

Rabbi Joseph B. Soloveitchik

HALAKHIC
MORALITY
ESSAYS ON ETHICS
AND MASORAH

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Contents

<i>Preface</i>	vii
<i>Introduction</i>	ix
I. PIRKEI AVOT AND JEWISH ETHICS	
<i>Two Dimensions of Masorah</i>	3
<i>Avot 1:1 – From Sinai to the Men of the Great Assembly</i>	13
<i>Avot 1:2 – The World Rests upon Three Things</i>	63
<i>Avot 1:3 – Against Religious Pragmatism</i>	93
<i>Avot 1:4 – Controversy and Continuity</i>	109
II. ASPECTS OF JEWISH ETHICS	
<i>Tzedakah: Brotherhood and Fellowship</i>	123
<i>Halakhic Morality</i>	181
<i>Religious Styles</i>	193
<i>Torah and Humility</i>	209
<i>Source Index</i>	223
<i>Subject and Name Index</i>	231

Fear is the source of the deep-seated human tendency to join others to form a powerful group that can defend one's existence. But while fear of destruction is the progenitor of acts of *tzedakah*, it motivates not sympathetic emotions but only the survival instinct: by giving something to others, a person finds refuge for his own soul, tormented by fear. He believes that if he helps others, they will not be ungrateful and will help him, in turn, when he is in need of assistance. Thus, *tzedakah* flows from the search for illusory security, a mirage for which man is in constant quest, the search for stability in life – in short, it flows from a utilitarian-pragmatic aspiration.

The Torah, to be sure, does not reject such a feeling. Even instinct can be sanctified and purified by Halakhah, if it is expressed through ethical conduct. Accordingly, the Sages established the *halakhah* that one who contributes to *tzedakah* for the (ulterior) motive of promoting his son's restoration to health is regarded as having acted in an entirely righteous manner (*Pesahim* 8a). The brotherhood that constitutes a fundamental component of *tzedakah* is, in the first instance, a utilitarian sentiment.

In my opinion, the essence of the halakhic requirement to give *tzedakah* is a realization of the idea of brotherhood. As long as Israel is persecuted by a particular nation or society and cannot turn to it for assistance, it follows that we are exempt from sustaining their poor and have no obligations toward them. We were not obligated to support the SS members who murdered so many Jews. But it is obvious to me that if a particular nation acts graciously toward us, performing *tzedakah* and demonstrating a sense of brotherhood, then we are obligated to reciprocate in kind and sustain it. The Halakhah states that a resident alien (*ger toshav*) is included within the requirement of "you shall sustain him ... that your brother may live with you" (Lev. 25:35–36 – one aspect of *tzedakah*). A resident alien is a gentile in all respects, but he fulfills the seven Noahide commandments (*Hilkhot Issurei Bi'ah* 14:7), acting in accord with the rules of justice and righteousness, and he helps us in our times of need. The halakhic basis for the obligation of *tzedakah* is reciprocal action flowing from a shared fate.

Toward the end of the *Guide of the Perplexed* (III:53), Maimonides drew a distinction between *tzedek* (justice) and *tzedakah* (there used in the sense of righteousness). That distinction, however, in no way

contradicts the foregoing discussion. Both terms – *tzedek* and *tzedakah* – represent legal concepts, and we have already explained that Judaism regards justice (*mishpat*) and *tzedakah* as inseparable. Like debts, the obligation of *tzedakah* is subject to court enforcement. There is, however, one distinction. In the case of a debt, the request for enforcement, i.e., *tzedek*, is made by a specific party-in-interest. If Reuben lends money to Simon, Reuben can collect the debt, even to the point of foreclosing on Simon's property, and the court will back him up; but the court acts only by petition of the creditor. If the creditor is willing to forgive the loan or to waive his right to have the court enforce it, neither the community nor its representative becomes involved in the matter. The debt becomes an issue of justice only when the creditor insists on his rights and presses the court to enter the breach on his behalf.

With respect to *tzedakah*, there is no specific party-in-interest, but there is nevertheless a complainant demanding that the court enforce a person's obligation; that complainant is none other than God Himself. The complaint alleges that God's creatures are not meeting their obligations under the contract that underlies their supposed property rights, obligations that the court is authorized to enforce. Having acquired property subject to the terms of the contract, the recalcitrant individual attempts to turn his conditional property rights into absolute ownership; the court thereupon is charged to compel the individual to overcome his greedy impulses and restrain himself by dedicating a portion of his property to divine purposes. In the context of *tzedakah*, then, a person has no direct obligation to another person; his obligation runs to God and, through Him, to society. With regard to typical legal matters (i.e., matters of *mishpat*), a person's obligations run directly to his fellow, but once the term *tzedakah* is appropriate, the obligation runs to God. Vows to contribute *tzedakah* are dedicated to God, not to human beings. The Sages wisely determined, with respect to *tzedakah*, that the verse "If a man deliver unto his neighbor money or stuff to keep" (Ex. 22:6) implies "to keep, not to distribute" (*Bava Kamma* 93a). We are not dealing here with a direct relationship between bailor and bailee; the connection is between the Lord of the universe and the bailee. It is impossible to take a vow to flesh-and-blood, and no special sanctity attaches to property owed to a human being.

The reason for the distinction is simple. In all legal matters, the obligation grows out of some bilateral economic activity that creates rights and responsibilities. A sale, for example, creates an obligation on the buyer's part to pay money and on the seller's part to deliver the goods; the obligations stem from their reciprocal economic activity as buyer and seller. So too in the case of loans; in cases of torts or theft, the action is unilateral – the damage to person or property – but in all cases, there is a single factor that generates the obligation. Sometimes it is teleological in form, as in the case of a sale, where the action is directed toward forging a legal relationship; sometimes it is automatic and non-teleological, simply the consequence of an action, as in the case of a tort. Obligations of this sort fall under the rubric of justice (*tzedek* and *mishpat*), in which a concrete litigant asserts his rights. In the case of *tzedakah*, however, there is no specific action (neither bilateral nor unilateral) that brings about the obligation. The link between the parties does not come into being by accident or design; it is, rather, existential and ongoing, accompanying a person throughout his life. It is part of human existence, of man's standing before his Creator; it is not born of human action but activated by the Infinite. There is no common action between the donor and the beneficiary, no damage, no mutual need. The relationship enters the world with the person and needs no further initiative. But that in no way weakens the obligation. Its moving force differs, but it is no less real or binding.

The matter can be viewed on a deeper, philosophical-sociological level as well. The source of the obligation is the community bond – the connection between the I and the other. With respect to justice (*tzedek* and *mishpat*), the situation is highlighted by the action itself. The background of legal relationship constitutes interdependence within the framework established by the law. At times, it is a legal interdependence made manifest by the action itself, as in the case of sales or loans. The legal act comprises the assent of both parties within a bilateral phenomenon; a sale cannot exist without the participation of two parties. But that is not the primary element of the interdependence in its original appearance. The most fundamental principle is that, in general, a person's existence is conducted within an array of reciprocal relationships to which all members of a society are subject.

A person cannot exist as an individual totally removed from the group. The cooperative effort is the most powerful moving force in the development of both the individual and society. A person is aware of that fact and therefore he is impelled to fulfill his obligation. Ecclesiastes' advice – "Two are better than one, because they have a good reward for their labor" (4:9) – resonates constantly in his ears; it is the internal impetus to submit to social directives that sometimes make him uncomfortable.

Tzedakah, too, is based on that feeling, a feeling of oppressive loneliness in which one is trapped. One sees oneself as wretched and powerless. Today success shines on him while his friend suffers torment and grief; tomorrow things will be reversed, and he will be the one oppressed. It is that fear of the future that motivates acts of *tzedakah*.

And so, the primary factor is the feeling of brotherhood that should prevail among men. That brotherhood refers to the common fate and metaphysical tragedy of humanity overall. One lacks confidence in his fortune and in what is to come; neither rich nor poor knows what is in store. The former may descend into poverty, while the latter may rise from the dust. Similarly, the healthy and the sick are not expert in their fate. Tomorrow the former may take ill and the latter may recover. Mutual help greatly enhances human confidence, for a person knows that when he needs assistance he will receive it, just as he provided it. *Tzedakah* entails an expectation that it will be reciprocated in some form; and it is rooted primarily in the sense of interdependence that emerges from a person's terrible fear in the face of the large, seemingly alien, world. Accordingly, the Torah stresses "your needy brother" (Deut. 15:7); the obligation of *tzedakah* is based on cooperation and brotherhood. Sadly, universal brotherhood remains only an abstract idea, never realized in all of human history, and it is impossible, therefore, to base the idea of *tzedakah* on that principle. Instead, it must be confined to the historical brotherhood of the people of Israel.

OBJECTIVE ACTION OR INTERPERSONAL INVOLVEMENT

The foregoing discussion leaves us uncertain as to whether the Halakhah concerns itself only with the external action of extending help to another or considers the subjective correlative to be important as well.

non-legal) creature. He thereby defaces his godly likeness and impairs the divine image in man, which is expressed through man's moral nature. The Sages said that wherever the Torah uses the term *beliya'al*, it refers to loss of one's reward in the World to Come (*Sanhedrin 111b*); in other words, the spiritual personality is lost.

"Wicked" (*rasha*) denotes a personality in which natural empathetic tendencies are lacking. Such a person does not grasp the bond of fate that ties him to the thou; he retreats into himself, into his own good fortune, and adopts an egocentric stance that precludes cooperation with others. The perverseness of his heart and the foolishness of his mind join forces. Cruelty embodies both moral evil and practical folly. The cruel person is both reprehensible and foolish, for he will receive his just desserts and be treated as he has treated others. "The mercies of the wicked are cruel" (Prov. 12:10). The personality is damaged yet again. Not only moral feeling, but pragmatic sympathy as well, is lacking in him.

"Sinner" (*hotei*) indicates metaphysical collapse. The Hebrew word for sin (*het*) comes from a root meaning "to miss the mark" – "Everyone could sling stones at a hair-breadth and not miss (*lo yehta*)" (Judges 20:16). It refers to moral bankruptcy and lack of ethical sensitivity, existential disappointment, a sense that a person has not acted, has not achieved anything. *Het* also refers to frustration, downfall and loss. The sum of the life of one who has not engaged in *tzedakah* is one of total failure; his existence comes to naught.

Ultimately, from an axiological perspective, a haughty person who disregards the call to *tzedakah* remains a pseudo-person, lacking all human values – both natural and metaphysical.

THE EXPERIENCE OF BROTHERHOOD THROUGH TZEDAKAH

Tzedakah, then, is an external performance encompassing both concrete aid and spiritual encouragement that need not draw on a source of fraternal sensitivity. It requires no inward content; the form alone suffices. Even when a person is liable to be punished for his hard-heartedness, when we come to him with a demand for gentleness and sympathy for the suffering of a forlorn outcast, this demand does not refer to love but to egotistical awareness of brotherhood rooted in the fear of the isolated

individual. A person who betrays his conscience and closes his hand is first judged with regard to his lack of this sort of fear-based sympathy. Here we find brotherhood as a negative: the fear of isolation.

Love of one's fellow, on the other hand, draws on the awareness of fellowship (*re'ut*), as Scripture recognizes in its precise wording, "Love your fellow (*re'a*) as yourself" (Lev. 19:18) – we are commanded to love our fellow, for the feeling of fellowship brings about love. Just as the awareness of brotherhood arouses a person to *tzedakah*, the awareness of fellowship motivates him to love and to act graciously. In the passages dealing with *tzedakah* (Lev. 25:35–55; Deut. 15:7–15), Scripture uses the term "your brother," while in the command to love, it uses the word "fellow." What is the difference? The two words are used in the Bible as synonyms, and the Halakhah also treats them interchangeably for legal purposes. The shared sense is the awareness of togetherness – the I and the thou are aware of our interdependence and close attachment – but it is nevertheless possible to identify two layers of brotherhood and fellowship. *Tzedakah* is rooted in the outer layer, while acts of kindness (*gemilut hasadim*) have their grounding in the deeper one.

As explained above, the consciousness of brotherhood vis-à-vis *tzedakah* is shaped by two factors. First, there is the sense of a common fate. The individual is aware of a commonality of fate that he shares with all the members of his people and knows that there is no escape from this paradoxical fatefulness. As the prophet Jonah learned long ago, it is impossible to flee from before God. That recognition of a shared fate should overcome any pride or haughtiness, lest a person consider the option of saving himself by abandoning his brothers and escaping to the safety of his home.

Second, there is the sense of mutual assistance. If fate attacks, a united group will be able to confront it and defend itself, while the isolated individual will perish. Accordingly, egotistical interests demand that one should join forces with the thou and participate in his suffering. Fear is the father of the act of *tzedakah*; it is a phenomenon that revolves around one's egotistical awareness. Fear of destruction moves one not to sympathy for the thou but to love of oneself: by helping others, I find a refuge for my own tormented soul, terrified of what the morrow might bring. I believe that the thou will not be ungrateful and will return my

favor when I am in need. When I share in the travails of the thou, I put myself in his position and envision myself weighed down by troubles. *Tzedakah* emerges from the search for imagined security, from the quest for stability in one's life – in short, from pragmatic, utilitarian aspirations. On the sociological plane, the degree of bonding is only that associated with a "camp" (*mahaneh*), whose formation is generated by the impulses uncovered by the fears of the uprooted individual who must fight for his existence. The Torah, which did not demand the pursuit of ideals that are at times beyond the reach of man, considered this feeling legitimate and issued commands that reflect it.

Our Sages were sensitive to the turning wheel of fate:

R. Me'ir would say: "It is better to go to the house of mourning than to the house of feasting ... and the living will take it to heart" (Eccl. 7:2) – [this refers to] matters pertaining to death. If he mourns for others, he will be mourned for; if he buries others, he will be buried; if he eulogizes others, he will be eulogized; if he weeps for others, he will be wept for (*Mo'ed Katan* 28b).

R. Me'ir endorses the idea of helping others with the expectation that the help will be reciprocated. The maxim "Two are better than one" is based upon an extremely pragmatic motif:

Because they have a good reward for their labor. For if they fall, the one will lift up his fellow; but woe to him that is alone when he falls, and has not another to lift him up. Again, if two lie together, then they have warmth; but how can one be warm alone? And if one is attacked together they shall withstand the attacker; and a threefold cord is not quickly broken (Eccl. 4:9–12).

This is not devotion to the thou; rather, it is improving one's own situation. Maimonides likewise described the idea of brotherhood in the context of this sort of cooperation.

In truth, this sort of relationship embodies the idea of togetherness but not that of unity. On the contrary, each individual takes into account only his own benefit and is uninterested in his fellow; all is

centered on his individual existence. However, despite his egocentrism, he must acknowledge that the thou, upon whom he depends, exists as well. The sense of togetherness is a tragic one, grounded in the feeling that the individual is insignificant. The individual wants to free himself from the bonds that tie him to the group; he grits his teeth over his need to recognize the existence of the thou and their mutual dependence. But he nevertheless subjects himself to the discipline of the camp. Were he but to imagine that the need to do so had passed, he would without doubt try to undo the bonds. The Torah demands that a person have no illusions; rather, one must retain the constant awareness that this dependence never ends.

HISTORICAL FELLOWSHIP

The second layer out of which the feeling of love grows is an awareness of fellowship or brotherhood in a completely different area. Jewish brotherhood at this level is sustained by a lofty, ethical-historical force. The sense of togetherness is transformed into the brotherhood of an ideal that becomes manifest as an *edah* (community). The latter is not generated by negative factors – fear of the pursuer attacking his unfortunate prey – but by positive considerations. An *edah* is a collective – a group of individuals with a shared past and a common future, with aspirations and ideals that generate a communal spirit within them, with identical yearnings and uniform concerns. The term *edah* is derived from *edut* (witnessing) – a collective memory that includes within it the experience of the past and a vision of the future. The *edah* is witness to historical events that cannot be erased. It spans generations, from the dawn of its collective history until the prophecies of the end of days. An *edah* includes not only the individuals now present but all those who came before as well as those who will come in the future – from eternity to eternity. The dead who are long gone still exist in its midst, and those who are yet to be born live within it already.

Maimonides cited the verse "You are the children of the Lord your God" (Deut. 14:1) as referring to the sense of a common fate (*Hilkhot Matenot Aniyim* 10:2). The Jewish people are set apart from other nations; they are harried and oppressed; their burden is shared. But Scripture refers to a more exalted meaning as well: to a common destiny that is

psychology tells of cattle herds pastured in the wilderness, each member grazing on its own, that come together and huddle in a small area as soon as a predator is sensed. The instinct of self-preservation brings them together for mutual assistance. The Torah takes that impulse and elevates it to a level of morality – providing help in the form of *tzedakah*. Given that, it is impossible to limit it to a historically defined area and exclude from it all who have removed their consciousness from the destiny of the *edah*. If one is merely a living creature, filled with fright and terror, the other must support and sustain him. *Tzedakah* as a sublime moral act is realized in the physical arena, as emphasized above, while love arises in the area of ideals and spirit.

THE COMMANDMENT TO LOVE ONE'S FELLOWS

At two points in the *Mishneh Torah*, Maimonides deals with the obligation to love one's fellows. Upon studying these two passages carefully, we note a discrepancy regarding the formulation of the commandment. In *Hilkhot De'ot* 6:3, he defines the commandment to love one's fellow as follows:

It is incumbent on every person to love each individual Israelite as himself, as it is said, "And you shall love your fellow as yourself" (Lev. 19:18). Hence, a person ought to speak in his praise and be careful of his property, as he is careful of his own property and solicitous about his own honor. Whoever glorifies himself by humiliating another person has no portion in the World to Come.

In *Hilkhot Evel* 14:1, he formulates the essence of the commandment somewhat differently:

It is a positive commandment ordained by the Rabbis to visit the sick, comfort the mourners, join a funeral procession, dower a bride, escort departing guests, perform for the dead the last tender offices, act as pallbearer, go before the bier, make lamentation [for the dead], dig a grave and bury the body, as well as to cause the bride and bridegroom to rejoice and provide them with all

their needs [for the wedding]. These constitute deeds of loving-kindness performed in person and for which no fixed limit is prescribed. Although all these commands are only on rabbinic authority, they are implied in the precept, "And you shall love your fellow as yourself" (Lev. 19:18), that is, what you would have others do to you, do to him who is your brother in the Law and in the performance of the commandments.

In *Hilkhot De'ot*, Maimonides defines love from a passive-contemplative perspective. On the face of it, at least, it appears that this love requires no actions and no concrete realization in the form of energetic acts and relationships. It is expressed through a spiritual link of esteem and affection, inner warmth and closeness. The commandment is fulfilled through the emotion itself: a person shows concern for the honor and property of the thou; he is dismayed when his friend finds himself in difficult straits or is embarrassed in public. It is all a matter of sympathy, participation in his sorrows, and sharing in his troubles and misgivings. This sympathy, however, is not translated into objective acts of help and support; its arena is limited to the subjective domain. It has not yet broken through to the outside and has not crystallized into a concrete form of motion and initiative. Therefore, both the essence of the commandment as well as its performance remain enclosed within the borders of faceless inwardness.

In *Hilkhot Evel*, however, Maimonides places the commandment of love in an entirely different arena, one requiring action and dynamism. Love is understood as performing physical acts of kindness; its essence is identical with acts of kindness, with the mighty effort to express the feeling through deed. Internal sympathy does not suffice. It must find its active correlative so that it shapes my way of life, my actions with regard to the thou. The external manifestation is essential to the fulfillment of the commandment of love, and without it the person has not fulfilled his obligation. If that is the case, this commandment is similar to others insofar as it is fulfilled through concrete action. Although its fulfillment focuses on the heart, its realization is objective. Love dons a dynamic-aggressive form: it impels one into action and transforms emotional yearning into an exalted motif.

dynamic love that motivates one's conduct toward others – which Maimonides discusses in *Hilkhot Evel*. All types of support are encompassed within this type of love: caring for the sick, comforting the mourner, dowering the bride, etc.

TWO DEFINITIONS OF “AS YOURSELF”

In characteristic form, Maimonides provides two definitions of “as yourself.” In *Hilkhot De'ot*, as we saw earlier, he writes:

It is incumbent on every person to love each individual Israelite as himself, as it is said, “And you shall love your fellow as yourself” (Lev. 19:18). Hence, a person ought to speak in his praise and be careful of his property, as he is careful of his own property and solicitous about his own honor.

“As yourself” is understood here as complete identity. Just as you love yourself and are concerned about your own welfare, you must love others and be concerned about them. He uses this extreme definition in *Sefer ha-Mitzvot* as well:

He commanded us to love one another as we love ourselves, and one's love and compassion for his brother should be as his love and compassion for himself with respect to his person and everything in his possession. If he desires something, I should desire it as well, and all that I desire for myself I should likewise desire for him (Positive Commandment 206).

In *Hilkhot Evel*, however, Maimonides reformulates the idea, as we have seen: “What you would have others do to you, do to him who is your brother in the Law and in the performance of the commandments.” “As yourself” is here given a different meaning: it refers to what you would want others to do for you, but not to what you desire for yourself. The difference between these two formulations is quite stark: a person craves for himself more than he demands of others. According to the formulation in *Hilkhot Evel*, the Torah does not command doing for the other what I do for myself, but only what I want others to do for me.

This definition is closer to the morality born of social-psychological empiricism, and it is not suffused with an ideal vision that is far from attainable.

But the contradiction is resolved if we distinguish between the two types of love. Regarding contemplative love (which Maimonides discusses in *Hilkhot De'ot* and in *Sefer ha-Mitzvot*, requiring desire devoid of action, a sympathetic attitude and nothing more), the Halakhah demands identical love for both himself and the thou. With regard to active love, however, the Halakhah came to terms with psychological realities and forwent the paradoxical maximum that would charge a person to work on behalf of others as he does on his own behalf; instead, it demands only that a person apply in his conduct toward others the same standards that he would use in assessing their fondness for him. Judaism established the halakhic rule that given a choice between retrieving his own lost property and that of another – even of his father or his teacher – his own property has precedence. It did not demand identical action on behalf of everyone. The rule was formulated by R. Akiva: “‘That your brother may live with you’ (Lev. 25:36) – your life takes precedence over the life of your fellow” (*Bava Metzi'a* 62a). This is an “empirical” ethic, which lends itself to realization.

Logic demands this type of dual approach to the commandment to love one's fellows. With respect to contemplative love, based on a positive assessment of the thou, the Torah (which established morality upon empirical bases) refused to compromise and accommodate itself to psychological realities, and it therefore demanded that a person value the thou as he values his own self. In other words, I am important as a unique human entity, and he too is equally important in that respect. With regard to axiological activity, it tolerates no compromise, for if it did, it could not demand that one protect another's honor as he protects his own. From this point of view, the demand is not overly excessive since one can comprehend this approach. Each individual is a separate small world of his own, bearing the divine stamp and therefore subject to the same standard. In considering dynamic love, however, the love that drives a person to action, the Torah forgoes the maximum, the ideal, and does not want a person to do for others everything that he is prepared to do for himself. Instead, it rests content with median achievement: a person must provide for others everything he expects them to provide