price is zachur la-tov, remembered for good, because, as explained by the Gemara, he lowers the market price.

1 Stetson, et al. v. West Publishing Corporation, et al., Central District of California Case No. CV-08-00810 R.
2 Just Kosher v. The Makolet, (July 28, 2010). Note, however, that Rabbi Taubes held that the store could be opened if it would be a different type of establishment, like an ice cream shop.
3 The term often associated with Judaism’s view on economic competition is hasagat gevul, literally the moving of the boundary. The prohibition on moving a boundary appears in Deuteronomy 19:14 in regard to the initial allotment of land between the tribes, and Nachmanides limits the prohibition to this particular situation: to apply only to the tribes moving a boundary regarding their allotment of land. The application of hasagat gevul to apply to stifle economic competition did not appear until the Rishonim. For a detailed discussion of the origins of hasagat gevul see Rav Simcha Krauss’s article, Hasagoth Gvul, The Journal of Halacha and Contemporary Society 29 (Spring, 1995) 5-29.
4 BT Bava Metzia 60a-b.
5 See Me‘iri, ad loc.
overall. This portion of the mishnah appears to focus only on the consumer; the market price decrease certainly does not benefit producers. The Shulchan Aruch codifies the opinion of the Sages, and thus the prevalent law emerges that a producer should aspire to lower market prices. Under this view, the opening of a second grocery store with lower prices should be permitted!

On the other hand, there is a Talmudic passage which appears to decry economic competition, thereby supporting Rabbi Taubes’s opinion. The Babylonian Talmud, Bava Batra 22a states:

אמר רבי הונו אתא בר נמנתא
דחקך רוחית האתא בר מצאתא החירה
המקדים בהו דיר אוח מוצבותו
ולא ילדותו

Rav Huna said: a resident of a ma’avi set up a mill and a fellow resident of the ma’avi comes and sets up a mill next to his, the law is that the first one can stop the second one, for he can say to him: “You are cutting off my livelihood."

Rav Huna, in his opinion, originates the principle that undergirds Rabbi Taubes’s decision - that the incumbent commercial businessman has the right to obstruct a competitor based on the rationale that the competitor cannot interfere with his livelihood. In Jewish law, it appears that the business owner has some right to her livelihood, which her fellow business owner must respect. Perhaps stemming from Judaism’s commitment to social responsibility, the focus is on the effect of competition on the producer and not the benefits such competition would have to the consumer.

The Talmud subsequently discusses the extent to which Rav Huna’s ruling is respected, contrasting it with the principle אמתו pooך salon, אמתו נשמה 살ך, “you do as you wish inside your property, and I do as I wish inside my property.” There is a line of halachic authorities that maintain that this latter principle of individual property rights prevails and therefore reject Rav Huna’s

6 BT Bava Metzia 60a-b.
7 Shulchan Aruch, Choshen Mishpat 228:18. The Pitchei Teshuvah, on the other hand, limits this rule to only produce where the market devaluation is necessary for consumers, while maintaining that other items may be sold at whatever price the producer demands to insure the livelihood of the producer. See Pitchei Teshuvah to Choshen Mishpat 156:8.
8 In Talmudic times, the residential houses would all open into a courtyard, and several courtyards were only accessible via an alley in order to get to the public thoroughfare of the street. The alley was known as a ma’avi.
9 Rashi makes it clear that the purpose of the mill was for commercial purposes, either to sell the grain or rent out the mill.
10 Often quoted in this context is the phrase כל רเชי עליבים אין ברא, that all of the Jewish nation is responsible toward each other. See, e.g. BT Sanhedrin 27b.
11 In line with these opinions, Rav Joseph Soloveitchik once ruled that there should be no Talmudic restrictions on economic competition in America. On the other hand, several authorities ruled that Rav Huna’s ruling should be respected in certain situations. In keeping with these authorities, Rav Moshe Feinstein maintained that if a second store would cause the first store owner to change his socio-economic class, it is prohibited to open the second store.

Thus emerges a clear dividing line between modern day authorities regarding the extent to which Rav Huna’s ban on competition should be respected. As the aforementioned discussion illustrates, respecting Rav Huna’s ban could have devastating consequences for consumers by allowing mediocre establishments to create a monopoly without any incentive for improvement or desire to respond to the community’s demands. There is no dearth of Jewish communities with public censures of Rabbinic insulation of pre-existing pizza stores that serve reheated pizza, bagel stores with limited hours, or Chinese restaurants that prevent new delicatessens under the guise of Halacha. There is also a common position that the entire dispute around Rav Huna’s ruling is only in the case where the second store poses no benefit for consumers. But if it did, even Rav Huna would agree that the store can, and even should, be opened. According to this approach, the Talmudic system only prioritizes the producer in a vacuum, where there is no competing social need. In a case when the consumer would benefit, however, the needs of the consumer take priority.

From this interplay emerges a kind of Talmudic free market that

11 The Gemara itself appears to align Rav Huna’s ruling with a minority tannaitic opinion, and therefore Tosafot (BT Bava Batra 21b) and the Ra”sh (BT S Baba Batra 2:12), as well as the Shulchan Aruch (Choshen Mishpat 156:5) rule against Rav Huna.
12 For a discussion of the context of this ruling, as well as additional sources, see Chaim Jachter, “Hasagat Gevu’a: Economic Competition in Jewish Law,” in Gray Matter: Discourses in Contemporary Halachah (Teaneck, 2000).
13 The Mordechai maintains that if it is impossible to pass the second store in order to get to the first store, then Rav Huna’s ruling would apply to enjoin the second store. A responsum of the Rema expanded the Mordechai’s ruling beyond its physical limitations to uphold Rav Huna’s ban in any case where there would be definite damage to the original store owner. See Ibid.
14 See Iggerot Moshe, Choshen Mishpat 1:38
15 See, e.g., Ri Migash (quoted by the Tur, Choshen Mishpat §156). The Pitchei Teshuvah, on the other hand, limits this rule to only produce where the market devaluation is necessary for consumers, while maintaining that other items may be sold at whatever price the producer demands to insure the livelihood of the producer. See Pitchei Teshuvah to Choshen Mishpat 156:8.
is very different than that of the American economic system. The American free market embraces the law of supply and demand, an unregulated economy where the price ideally reflects the maximum amount of consumer interest balanced by the lowest price that the producer will accept when faced with competition. To the Talmud, however, such a system is unacceptable. Producers cannot sell at any price that consumers will pay.16 A second store that challenges the first establishment can be obstructed. There is no free competition or unregulated transactions - the exact effect of every price decrease on an owner’s profit is subject to strict halachic scrutiny.

Perhaps one understanding of the difference between the two legal approaches is that, in Talmudic law, there is a separate requirement for fair business dealings. All commercial dealings are charged with the biblical command to have fair weights and measures.17 In fact, the Talmud discusses whether there is a separate requirement for the producer to act more favorably to the buyer, rather than to simply treat him fairly.18 The goal of the American free market of a consumer-driven price may therefore be unnecessary in the Talmudic system which independently mandates such a result.

Thus, the contrast between the two systems reveals an alternative to the American economy. Rather than an unregulated free market to ensure ideal prices, the Talmudic system protects the producer’s livelihood while creating an independent obligation on the part of the producer to treat his customer fairly. The bifurcation of these two obligations in the Talmudic system arguably protects both the producer and the consumer by both taking into account the producer’s livelihood and the fairness to the consumer. Although the Talmudic system may be unworkable in the American economy,19 and perhaps even unworkable in the Jewish community,20 it is at least an alternative to consider in discussing which promotes the ideal social benefits.

Servants of Servants AVI GARELICK

There are several different classes of workers explicated in rabbinic literature. There are day-laborers, hired on a precarious basis, usually as field workers. This class bears some resemblance to the laborer in capitalism, leasing their body for wages. There are craftsmen and contractors, hired to deliver a product or complete a task. There are sharecroppers, who live on and work a rented field in exchange for some percentage of the yield. Lastly, there is the only category of worker explicitly discussed in the Bible—slavery. The distinction is fundamental. While all of the above are based on some kind of free exchange, slavery is based on ownership and domination. Even so, a master owes his slave something—subsistence and protection. There is no concept in Jewish law of a worker who receives nothing material in return for their labors. Only recently has it become possible, thanks to the cruel logic of the modern economy, for a worker to receive neither compensation nor protection from their employer.

Unpaid internships, until recently treated as the subject of idle humor, have finally become the stuff of legal action. In a recent class action suit brought in the southern district of New York, federal Judge William Pauley III ruled that the unpaid interns from the production of Black Swan needed to be compensated for their labor. In his opinion, Pauley argued that the Black Swan interns were hired to work a low-wage, entry-level job, but for free. Unpaid internships are not intended for the performance of menial labor, such as making copies, mopping up spilled coffee and all that; asking them to do such work is actually illegal!

Judge Pauley’s opinion is grounded in the Fair Labor Standards Act (FLSA), which articulates six qualifications for an unpaid internship. These include benefits that resemble an educational training, no immediate advantage to the employer, and no displacement of regular paid employees. As we see in the case of the Black Swan set, as well as, assumedly, a great number of other unpaid internships, the interns accomplished much that was to the advantage of Fox Searchlight Pictures, work that was exactly what a paid employee should have been doing. The educational benefits they received “were incidental to working in the office like any other employee and were not the result of internships intentionally structured to benefit them.”

The legal ramification of Pauley’s ruling is that it is illegal to hire someone for no wages, even if your employee agrees to those conditions. Waiving one’s entitlement to compensation is not permitted under the FSLA.

The purposes of the Act require that it be applied even to those who would decline its protections. If an exception to the Act were carved

1 http://www.courthousenews.com/2013/06/12/58451.htm

16 Indeed, the Talmud makes it clear that a sale that overcharges a consumer by more than one sixth of the inherent value is void under the prohibition of ona’ah. See, e.g., BT Bava Metzia 52a-b.
17 Deuteronomy 25:15.
18 See, e.g., BT Bava Batra 88b-89a.
19 For example, the Talmudic system may assume the honesty of the producer in charging him to sell at a “fair” price because the American system relies on market forces to set the fair price.
20 See the aforementioned discussion on whether Rav Huna’s ruling harms consumers.

10451.htm
Companies and schools with large and famous names use their reputations instead of salaries to bring in young people who are desperate for access to their prestige. They become convinced that their skills and educations are secondary to connections. The content and quality of what they do is overshadowed by where and with whom they are doing it.

This means that, though unpaid internships are legally expected to be educational opportunities, it does not really matter what one is actually doing at a prestigious internship — it is the affiliation itself that is one’s biggest gain. This is the main reason one would be unable or unwilling to recognize the gross unfairness of the system. Young people attempting to begin careers are looking for a way in the door, and they will do whatever it takes for a chance. But, in the end, this process is self-defeating because, in so doing, they erode their chances at getting paid for entry-level work! Employers choose not to offer paid positions if they can persuade people to do the same work at an internship for free. Meanwhile, people continue to accept such positions because they feel like they have no choice.

So, the defense of unpaid internships consists of two contradictory parts: It is their choice to forgo pay, why not allow it; at the same time, what choice is there, it is necessary for today’s careers. I will endeavor to demonstrate, within the framework of Jewish law and rhetoric, why a Jew should reject these rationalizations and seek a new future for ambitious youth.

Firstly, the matter of allowing the individual freedom to forgo one’s rights. Though some exception is permitted to established economic Halachah, it is clear that those exceptions may only persist if they do not pose a threat to others. If a property owner wishes to allow an injurious development to his neighbor’s property, he may waive his halachic protection – unless it involves the production of smoke and sewage, both notably toxic fumes. To settle disputes, you may choose to be judged by one expert instead of a panel of three, but for conversion you are held to a panel of three, because that ruling has a general effect on the Jewish community. Just as in the FSLA, certain protections cannot be waived, the same holds true in Halachah.

What of the problem of having no choice? Despite its pretensions of liberty, having no choice but to, for example, negotiate away one’s fair compensation, is an endemic problem in a capitalistic society, one that can erode the distinction between being a worker and being a slave. Indeed, according to the Talmudic sage Rav, the ability to choose to discontinue one’s work, at any moment, is the very distinction between free labor and slavery. He asserts that a worker is permitted to quit his job, even in the middle of the day. His proof is a gloss on Leviticus 25:55, “For unto Me the children of Israel are servants; they are My servants whom I brought forth from the land of Egypt.” Rav boldly declares, speaking for the sake of the Holy One, “They are My servants; not the servants of servants.” It is actually part of the Jewish responsibility, in accepting God as our master, to ensure the freedom of all workers, to keep them from exploitative situations in which their rights to compensation and movement are compromised. As free people, we must only work out of our own freedom, and not out of commitments we regret, or have turned to our disadvantage.

What of needing to stay busy, in order to stay competitive, or out of the inherent virtue of hard work? When Moses returns to Egypt to share God’s promise of liberation with the Jewish people, they are incapable of seeing the significance of his message. “They could not listen to him, out of shortness of spirit

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2 See http://www.someecards.com/graduation-cards/college-graduates-unpaid-internship-jobs-funny-ecard for a funny example of this phenomenon.

3 http://www.policymic.com/articles/48829/why-you-should-never-have-taken-that-prestigious-internship

4 BT Bava Batra 23a, cf. Tur, Choshen Mishpat $155.

5 Tosafot on BT Yevamot 46b

6 BT Bava Metzia 10a

7 The Meiri extends halachic worker protection to non-Jews as well as Jews, under the rubric of ger toshav. See Beit ha-Bechorah on BT Bava Kama 113a-b.
and hard work.” (Exodus 6:9) Rashi explains, “Any person who is constricted will suffer shortness of vitality and spirit; they will not be capable of broadening them.” When we fill our hours with work that isn’t ours, we are willfully limiting our spirits, and closing our eyes to the world around us. If someone working a white collar job cannot stop to help someone in need, or comfort their own crying child, because they are afraid of the consequences at work, that person understands this experience. Before you jump to fill your workday doing menial work for no pay, stop to think what kind of career you are preserving, and consider what else you might preserve, like your own talents and spirit, or your openness to the world around you.

As Jews living in a capitalist society, trying to live out the Torah’s ideals, and putting forth effort to bring more justice to our world, we must consider the full impact of Rav’s statement regarding the ideal of human freedom. Anything a person does which is not an order from God is something which they should be free to quit at any time, since one is only, truly, beholden to the Holy One. One must be free in a real sense, beyond rhetoric; it should be actually possible to quit. Prestige economics, wherein you work not for wages but for a chance at accruing a kind of personal prestige, undermines the very possibility of this kind of freedom. One can never sever ties with one’s employer if your future employment depends on your prestige which in turn depends on your institutional affiliation. Can you really say that, for the sake of your future, you have not been made a slave to your work?

There are countless other factors which limit human freedom, but the understanding of unpaid internships typified by Judge Pauley, which expose the injustice imbricated within their very structure, helps us realize how much suffering of today’s workers is connected. Even a well-connected, well-educated young Jew can find themselves working jobs they hate and from which they cannot extricate themselves. We have to understand that it is possible to maintain the letter of the law here - basic permission to quit your job whenever one chooses - without touching on its spirit. You can be technically permitted to walk away from your job without truly feeling, or being, free to do so. Such a freedom requires more than a legal injunction; it requires robust social support. Indeed, we will only see the true spirit of Rav’s vision achieved if we work to build a society that offers a wealth of opportunities to its members, and economic security even, or especially, to its most vulnerable.

The revelation at Sinai was deeply auditory, full of sound, but in the Torah portion Mishpatim (Laws), the reader is moved if your future employment depends on your prestige which in turn depends on your institutional affiliation. Can you really say that, for the sake of your future, you have not been made a slave to your work?

The absence of dialogue in this portion is a fitting legal preamble to the mostly silent sanctuary, whose workings are described in the portions that follow. Some voices, however, are heard. The first is of the eved ivri, the Hebrew slave, who freely accepts his servitude and is, in his own way, the perfect symbol of the law (Deut. 21:5). Another is the bailee who swears in his own defense; standing before the law, he can only avail himself of sacred words, as his own do not suffice.

Later in the portion, an entirely different voice emerges, warning: “You shall not ill-treat any widow or orphan. If you do mistreat them, I will hear their outcry as soon as they cry out to Me, and My anger shall blaze forth and I will put you to the sword, and your own wives shall become widows and your children orphans” (22:21-23).

The wail of the widow and cry of the orphan suddenly erupts among the staid formulas of the law, and the balanced formulations of “if x then y” crack under the moral force of a direct command. They further lost structural integrity at the prohibition against keeping the poor borrower’s collateral overnight. “It is his only clothing, the sole covering for his skin. In what else shall he sleep? Therefore if he cries out to Me, I will pay heed, for I am compassionate” (22:26).

The Targum interprets these voices crying out as prayers. The Talmud (BT Bava Kamma 93a) posits that one may cry out for divine judgment against others only if there is no earthly judge to dispense justice. And it is precisely the widow, the orphan and the destitute who are likely to feel they will not receive justice at the hands of earthly judges. So are these cries to be regarded as conventional prayers? Commenting on the words “I will pay heed,” the classic Tannaic midrash on Exodus, the Mekhilta says God will hear the cry whether or not the oppressed actually articulate it; a silent appeal is not inaudible to God. He holds us to account for the cries that we would hear if only we were paying attention, and he exacts judgment as though for willful deafness.

1 This essay initially appeared in slightly revised form in The Jerusalem Report, February 14, 2000.
The silent cry of the widow, orphan and destitute also indicates a deeper truth about the Divine Presence. In commenting on these verses, the 19th-century commentator Malbim cites Maimonides’s comment in his *Guide of the Perplexed* that God’s anger is reserved exclusively for idolators. Divine rewards and punishments are simply the natural workings of the universe, but the idolator upsets that system at its heart and kindles divine anger. Here, however, God’s anger is expressly inflamed by those who oppress widows and orphans. Where is the idolatry in that?

An answer can be found in Maimonides’s legal masterwork, the *Mishneh Torah*. There he writes that whoever shirks the duties of charity “is called base, as an idolator is called base... And the Holy Blessed One is close to the cries of the poor... for a covenant obtains between Him and them, and bids us to act before the Divine Presence.”

In hearing the silent cries and seeing the hidden wounds of the widow and the orphan, the destitute and the stranger, we acknowledge the reality that binds us to them and bids us to act before the Divine Presence.

In his *Orot ha-Kodesh* (“Lights of Holiness”), Rabbi Abraham Isaac Kook writes of a “higher silence” - one in which we rise above the cacophony of this world to hear an ultimate unity - and says that we must cultivate a mode of listening that attends that silence. For in it we discover our connection to the world and others through God.

At the close of *Parshat Mishpatim*, the Israelis say “na’aseh ve-nishma,” we will do and, literally, we will hear - the spoken and unspoken, the said and unsaid, the heard and unheard. For all that, we will listen.
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