

Poverty and Community in R. Joseph Karo's *Shulḥan Arukh*: "Law and Literature" and Halakhic History

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R. Joseph Karo's (1488-1575) magisterial *Shulḥan Arukh* ("SA") benefited from a rapid dissemination in print as well as a confluence of social and intellectual trends and was recognized—despite lingering opposition—as an authoritative legal compilation in both the Sefardic and Ashkenazic worlds by the seventeenth century.¹ The legal rulings² were drawn in part from Karo's earlier analytic

- 1 SA was first published in Venice in 1565 and then again in Cracow in 1570-80 with the glosses of R. Moses Isserles (ca. 1525-1572). On the dissemination, criticism of, and eventual acceptance of SA, see, e.g., Meir Benayahu, "Al Shum Mah Ḥibber Maran Et Shulḥan Arukh U-I'shem Mi Ḥibbero?," *Asufot: Sefer Shanah le-Mada'ei ha-Yahadut* 3 (1989/90): 263-74; idem, *Yosef Behiri* (Jerusalem: Yad HaRav Nissim, 1990), 365-90; Joseph Davis, "The Reception of the *Shulchan 'Arukh* and the Formation of Ashkenazic Jewish Identity," *AJSR* 36 (2002): 251-76; David Ruderman, *Early Modern Jewry: A New Cultural History* (Princeton: Princeton University Press, 2010), 99-102.
- 2 Although SA was eventually largely accepted as an authoritative code of Jewish law, that was not necessarily the intention of its author. In his introduction to SA, Karo himself describes the work as a collection of rulings drawn from *Bet Yosef* and presented "in a concise manner" (*be-derekh qetzarah*); the work would also ensure that the Torah would be "fluent in the mouth of every man of Israel" and would aid the "young students"—whom Benayahu, *Yosef Behiri*, 376, sensibly identifies as rabbinic students and not children. For a useful summary of the different meanings of "code" and their application to Jewish legal literature, see Elliot N. Dorff and Arthur Rosett, *A Living Tree: The Roots and Growth of Jewish Law* (Albany: State University of New York Press, 1988), 366-401. Eliav Shochetman argued—based in part on SA's presentation of multiple views as compared with the monovocality of Maimonides' *Mishneh Torah*—that SA was not intended to be a law code, a view strongly contested by Benayahu. See Eliav Shochetman, "Al Ha-Setirot be-Shulḥan Arukh ve-Al Mahuto Shel Ha-Ḥibbur U-Maṭarotav,"

opus *Bet Yosef*, a comprehensive analysis of laws based on, and appended to, R. Jacob b. Asher's (1269-1343) *Arba'ah Turim* ("Tur"), and the work leans very heavily upon the language of Tur and Maimonides' *Mishneh Torah* ("MT").³ Karo was also deeply engaged in the study of the Mishnah (with the spirit of which he represents himself as having been in communication)⁴ and of course MT (on which he composed the *Kesef Mishneh* commentary)—both of which were written in a clear and concise Hebrew style he admired and which he utilized in SA. SA also includes a meta-halakhic framework of theology and religious reflection, which, as Isadore Twersky pointed out, is largely derived from MT.⁵ The wide acceptance and authority eventually accorded SA beginning in early modernity and extending to the present more than justifies a study of how it represents the poor and poverty.⁶

Asufot: Sefer Shanah le-Mada'ei ha-Yahadut 3 (1989/90): 323-29, and Benayahu's note to the article and in *Yosef Behiri*, 382-83. Stephen Passamanek suggested that SA be considered a "restatement" as that term is used in American law: a legal compilation that makes the law coherent by filling in gaps and resolving conflicting lines of authority. See Stephen M. Passamanek, "Aspects of Physical Violence Against Persons in Karo's Shulhan Arukh," *Jewish Law Annual* 9 (1991): 8-9. See also Dorff and Rosett, *Living Tree*, 367. We will return later to the issue of how to understand SA in the context of Law and Literature.

- 3 SA's reliance on the language of Tur and MT was clear to students of the work early on; see the comments on this by Meir Benayahu, "Al Shum Mah," 272, and Shochetman, "Al Ha-Setirot," 326.
- 4 On Karo's *Maggid Mesharim*—which records his communications with the heavenly spirit—see R.J. Zwi Werblowsky, *Joseph Karo: Lawyer and Mystic* (Philadelphia: Jewish Publication Society, 1977).
- 5 Yitzhak Twersky, "Ha-Rav Yosef Karo Ba'al Ha-Shulhan Arukh," *Asufot: Sefer Shanah le-Mada'ei ha-Yahadut* 3 (1989/90): 245-61. See also Jeffrey R. Woolf, "La-Avodat Bor'ot: The Body in the Shulhan Arukh of R. Joseph Caro," in *The Jewish Body: Corporeality, Society, and Identity in the Renaissance and Early Modern Period*, eds. Maria Diemling and Giuseppe Veltri (Leiden and Boston: Brill, 2009), 159, who refers to SA as a "passionately spiritual book" with "homiletic hints and elaborations" intended to encourage the individual Jew to develop his own "personal mode of spirituality."
- 6 By the nineteenth century, SA came to be seen as the embodiment of halakhic Judaism, much to the unconcealed dismay of the historian Heinrich Graetz. As for halakhists, the iconic status of SA is interestingly evident in how some have characterized SA, within essays as well as in essay titles. Louis Ginzberg referred to SA as "the codex par excellence of rabbinical Judaism"; see his "The Codification of Jewish Law" in idem, *On Jewish Law and Lore* (Cleveland and New York: Meridian; Philadelphia: Jewish Publication Society, 1955), 182; see also Isadore Twersky, "The Shulhan 'Aruk: Enduring Code of Jewish Law," in *The Jewish Expression*,

The present study combines textual and legal analysis of SA with insights drawn from "Law and Literature." Part I of this study will examine aspects of SA's laws of *tzedaqah* (charity), and treatment of the disadvantaged in comparison with those of *Tur*, its major predecessor. Part I will argue that SA makes discernible changes to *Tur* that overwhelmingly tend to favor the poor, and will demonstrate that SA's rulings on poverty in general tend to provide for leniencies in the application of other elements of Jewish law outside the *tzedaqah* context to the poor. Part II will consider the broader communal implications of SA's rulings on poverty by examining the way SA balances the legitimate and at times competing interests of the poor, the community, and private and family donors in order to maintain communal solidarity and cohesion. In addition, Part II will examine the ways SA emphasizes the poor's obligations to observe key elements of Jewish law, as well as their obligations as participants in the community and as members of families. SA's codification of the poor's obligations as well as their entitlements alerts both classes to the relative equality of all members of the community in Jewish law. Recognition of the poor's obligations by themselves and toward others may help minimize the social divisions that could emerge in Jewish communities between perennial "haves"—who provide alms—and "have-nots"—who perennially take them. More specifically, SA emphasizes the poor's obligations to observe key Jewish laws—notably Torah study, the four cups of wine at Passover, and the Hanukkah lights—which encode historical and ideational elements of what we may call the "Jewish narrative": the history of the formation, study, observance, and defense of, the Jewish people and their covenant with God.⁷ This emphasis is

ed. Judah Goldin (New York: Ktav, 1970), 322-43. Boaz Cohen, in his argument for the continuing relevance of SA to Conservative Judaism, noted *inter alia* that "[t]o reject the *Shulhan Aruk*. . . would be tantamount to repudiating the Talmud." See Boaz Cohen, "The *Shulhan Aruk* as a Guide for Religious Practice Today," in *Conservative Judaism and Jewish Law*, ed. Seymour Siegel (New York: Ktav, 1977), 86 (article published originally in 1939). For a similar observation about SA's influence on "subsequent Jewish religion and culture," and the need to study the work as a literary whole to discern its influence on later Jewish religious conceptions of the body, see Woolf, "La-Avodat Bor'o," 161-62 and n. 11.

7 See Robert Cover, "Obligation: A Jewish Jurisprudence of the Social Order," in *Narrative, Violence, and the Law: The Essays of Robert Cover*, eds. Martha Minow et al. (Ann Arbor: University of Michigan Press, 1993), 239-48. Cover points to the centrality of "obligation" (*mitzvah*) in Jewish law, as opposed to the centrality of "rights" in Western law, and how obligation looks backward to Sinai as its foundational event. Moreover, to Cover, obligation is a marker of a Jewish person's

a powerful rhetorical reinforcement of the poor's status as full members of the Jewish community and people, despite their impoverished state.⁸

"Law and Literature" is a variegated and complex field of which three principal foci are interpretation, rhetoric, and narrative.⁹ The broad metho-

"completion as a person within the community" (241), and mutual obligations "reinforce the bonds of solidarity" (242) and "counter the centripetal forces that have beset Judaism over the centuries" (244). Tzvi Novick has recently analyzed in an unpublished paper what he terms the "agency" of the poor in rabbinic literature of late antiquity with reference to Cover's observations on obligation. I thank Prof. Novick for sharing his unpublished paper with me.

- 8 This point will be developed below in Part II of this essay. Historical evidence of class conflict in Jewish communities, particularly in Spain, shows that rhetorical reinforcement of communal solidarity despite class differences was vital. It should be noted that in the history of Jews in Christian Spain, scholars such as R. Asher b. Yehiel (1250-1327) and R. Shlomo ibn Adret (1235-1310) contended with legal conflicts arising out of these differences. See, e.g., Yom Tov Assis, *The Golden Age of Aragonese Jewry: Community and Society in the Crown of Aragon, 1213-1327* (London: Littman Library of Jewish Civilization, 1997), 5 and n. 11, 82-84 and passim; Jonathan Ray, *The Sephardic Frontier: The Reconquista and the Jewish Community in Medieval Iberia* (Ithaca: Cornell University Press, 2006), 131-44; R. Asher b. Yehiel, responsa 4:22 (ed. Yitzhak Shlomo Yudelov; Jerusalem: Makhon Yerushalayim, 1994); R. Shlomo ibn Adret, responsa 3:380, ed. Yehiel Zakash (Jerusalem: Makhon Yerushalayim, 1996). Apropos of class in Christian Spain (particularly the thirteenth century), see Judah D. Galinsky's findings on the prevalence of *heqdesh* trusts and Jewish charitable bequests for the poor in "Jewish Charitable Bequests and the Hekdesh Trust in Thirteenth-Century Spain," *Journal of Interdisciplinary History* 35 (2005): 423-40. As for northern France, Robert Chazan has noted that there were no discernible twelfth-century complaints arising from social or economic inequality. See Robert Chazan, *Medieval Jewry in Northern France: A Political and Social History* (Baltimore and London: Johns Hopkins University Press, 1973), 51. In thirteenth-century Germany, *Mordecai* and *Or Zaru'a* discuss a disagreement between the earlier German scholars R. Eliezer b. Joel Halevi ("Ravyah"; twelfth-thirteenth centuries) and R. Simḥah of Speyer (twelfth-thirteenth centuries) about an impoverished debtor whose creditors wished to seize the *tzedaqah* monies the debtor had managed to accumulate for his family. The *Mordecai* and *Or Zaru'a* represent the debtor's plaintive plea: "Have mercy on me! These monies were to support my family." While not necessarily indicative of what we might call "class conflict," this account does point to the representation of a certain want of sympathy for the debtor's plight on the part of the German creditors. We will discuss this case later in this essay.

- 9 These three foci presume that the scholar's orientation is to view law *as* literature, rather than to study the portrayal of law *in* literature. See Mark Washofsky, "Responsa and Rhetoric: On Law, Literature, and the Rabbinic Decision," in *Pursuing the*

dological aspects of Law and Literature have been profitably applied to the study of modern responsa,¹⁰ and in this study I propose to utilize its theoretical foundations to examine SA. While responsa may seem at first glance to be more fruitful terrain for such analysis, a closer look shows both responsa and the Jewish legal codes/summaries to be species of the same genus: the literature of Jewish legal interpretation. From its sixteenth-century genesis SA has come to be accepted as a code of law, but it is also a work of interpretation; the work of one highly imaginative, gifted scholar who collected and masterfully analyzed the vast legal literature of the past to produce an opus consisting of his learned interpretations of Talmud, post-talmudic legal compilations, responsa, talmudic commentary, communal enactments, and literary representations of the lived behaviors of Jewish communities. SA is the fruit of a monumental labor of interpretation, and, as such, is inherently no less capable of being studied through the Law and Literature lens than the responsa—although naturally the difference in genre will call for a difference in approach. While the examination of respondents' rhetorical strategies and techniques of persuasion is appropriate in the analysis of that genre,¹¹ a Law and Literature analysis of a code requires the study of its structure and detailed analysis of its content in comparison with its predecessors—what the codifier chooses to retain from the past, what he changes, what he chooses to add, and how he structures and arranges the material. It is through the study of the code at both the macro level of the entirety of the completed work and the micro level of the discrete codified rules—particularly the ways the codifier reads and interprets his sources in order to derive them—that we can discern what has been referred to as “the large-scale, latent structures of thought at

Text: Studies in Honor of Ben Zion Wacholder, eds. John C. Reeves and John Kampen (Sheffield: Sheffield Academic Press, 1994), 367. Jane B. Baron proposes a different tripartite division within Law and Literature: “humanist” ‘law-and-lits’ (who argue that lawyers should read literature); “hermeneutic” ‘law-and-lits’ (who argue that lawyers should read literary theory); and “narrative” ‘law-and-lits’ (who argue that lawyers should pay attention to the stories told by clients, lawyers, judges, and by legal doctrine as well). See Jane B. Baron, “Law, Literature, and the Problems of Interdisciplinarity,” *Yale Law Journal* 108 (1999): 1059-85.

10 See, e.g., Washofsky, “Responsa and Rhetoric.”

11 See *ibid.* See also Mark Washofsky, “Responsa and the Art of Writing: Three Examples From the Teshuvot of Rabbi Moshe Feinstein,” in *An American Rabbinate: A Festschrift for Walter Jacob*, eds. Peter S. Knobel and Mark N. Staitman (Pittsburgh: Rodef Shalom Press, 2000), 149-204.

the heart of the legal codes.”¹² In brief, SA is a work of legal interpretation that can and should be *read* as a whole—“whole” referring to the totality of laws on a particular subject and/or the code in its entirety. It has already been suggested with reference to *Ṭur* that its arrangement and selection of *halakhot* pertaining to a (male) Jew’s daily ritual behavior sheds light on a “latent structure of thought,” *Ṭur*’s “construction of the ideal religious Jew.”¹³ That is, chapters 1-240 of the section *Orah Hayyim* of *Ṭur* are not simply legal directives, but the detailed construction of how the ideal Jew conducts himself from rising in the morning to retiring each night. SA, I suggest, also contains “latent structures of thought,” in this case pertaining to poverty, the poor, the communities of which they are a part, and a broader vision of the nature of a Jewish community.

In setting the search for the “latent structures of thought” about poverty and the poor in SA into terms drawn from Law and Literature discourse, we may come to ponder with Robert Cover about the “paideic” elements latent in the text. To Cover, “paideic” refers to a common body of law and narrative, a way of being educated into that corpus, and the sense of direction constituted as the individual and community work out the implications of their law.¹⁴ Law is not simply a matter of following rules, but of being educated into a particular path, the narrative of a particular community, and then the struggle within that community to arrive at a vision of how to carry forward the “imagined alternative” presented by law into the “unredeemed” reality of the present.¹⁵ This essay contends that SA’s rulings on poverty and the poor present a vision of the nature of the Jewish community and the ways in which the poor and non-poor are to relate to each other in creating and maintaining communal solidarity and cohesiveness. Part of the way SA does this, as was alluded to earlier, is by explicitly linking the poor to the Jewish narrative of divine covenant and its manifestation in several key *mitzvot* that are expressly emphasized to be incumbent on the poor.

12 See B. S. Jackson, B. Lifshitz, A. Gray, and D. B. Sinclair, “Halacha and Law,” in *The Oxford Handbook of Jewish Studies*, eds. Martin Goodman et al. (New York and Oxford: Oxford University Press, 2002), 661.

13 Ibid.

14 Robert Cover, “Nomos and Narrative,” in *Narrative, Violence, and the Law*, 105. As Cover points out in the text and in n. 33, his inspiration for the “paideic” pattern of constituting a *nomos* was Karo’s remarks in *Bet Yosef* to *Ṭur Hoshen Mishpat* 1.

15 Cover, “Nomos and Narrative,” 101, 102.

This essay is primarily grounded in a perspective on Law and Literature derived from the work of James Boyd White.¹⁶ White sees his studies of law in relation to other cultural and social activities as the study of the constitution and transformation of culture, community, and character.¹⁷ For White, the “rhetoric” of the law refers not only to the art of persuasion, but also to the art by which culture, community, and character are constituted and transformed. Moreover, for White, “poetics” is also key—by which he means that the language of the law is “literary or poetic,” which in turn means, *inter alia*, that it is “complex” and “associative.”¹⁸ This understanding of law as a rich and complex language that points beyond discrete rules to the constitution and transformation of community, character, and culture is very helpful as a theoretical backdrop to a study of SA’s laws on poverty and the poor and its broader vision of Jewish community. This essay will take into account the three aspects of what White terms the “lawyer’s rhetorical situation”: (1) inherited language—including considerations of what that language omits or suppresses; (2) the art of the text—the manner in which the inherited language is remade by the speaker in the new text, and the way the speaker reconstitutes the discourse; and (3) the rhetorical community—what kind of person the speaker seems to be, the kind of response the text invites, and the sort of community the text creates.¹⁹ SA is obviously working with “inherited language,” and we will explore how SA reconstitutes the inherited discourse on the poor, poverty, and *tzedakah*. Finally, White and Cover converge in their focus on the reception of the legal text and its role in the constitution of community. This essay will ponder the rhetorical community created by SA, the kind of response the work invites from its audience, and the sort of Jewish community it contemplates.

Another intriguing and useful suggestion of James Boyd White concerning the nature of rules and laws outside of the traditional normative framework is that “. . . a statute can be read not merely as a set of orders. . . but also as

16 This may be somewhat ironic in light of White’s characterization of “Judaic” tradition as envisioning “the law as a set of authoritative commands. . . .” Yet, as we will see, White’s articulation of what he terms the “rhetoric and poetics of the law,” when applied to SA, results in a richer and more nuanced understanding of SA and its cultural work. See James Boyd White, “Rhetoric and Law: The Arts of Cultural and Communal Life,” in *Heracles’ Bow: Essays on the Rhetoric and Poetics of the Law*, ed. idem (Madison, WI: University of Wisconsin Press, 1985), 29.

17 James Boyd White, “Foreword,” in *Heracles’ Bow*, ix-xiii.

18 Ibid., xi-xii.

19 James Boyd White, “Rhetoric and Law,” in *Heracles’ Bow*, 45-46.

establishing a set of topics, a set of terms in which those topics can be discussed, and some general directions as to the process of thought and argument by which the statute is to be applied.”²⁰ J. M. Balkin explored the notion of “topics” further, arguing that topics “provide a roadmap” for the identification and discussion of legal problems and they enable a legal actor to analyze a given situation as a legal problem.²¹ Extrapolating from White and Balkin, we may say that SA’s systematization of the laws of *tzedaqah*, and its laws governing the poor generally, present us with the “topics” SA sees as necessary to properly characterize and evaluate legally factual situations involving the poor. More broadly, we may conceive of successive codifications of Jewish law pertaining to the poor (or any subject) as successive re-presentations (often with modifications) of what scholars have seen to be the required “topics” within that area of *halakhah*. Reading White and Balkin together with Cover, we may say that a discontinuity in topics within the laws pertaining to the poor may signal changes in the religious, social, political, or moral structures undergirding those laws, and in the meta-legal understandings of the poor and the community suggested by those laws. Studying the laws pertaining to the poor as codified by R. Joseph Karo in SA reveals how he applied his own Jewish legal consciousness to the legal legacy he inherited concerning the poor and the nature of the communities of which they are a part. This, in turn, enables us to discern the vision of the poor and the Jewish community SA bequeathed to later Jewish religious culture.

Part I: The Laws of *Tzedaqah* in SA: Its Tendency to Rule for the Benefit of the Poor

Assembling the evidence to support the conclusion that SA’s laws of *tzedaqah* are more generous to the poor than (even) the earlier *Ṭur* requires careful textual investigation of the legal history lying behind SA’s rulings. Ostensibly, there seems to be little difference between SA and *Ṭur*, but our focus will be on the discontinuities between them—those points at which SA supplements or emends *Ṭur*, either by retrieving a legal source *Ṭur* had omitted, adding another view of the law, or reassessing which prior sources should be seen as dispositive of a

20 Ibid., 41.

21 J. M. Balkin, “A Night in the Topics: The Reason of Legal Rhetoric and the Rhetoric of Legal Reason,” in *Law’s Stories: Narrative and Rhetoric in the Law*, eds. Peter Brooks and Paul Gewirtz (New Haven: Yale University Press, 1996), 211-24.

particular point. It is by analyzing such points of discontinuity—where we see clearly the interpretive choices made in producing SA—that we can truly assess and characterize its singular contribution.²² As Haym Soloveitchik once pointed out: “Legal literature is couched in the idiom of the inevitable. No. . . religious jurist[] dreams of interpreting the law according to his personal inclination; he seeks simply to discover what the sources say on the matter. And if he is of any stature, his words will read as a series of objective and ineluctable conclusions. *Only by comparing his solution with those of others does its subjectivity become(d sic) apparent*” (emphasis added).²³

1. Who Are “the Poor” in SA?

SA presents three broad categories within which the poor may be classified: what we may call “financial” poor—those without adequate resources; “contextual” poor—those considered poor in a particular context; and “religious” poor—those considered to be poor or not poor based on religious criteria alone. Beginning with the financial poor, *YD* 253:1²⁴ codifies the old talmudic measures that one who has enough food for two meals should not take from *tamḥui* (“food tray”)²⁵ while those with enough for fourteen meals should not take from *quppaḥ* (“communal fund”). Those with two hundred *zuz*, or with fifty *zuz* with which they actively engage in commerce, should also not take

22 Shochetman noted that—according to his understanding of SA—the work was not simply a synopsis of *Tur*, but that SA adds to *Tur* or makes changes to it in light of the views of jurists Karo analyzed in *Bet Yosef*. Shochetman summarized the matter as follows: “It is a synopsis, in which in many instances the determinations of the author were also added.” See Shochetman, “Al Ha-Setirot,” 326. Our goal in this essay is precisely to study the additions of these “determinations of the author”; while Shochetman seems to imply that these additions are somewhat mechanical, this essay proposes to interrogate that implication.

23 Haym Soloveitchik, “Rabad of Posquieres: A Programmatic Essay,” in *Studies in the History of Jewish Society in the Middle Ages and in the Modern Period, Presented to Professor Jacob Katz on His 75th Birthday*, eds. E. Etkes and Y. Salmon (Jerusalem: Magnes, 1980), 30-31.

24 “OH” refers to “*Orah Ḥayyim*,” “YD” to “*Yoreh De’ah*,” “EH” to “*Even Ha’ezer*,” and “HM” to “*Hoshen Mishpat*.” Together these are the four parts of *Tur* and SA.

25 “*Tamḥui*,” or “food tray,” literally means a large plate on which various portions of food are set out, or a large cooking-pot from which portions could be doled out. Per *b. B. Bat.* 8b, the *tamḥui* was both collected and distributed by three people every day, and was intended for all poor, not simply the poor of the city in which it was collected.

tzedaqah.²⁶ One who has property encumbered by liens may take *tzedaqah*, and one who has property but no liquid funds is given guidelines for when he is required to sell off property prior to taking *tzedaqah*. One who wishes to take from *quppah* must trade down luxurious versions of necessary items such as cutlery before taking from communal funds. From the perspective of potential donors (and lenders), the poor who must be considered first are those most closely related to oneself (*YD* 251:3-4; *HM* 97:1); moreover, a poor person with wealthy relations is not to be supported initially from public funds (*YD* 257:8).

But a person's financial worth is not the only indicator of whether he is to be considered "poor" in a legally-cognizable sense. Religious criteria, as well as the context in which the allegedly "poor" person finds himself, are also important. For example, a wealthy individual whose resources were exhausted while traveling is entitled to take *tzedaqah* and need not repay it on his return home (*YD* 253:4). Of greater significance, the religious status of the land of Israel accounts for SA's reintroduction into the legal discourse on *tzedaqah* of an old idea that it now codifies as a "topic" (in J. M. Balkin's terms): impoverished inhabitants of the land of Israel are placed ahead of the poor outside the Land in the list of priorities for support (*YD* 251:3). This ruling comes at the end of the paragraph, following the careful delineation of how one's relatives take precedence over any other. The section's structure invites the inference that the poor of the land of Israel even take precedence over the poor of one's own Diaspora family—which, it may be suggested, is a rhetorical and paideic, not a halakhic point. *YD* 251:3 has no equivalent in either *Tur* or *MT*, but has an early precedent in *Sifre Deut.* 116, in a passage which R. Moses of Coucy carries

26 SA reads "*tzedaqah*," while *m. Pe'ah* 8:8-9, the source of the ruling, refers to the taking of "*leqet* (gleanings), *shikhḥah* (the forgotten sheaf), and *pe'ah* (the produce of the corners of the field)." These three mishnaic agricultural entitlements of the poor are biblically rooted in, e.g., *Lev* 23:22 ("... you shall not reap all the way to the edges of your field, or gather the gleanings of your harvest; you shall leave them for the poor. ..."), and *Deut* 24:19 ("When you reap... and overlook a sheaf in the field, do not turn back to get it; it shall go to the stranger, the fatherless, and the widow. ..."). SA clearly makes the terminological switch because of the inapplicability of these gifts to the Diaspora context, while leaving the earlier references to the communal institutions "*tamḥui*" and "*quppah*" intact. I will defer until later a further discussion of communal support for the poor, but will simply note that in the context of *YD* 253:1, *tzedaqah* likely refers to support from communal, as opposed to private, resources. For some reflections on the evolving meaning of "*tzedaqah*" in the biblical and post-biblical period from "justice" to "charity," see, e.g., Franz Rosenthal, "Sedaka, Charity," *HUCA* 23 (1950-51): 411-30.

over in its entirety into his *Sefer Mitzvot Gadol*, positive commandment 162 (thirteenth century).²⁷ YD 251:3's statement about the land of Israel harnesses the laws of *tzedakah* to a particular religious vision not emphasized in the parallel material in *Tur* and MT: prioritizing the care of the poor of the land of Israel, a priority likely rooted in the *Sifre's* midrashic expression of the Land's inherent holiness, and which, if practiced, would undoubtedly assist in the Land's settlement—certainly a matter of interest to Karo and his scholarly circle. Moreover, the careful structuring of the paragraph to indicate the precedence of the land of Israel's poor over one's Diaspora family implies an exacting vision of community: Diaspora Jews and Jews in the land of Israel are part of the same community, so much so that the latter are rhetorically constructed as even closer to the center of Diaspora Jews' concerns than impoverished Diaspora Jews.

Finally, SA codifies R. Eliezer of Metz's twelfth-century exclusion of the deliberate transgressor ("*avaryan be-mezid*") from *tzedakah*.²⁸ Taken together, these three examples indicate that to SA, poverty is more than a chronic lack of necessary resources. A person who is "poor" in resources may be, through his religious rebelliousness, outside the realm of legally cognizable poverty. A person who is "rich" in resources may be, through unfortunate circumstances,

27 See *Sefer Mitzvot Gadol*, ed. Alter Pinhas Farber (n.p., 1990-91), 381. R. Eliezer of Metz (twelfth century) had earlier noted the priority of the land of Israel's poor in chapter 167 of his *Sefer Yere'im*, ed. A. A. Schiff (Vilna, 1892; repr. Israel; n.p.; n.d.), 156.

28 In chapter 156 of his *Sefer Yere'im*, R. Eliezer of Metz took the unprecedented step of barring the *mumar le-te'avon* (*mumar* out of appetite; a sinner driven by personal desires, not by an animus against Judaism) from receiving *tzedakah*. Moreover, R. Eliezer coined the neologism "*avaryan be-mezid*"—"deliberate transgressor"—to describe such a person, whose transgressions are indeed "deliberate," although not ideologically motivated. R. Eliezer justified his ruling with argumentation carefully crafted for maximal rhetorical persuasiveness. His ruling was taken up in the thirteenth century by R. Moses of Coucy in the *Sefer Mitzvot Gadol* as well as by R. Isaac of Corbeil in his *Sefer Mitzvot Qaṭan*, a summary of the latter work. R. Eliezer's ruling also appears in the fourteenth century Provençal legal compilations *Orḥot Ḥayyim* and *Kol Bo*. R. Eliezer's ruling was also codified by R. Jacob b. Asher in *Tur* YD 251, from where it was taken up by SA in YD 251:1. It bears noting that not all these scholars adopted R. Eliezer's neologism "*avaryan be-mezid*." For more on R. Eliezer's innovation, his arguments for it, and the historical context, see my forthcoming article, "R. Eliezer of Metz's Twelfth-Century Exclusion from Charity of the Jewish *Avaryan B'mezid* ('Deliberate Transgressor')," which will appear in the series *International Medieval Research* (ed. Sharon Farmer).

within the set parameters of poverty. The poor of the land of Israel, whose geographical distance from Diaspora communities would ordinarily place them outside those communities' range of concern, are nevertheless given heightened precedence—precisely because they are in the land of Israel. SA's nuanced understanding of poverty suggests aspects of a vision of a dynamic and magnanimous Jewish community: a community willing to aid Jewish travelers in need with no expectation of repayment regardless of the resources the travelers may possess, actively engaged in the support of the poor of the land of Israel, and reinforcing communal religious boundaries and sense of self as a Torah-obedient community by excluding willful transgressors from its realm of moral concern.

2. Meta-Halakhic Reflections on Poverty and *Tzedakah*

As a work of legal literature SA is not much concerned with the theology of poverty,²⁹ but it does make clear in two places that poverty may result from ritual and modesty infractions. *OH* 158:9 says that whoever belittles the ritual washing of the hands will fall into poverty, while *OH* 241:1 says that urinating naked before one's bed is one of the things that God hates, and the person who does so will fall into poverty. The message is clear that poverty is not simply an unfortunate twist of fate, but could be the result of ritual infraction or engagement in behavior hateful to the Divine. SA thus perpetuates an old strain of classical rabbinic thought according to which poverty does not indicate an exalted spiritual status.³⁰ Apropos, SA also rules that one who takes unneeded *tzedakah* will not die before actually needing it, while one who does not want

29 This is not to say that SA is entirely uninterested in theological issues or lacks a broad, non-legal conceptual framework. See Twersky, "Ha-Rav Yosef Karo," in n. 5, above, as well as the pertinent comments of Jeffrey R. Woolf in "La-Avodat Bor'o," 159.

30 See my "Redemptive Almsgiving and the Rabbis of Late Antiquity," *JSQ* 18 (2011): 144-84 for a detailed account of the classical rabbinic views on the matter, some of which (primarily rabbinic views found in the compilations of the land of Israel) did view poverty in religiously-positive terms. The Talmud Bavli, however, tends to view poverty negatively or at best neutrally. The view codified in SA is a contrast not only to those old views from the land of Israel but also to a position found earlier in medieval Latin Christian Europe, which—drawing on earlier strands of Catholic thought—also saw poverty as a potentially positive spiritual state. See, e.g., Michel Mollat, *The Poor in the Middle Ages: An Essay in Social History*, trans. Arthur Goldhammer (New Haven and London: Yale University Press, 1986), 106-13 and passim; R. W. Southern, *The Making of the Middle Ages* (New Haven and London:

to take needed *tzedaqah*—provided the situation is not life-threatening—will not die before supporting others (YD 255:2). One ideally should not need *tzedaqah* (YD 255:1), and this directive dovetails with the statement that lending to the poor is a greater *mitzvah* than giving them *tzedaqah* (HM 97:1). Lending grants them greater dignity than simply giving, and—since the not-poor also borrow and lend—places them on the same plane as the not-poor.

Poverty is thus not an ideal state, nor taking *tzedaqah* an ideal form of support. Yet SA does not allow these ideas to dilute the community's obligation to provide for the poor. SA reintroduces (YD 256:1) Maimonides' observation—omitted by *Tur*—"We have never heard of a Jewish community that does not have a communal *tzedaqah* fund."³¹ Whether or not the statement is (or was meant to be) literally true, SA's reintroduction of the Maimonidean notion strongly implies that a Jewish community without a *tzedaqah* fund is—and presumably should be—quite literally unheard of.³² YD 256:2 notes that the inhabitants of a town who ate and retired for the night after a public fast without distributing *tzedaqah* are like shedders of blood.

Individuals are encouraged to give *tzedaqah* before each of the daily prayers (YD 249:14).³³ Such ritualized giving is probably more effective as character development for the givers than meaningful assistance to the needy. Yet, that is likely precisely the point. Moreover, an individual must give in a kindly manner, treating the poor with dignity (YD 249:3-4), and he even gets greater

Yale University Press, 1992), 110, quoting a thirteenth-century Cistercian monk: "There is nothing freer. . . than holy poverty."

- 31 Maimonides, *Mattenot Aniyyim* 9:3. Karo had earlier quoted the Maimonidean passage more fully in *Bet Yosef* to *Tur* YD 256, s.v. "kol."
- 32 For a nuanced overview of public charitable provision in medieval Germany, with some observations on other halakhic subcultures, including this statement of Maimonides, see Judah Galinsky, "Public Charity in Medieval Germany: A Preliminary Investigation," in *Toward a Renewed Ethic of Jewish Philanthropy*, ed. Yossi Prager (Orthodox Forum; Hoboken: Ktav, 2010), 79-92. Galinsky's review of the evidence points to the late thirteenth century at the earliest as the time of the emergence of public charitable institutions in Germany—although communal charity was not entirely absent earlier.
- 33 See *b. B. Bat.* 10a. R. Eleazar was said to give a *peruṭah* to a poor person before prayer, in fulfillment of Ps 17:15 ("In righteousness I shall behold Your face"). Eliezer Segal has shown how this story—not at all a binding legal norm—became ritualized during the Middle Ages as part of the praxis of prayer, in part through the growing influence of the Zohar's view of charity. See Eliezer Segal, "Rabbi Eleazar's *Peruṭah*," *Journal of Religion* 85 (2005): 25-42.

divine reward for motivating others to give (YD 249:5). Moving on to a general observation about the nature of the *tzedaqah* one should give, SA emphasizes more than once that one must give the poor the *best* one has. YD 248 concludes with the stirring paragraph 8, drawn from Maimonides' *Issurei Mizbe'ah* 7:11:³⁴ "One who wishes to give merit to himself will restrain his evil inclination and open wide his hand, and everything which is for the sake of Heaven must be of that which is good and beautiful. . . [if] one feeds the hungry, he must feed [him] from the best and sweetest of his table. If he clothes the naked, he must clothe from the finest of his clothes." YD 331:52 and 63 reiterate this point in a lengthy chapter devoted to the biblical laws of *terumah*. While the legal obligation to provide priests with *terumah* drawn from one's best property is no longer pressing, the obligation to provide the best to the *poor* nevertheless remains in full force.

3. Making Funds More Readily Available to the Poor

In three places SA makes changes to *Tur* that point in the direction of making funds more available to the poor. In the first case, the Babylonian Talmud already provides that a person must dwell in a place for certain periods of time before being obligated to contribute to various communal needs, notably the communal fund for the poor. For example, a person is obligated to contribute to *tamhui* after thirty days, to *quppah* after three months, and to pay various other taxes after twelve months (*b. B. Bat.* 8a). This implies that even if a person moves to a new location with the intention of settling there permanently, there is no obligation to contribute for communal welfare purposes until after the specified time periods have elapsed. SA adds to *Tur*'s codification of these laws at YD 256:5, on the basis of a ruling of R. Barukh ben Samuel of Mainz (ca. 1150-1221),³⁵ that these time periods only apply to a person who does not intend to settle permanently. The person who intends to settle permanently should be obligated in these various financial responsibilities immediately. SA's ruling clearly enables more funds and resources to be made available sooner for the benefit of the needy.

34 Karo had earlier quoted Maimonides' text in *Bet Yosef* to *Tur* YD 248 (s.v. "adam"). Twersky pointed to this example as a demonstration of Karo's importation from the *Mishneh Torah* of a meta-halakhic framework into SA. See Twersky, "HaRav R. Yosef Karo," 253.

35 As quoted in the *Sefer Ha-Mordecai* to *b. B. Bat.*, paragraph 477.

If one is holding monies and is uncertain whether or not they had been designated as *tzedakah* monies, SA rules that they must be given to *tzedakah* (YD 259:5). This supplement to *Ṭur* is supported by a lengthy quotation in *Bet Yosef* (to *Ṭur* YD 259, s.v. “*ve-im*”) from *Mordecai*'s glosses to *b. B. Bat. Mordecai*, in turn, drew his ruling from the abbreviated *Or Zarū'a*,³⁶ which, relying on the *Sifra*, *Sifre Deut.*, and Talmud Yerushalmi, had reasoned that since doubtful “corners of the field,” “gleanings,” and “forgotten sheaf”³⁷ are considered as such and given to the poor, so should doubtful *tzedakah*, which is also a gift to the poor. Doubt is thus resolved to the benefit of the poor. Finally, in a related vein, SA rules on the basis of a responsum of R. Asher b. Yeḥiel (“*Rosh*”)³⁸ and a ruling of R. Yeruḥam b. Meshullam (fourteenth century)³⁹ that one who was publicly assaulted or reviled by another and declared in the presence of the local *tzedakah* officials or communal authorities that the financial penalty owed him by his assailant should be given to *tzedakah* could not, by subsequently forgiving the perpetrator, cut off the payment of that amount to the poor. Even if the victim forgave the perpetrator, the penalty provided by local law for the offense should still be given to the poor as the victim had originally declared (YD 258:9). The talmudic origin of the principle that the poor are entitled to the fine monies even if the victim forgave the perpetrator is a story (*b. B. Qam.* 36b) about a man who, upon hearing that the court would award him a small amount of money, declared himself willing that the money should be given to the poor. He subsequently changed his mind, but Rav Joseph declared “the poor have already become entitled to it,” and, significantly, “we [the communal authorities, namely, himself] are the hand of the poor”—meaning that he has the

36 *Sefer Or Zarū'a*, by R. Isaac b. R. Moses of Vienna (ca. 1180-1250). R. Isaac's son, R. Hayyim, produced an abbreviated version of the work entitled *Simanei Or Zarū'a*. *Sefer Or Zarū'a* is of critical importance in the history of Ashkenazic *halakhah* as it marks the melding of French Tosafism and German *halakhah* into a unified halakhic culture. See Avraham (Rami) Reiner, “From Rabbenu Tam to R. Isaac of Vienna,” in *The Jews of Europe in the Middle Ages (Tenth to Fifteenth Centuries)*, ed. Christoph Cluse (Turnhout: Brepols, 2004), 280; Haym Soloveitchik, “Three Themes in the *Sefer Hasidim*,” *AJSR* 1 (1976): 349.

37 See n. 26, above.

38 *Rosh*, responsa 13:4. Karo cites this responsum in *Bet Yosef* to *Ṭur* YD 258, s.v. “*katav od ha-Rosh*.”

39 *Toledot Adam ve-Ḥavah* 19:1, quoting the earlier Provençal scholar R. David HaKohen.

authority to receive and hold resources on behalf of the poor.⁴⁰ Interestingly, although the injured party in the case before *Rosh* had originally stipulated that the fine was to be given to support Torah study, and R. Yeruham had also referred to the support of either a Torah scholar, *tzedaqah*, or *heqdash*, SA codifies this law with reference to *tzedaqah* alone.

4. Protecting the Orphan

Maimonides' famous formulation of "eight degrees of charity" is found in the laws of *Mattenot Aniyyim* 10:7-14. The degrees are arranged in descending order, beginning with the "level than which there is no higher"—supporting a poor person with some sort of gift, loan, partnership opportunity, or job, "so that he will not need to ask other people" for support. SA places Maimonides' degrees at YD 249:6-13, but with a telling addition at 249:15, based on a responsum of the eminent Italian legalist Rabbi Joseph Colon (1420-1480)⁴¹ earlier discussed in *Bet Yosef*.⁴² Colon had written "it is obvious" that "there is no *tzedaqah* greater than this," referring to providing dowries and weddings for orphan girls.⁴³ The similarity in formulation between Colon's "no *tzedaqah* greater than this" and Maimonides' "level than which there is no higher" clearly caught Karo's eye. Examining SA's placement of Colon's declaration, we see that by placing it at YD 249:15, after the re-codification of Maimonides' eight degrees, SA has, in effect, subtly revised the Maimonidean degrees of charity to place a new priority near the top of the list—marrying off orphan girls, the most vulnerable members of society.⁴⁴

40 The origin of the notion that "we are the hand of the poor" is *y. Pe'ah* 4:9 (18c), where the notion is expressed as "the hand of the communal leader (*parnas*) is the hand of the poor." See also *b. Qidd.* 27a, where R. Akiva is described as the "hand of the poor."

41 Joseph Colon, *She'elot u-Teshuvot Mahariq ha-Yeshanot* (Jerusalem, 1988), *shoresh* 123.

42 *Bet Yosef* to *Tur* YD 249, s.v. "*u-mah she-katav.*"

43 Although neither Colon nor SA explicitly use the word "orphan," it is reasonable to assume that this is what was meant. In writing of the "poor girl" in his responsum, Colon quoted *b. Ketub.* 67a-b, which refers to the dowering and provision of spouses for male and female orphans. As for SA, the *Ba'er Heitev* commentary (n. 11 to YD 249:15), quotes the view of Karo's older contemporary, R. Moses Alashkar (1466-1542), that YD 249:15 most likely refers to orphan girls.

44 And, of course, providing an orphan girl with a husband is the equivalent for her of Maimonides' highest degree of *tzedaqah*: providing a job, loan, or partnership opportunity so that a person will not be dependent on the community.

Another example of protecting the orphan requires us to look again at *YD* 253:4. *Ṭur* had ruled (*Ṭur* *YD* 253) that a householder who ran low on funds during a journey is permitted to take *tzedaqah* and is even exempt from repaying it later. This is because the householder was legally considered “poor” when the *tzedaqah* was taken and the general rule is that a poor person who becomes rich is not obligated to repay *tzedaqah* (*m. Pe’ah* 5:4). *Bet Yosef* (s.v. “*ba’al*”) approves the ruling and cites R. Yeruḥam’s view that such a householder need not even repay a *private* person who had given help along the way, unless the person who provided the help sued the householder for restitution, and the latter had owned real or movable property at the time he had accepted the help. A poor orphan is an exception, who need not ever repay assistance received from a public or private source. The source of R. Yeruḥam’s ruling as to the poor orphan is a responsum of R. Isaac Alfasi (“*Rif*,” 1013-1103)⁴⁵ which *Bet Yosef* presented in the abbreviated form in which it appeared in the thirteenth-century Spanish work *Sefer ha-Terumot* 65:2:2. The case before *Rif* involved a householder, “Reuben,” who took in an orphan who owned property that yielded 50 gold pieces. Reuben added to that amount in order to provide for the orphan. In later years they had a falling-out, and Reuben sued the now-grown orphan for restitution of his additional outlays. The orphan denied any liability, claiming that Reuben had never represented those outlays as a loan. *Rif* agreed, pointing out that since Reuben never expressed an intention to seek restitution, those outlays were “*gemillut ḥasadim*” (“acts of kindness”), and, as such, the orphan was not obligated to repay them. *Rif* cited *m. Ketub.* 13:2 in support of his decision, which provides that if a husband went abroad and another person stepped in to support his wife (without his knowledge and consent or her explicit promise to repay), the husband is exempt from repaying. SA codifies the responsum discussed in *Bet Yosef* at *YD* 253:5, adding the new topic of care for the orphan to the earlier presentation in *Ṭur*. SA is careful to note that the orphan is exempt as long as the provider had supported him with the intention of doing a *mitzvah* (rather than with the intention of making a loan).

5. Protecting *Tzedaqah* from Pressures Imposed on the Poor by the Community

The poor are vulnerable members of society. Given that the communal welfare apparatus is most likely in the hands of wealthier members of the community,

45 See *She’elot u-Teshuvot Rabbenu Yitzḥak Alfasi, z”l*, ed. Ze’ev Wolf Leiter (Pittsburgh, PA: Makhon Ha-Rambam, 1954), responsum 116.

it is not impossible that the community may try to reorganize the provision of *tzedaqah* in a manner calculated to benefit itself at the expense of the poor, or attempt to compel the poor to use their *tzedaqah* so as to benefit the community in the form of taxes, or creditors in the form of debt repayment. Alternatively, it is possible that the community may attempt to limit the poor's ability to use their *tzedaqah* in other ways the poor deem beneficial for themselves. SA takes on these issues, in each case codifying a legal result beneficial to the poor.

At YD 250:5, SA emends *Ṭur* on the basis of a responsum of the thirteenth-century Spanish legalist R. Solomon ibn Adret ("*Rashba*"), adding a ruling that a community may not decide to dismantle the communal welfare apparatus (into which all members of the community contribute according to their ability to pay) in favor of compelling the poor to seek assistance on their own by begging door to door.⁴⁶ Specifically, he wrote that if the "poor of the city are many" and the very wealthy propose that they should go from door to door while the moderately wealthy propose that the support of the poor is a communal responsibility collected according to ability to pay, the law follows the latter.

SA also emends *Ṭur* by ruling at YD 259:6 that the community may not collect any kinds of taxes from *tzedaqah* funds. Going one step further, SA rules (YD 253:12) that individual creditors may neither seek nor receive debt repayment from *tzedaqah* monies. *Bet Yosef* quotes a lengthy passage from *Mordecai*, who discussed the case of a poor person who owed a sum of money.⁴⁷ After the person had managed to collect *tzedaqah* funds to support his family, his creditor tried to seize them. As is recounted in *Mordecai*, *Or Zaru'a*, and later *Bet Yosef*, the poor man pleaded with the creditor: "Have mercy on me! This was to support my family."⁴⁸ *Mordecai* and *Or Zaru'a* quote an earlier medieval disagreement about the disposition of this case. R. Eliezer ben Joel Halevi ("*Ravyah*"; twelfth-thirteenth centuries) ruled that the poor man did not have to use the *tzedaqah* for debt repayment, citing *t. Pe'ah* 4:16, which

46 *She'elot u-Teshuvot ha-Rashba*, ed. Yehiel Zakash (Jerusalem: Makhon Yerushalayim, 1996), 3:380. On this responsum, see Jonathan Cohen, "Charitable Contributions, Communal Welfare Organizations, and Allegiance to the Community According to Rashba," *HUCA* 72 (2002): 85-100.

47 *Bet Yosef to Ṭur* YD 253 (s.v. "*ve-khol*"). *Mordecai's* own discussion of this issue is found in his codification of *b. B. Bat.*, paragraph 497, as well as in the additional glosses. See also the longer, and earlier, discussion in *Or Zaru'a*, *hilkhot tzedaqah* 11.

48 *Mordecai* and *Or Zaru'a* add: "And not to pay my debt."

explicitly ruled that the ancient “poor man’s tithing” was not to be used for the payment of debts. R. Simḥah of Speyer (twelfth-thirteenth centuries), by contrast, reasoned that *tzedaqah* is no different from any other gift and unless the donor had explicitly indicated that the *tzedaqah* was *not* to be used for debt repayment, the poor man could not simply declare it off limits to his creditor. Although cautious about “putting my head between the great mountains,” *Or Zaru’a* sided with *Ravyah*, as did *Mordecai*. In the additional glosses to *Mordecai*, we find language similar to *Or Zaru’a*: “[The poor man] cannot pay his debt from *tzedaqah* monies, for we take notice that [the donor] did not give to him with the intention that he should pay the debts he owed to the rich, but with the intention that his wife and children should be supported from it. . . .” *Mordecai* and *Or Zaru’a* went one step further and closed off the option that the poor person could voluntarily choose to use his *tzedaqah* money in that way: “His wife and children can prevent him [from doing so] since they did not borrow and do not owe [the creditor] anything.”

Given the disparity in wealth and power between the rich and poor in a community, there could well be a fine, easily-crossed line between convincing the poor to choose “voluntarily” to use *tzedaqah* for debt repayment and the rich *compelling* the poor to do so. Moreover, the prohibition of voluntary debt repayment protects the poor man’s wife and children, who, in the medieval Jewish community, were even more vulnerable than he. At YD 253:12, SA includes and expresses the legal conclusion drawn from *Mordecai* in such a way as to make it clear that the poor person can neither be compelled to use his *tzedaqah* to pay off debts nor is permitted to do so voluntarily: “Creditors cannot be repaid from what he collected from *tzedaqah*.” SA’s use of passive voice in the formulation “creditors cannot be repaid” (“אין בעלי חובות יכולים” “להפרע”) elegantly encompasses and forecloses both options.⁴⁹

49 It should be noted that *Mordecai*’s and *Or Zaru’a*’s decision to follow *Ravyah* rather than R. Simḥah was by no means the only possible reading of the law. As an example of another possible reading, we will consider the reaction of Rabbi Elijah ben Solomon Zalman Kremer, the “*Vilna Gaon*” (1720-1797), to YD 253:12. R. Elijah acknowledges that YD 253:12 was based on *t. Pe’ah* 4:16 (*Hagahot Ha-Gra* to YD 253:12, n. 18). But R. Elijah reads the toseftan passage—which, as noted, ruled that “poor man’s tithing” is not to be used for debt repayment—as applying not to the *recipient* of the “poor man’s tithing,” but to the *one tithing*. That is, the tithing, once the giver designates it as such, cannot be used instead for debt repayment. Moreover, he points out, another source contemporaneous with Tosefta clearly provides that gifts like *tzedaqah* may be used for debt repayment. *M. Bik.* 3:12 provides that the priests can use the first-fruits offerings, for, *inter alia*, paying off

SA's sensitivity to the poor is also evident in the emendation of *Ṭur OH* 694, pertaining to Purim. *Ṭur* ruled that the poor may only use the "*mattanot la-evyonim*" (gifts for the poor) that Jews are legally required to give them on Purim for Purim purposes only. *Ṭur* codifies *t. Meg.* 1:5 (= *b. B. Meṣi'a* 78b) according to which the poor person may not use the monies "even to buy (or make) a lace for his shoe." *Bet Yosef* (s.v. "*ma'ot*") expresses astonishment at *Ṭur*'s ruling and comments: "We must be astounded at the fact that our Rabbi (=the *Ṭur*) ruled according to [*t. Meg.* 1:5]. . . for *Rif* and *Rosh* wrote that that [source] is not [the law]. . . and also [Maimonides]. . . omitted this [law] that the poor person is not permitted to use [the monies] for something [other than Purim necessities]." Like Maimonides, SA also omits *t. Meg.* 1:5 from its own *OH* 694. The poor who receive *tzedaqah* on Purim thus cannot be restricted in how they use it for themselves.⁵⁰

6. Poverty as a Factor Taken Into Account in Applying Jewish Law to the Poor

Sections 1-5 demonstrate how SA makes changes to *Ṭur* that reveal a pattern of systematizing legal results—mostly within the laws of *tzedaqah*—that are favorable to the poor. Moreover, SA's changes reintroduce older ideas about poverty and charity that *Ṭur* had omitted. By their codification in SA these reintroduced ideas are established as "topics" (J. M. Balkin) in the laws of *tzedaqah*. That is,

their creditors (as the mishnah states: "and a creditor can take them for his debt"). R. Elijah implicitly reasons that if this is true for holy offerings, how much more is it true of *tzedaqah* for the poor. *Mordecai*, it should be noted, had preemptively dealt with the issue of *m. Bik.* 3:12 by arguing that the case of first-fruits is different because God is the one who grants them to the priests, and their wives and children therefore have no legal claim to them. Moreover, because God is the grantor, there is no issue of "donor intent." R. Elijah also takes issue with *Mordecai*'s claim that a poor person who uses *tzedaqah* for debt repayment thereby violates the donor's intention; rather, he reads *b. B. Meṣi'a* 78b as supporting the proposition that a poor person who comes into the possession of property can do with it whatever is desired—including, presumably, pay a creditor. Finally, R. Elijah points out that many scholars disputed *Mordecai*'s reading of *b. B. Meṣi'a* 78b.

50 However, *OH* 694 conflicts with *YD* 253:12, which limits the poor's discretion by indicating that they may not choose to pay debts with their *tzedaqah*. Nevertheless, when read in tandem the two rulings consistently establish that *tzedaqah* monies are meant to improve directly the lives of the poor—not to provide aid and comfort to private creditors or public welfare providers (even if repaying the former can be interpreted as a form of aid and comfort to the poor themselves).

they become part of the ongoing legal conversation about *tzedaqah* among jurists and other students of the work and further, these topics (and *YD* 247-59 as a whole) become constitutive of how future conversations about *tzedaqah* are to be structured and what issues they must or should address. As a reminder, some of these topics are: the priority of the poor of the land of Israel over the Diaspora poor; only the best items should be given to the poor; “there is no *tzedaqah* greater” than providing weddings for orphan girls; the wealthy cannot dismantle the communal social welfare apparatus; the poor’s creditors cannot be repaid from *tzedaqah* funds; the poor may use *tzedaqah* monies given them at Purim for any purpose. By expanding the range of *tzedaqah* topics in this way, SA also educates its audience to a particular moral vision of community in which care for the vulnerable is a major concern.

Section 6 surveys SA as a whole without a focus on its discontinuity with *Ṭur* in order to shed light on another aspect of its munificent approach to the poor. Throughout its four parts SA contains rulings that apply laws more leniently to the poor, or that take the dignity and sensitivities of the poor expressly into account. *OḤ* 223:6 follows *Rosh*⁵¹ in ruling that whereas one need not make a blessing on a new item that is relatively unimportant, such as a tunic, shoes, or boots, a poor person who rejoices in them may bless over them if he wishes. *Rosh* (as quoted by *Ṭur*) was clear that there is no objective standard according to which blessings over new items should be recited; rather, all goes according to a person’s station. The poor are thus permitted to give religious expression to their gratitude for items that the non-poor may take for granted. *OḤ* 410:1 rules that a person who had intended to settle for Sabbath rest in a particular spot and did not arrive there, may go there the next day and have a Sabbath boundary of two thousand cubits from that spot. The reason for this is that since he had intended to make that his place of rest and had set out for it, it is as if that was his place and as if he had placed his *eruv* there. SA points out that this only applies to the poor person, “whom we do not trouble to place an *eruv*.”

Concern for the dignity and sensitivities of the poor is manifested in other ways as well. *YD* 353:1 says that “at first” only the faces of the deceased poor were covered up because they blackened at a time of drought. When this proved embarrassing to the living poor, “they instituted” that the faces of all the deceased should be covered. Apropos of the feelings of the living poor, *YD* 344:4 rules that a eulogy is recited over a poor child of five rather than six, the age at which a eulogy is recited over a deceased child of wealthy parents.

51 See *Ṭur* *OḤ* 223.

Although SA does not provide a reason, R. Shabtai ha-Kohen (“*Shakh*,” 1621-62)⁵² reasonably explains that the allowance is due to the poignant sorrow this loss adds to the already-difficult lives of the poor parents.

The poverty of a married couple is a factor in a husband’s obligations to his wife—from which he is not exempt, as we will discuss below. *EH* 74:1 quotes “those who say” that if a poor woman vowed not to adorn herself for her husband, he must maintain her for one year, unlike a rich woman, who need only be maintained for thirty days. Providing uninterrupted maintenance to the poor also seems to be a concern of *YD* 378:2, which rules that a person who eats meals provided by his employer as part of his wages may not, in the event he suffers a bereavement, eat the first meal after the bereavement by the employer. The exception is that poor people, orphans, and the employer’s own children—if supported by him without condition—may eat that first meal by him. In regards to the law of mourning, *YD* 380:2 rules that even a poor person who is supported through *tzedakah* is forbidden to work during the first three days following the burial of his close relative (the first three days of the mourning-week). After that, the person may work in his home if he needs to—an exception to the law that no work may be done that week—but SA calls down a curse on the community that led the poor person to need to work at all during that week.

Various other relaxations of law in both the ritual and civil realms have the effect of making more financial resources available to the poor or easing their burden of debt. In the ritual context of redeeming the firstborn son, *YD* 305:8 rules that while a priest may return redemption-money to the father under certain circumstances, he should not make a habit of doing so—except to the poor, to whom he may return the money every time. A person may not change his mind about a small gift to a poor person (*HM* 243:2). *YD* 160:18 rules that payments which are considered to be “interest” according to the rabbis⁵³ are permitted for orphans, for “*heqdesh aniyyim*,”⁵⁴ as well as to support Torah

52 *Shakh* to *YD* 344:4, n. *bet*.

53 As opposed to “interest” according to biblical law.

54 “*Heqdesh aniyyim*” refers to money or property given for the support of the poor and/or the synagogues in medieval Mediterranean Jewish communities and other places; eventually, as Madeline Kochen demonstrates, “*heqdesh*” comes to mean a place where the poor are provided for, such as a shelter or hospital. On the development of the term, see Madeline Kochen, “It Was Not For Naught That They Called It *Hekdesh*’: Divine Ownership and the Medieval Charitable Foundation,” *Jewish Law Association Studies XVIII (The Bar-Ilan Conference Volume)* (2008): 131-42.

study or synagogues. Apropos of interest, *ḤM* 72:1 rules that while a lender is forbidden to make use of the borrower's collateral (that use being considered interest), he is permitted to rent out a poor person's tools which can bring in much income without much depreciation. That rental amount can then be deducted from the debt.

ḤM 211:2 consists of two rulings that are exceptions to the legal principle that transactions cannot be effected as to as-yet nonexistent things⁵⁵—both exceptions being for the benefit of the poor. In the first case, a poor son with a dying father who needs to sell off part of his as-yet nonexistent inheritance in order to provide for the father's funeral and burial may do so, so that the father, when dead, will not be dishonored by being left unattended while monies are raised. In the second case, a poor fisherman who needs money to eat may sell off part of his as-yet nonexistent catch in order to purchase food. In this regard, *ḤM* 212:7 clearly states that the laws of dedicating property for sacred use, to the poor, and the laws of vows are not like ordinary acquisitions in that items not yet in existence can be dedicated to uses of the sacred and the poor. Similarly, SA's treatments of "*asmakhta*" ("surety") and "*dina de-bar mitzra*" (the adjacent landowner's right of preemption) show adjustments for the benefit of the poor. The issue with *asmakhta* is whether or not it "acquires" ("*qanya*")—that is, whether a person who undertakes an obligation in the form of an *asmakhta* is in fact obligated to fulfill the obligation.⁵⁶ The law is that *asmakhta la qanya* generally (e.g. *ḤM* 207:2) on the ground that we presume that at the time X made the promise, X really was hoping that the condition that would trigger the obligation would not be fulfilled, and thus, X and Y had no real meeting of the minds (*ḤM* 207:13). Nevertheless, SA emends *Tur* at

See also Judah D. Galinsky, "Jewish Charitable Bequests and the Hekdesh Trust in Thirteenth-Century Spain."

55 For some discussion of non-existent things ("דבר שלא בא לעולם"), see, e.g., *Tur ḤM* 60, 209, 210, 212; SA *ḤM* 60:6, 209:4, 7, 8.

56 As explained by *Rashi* (b. B. Bat. 168a, s.v. "*asmakhta*"), an undertaking in the form of an *asmakhta* occurs when X promises Y something—without receiving adequate consideration for the promise—on the condition that X will do something in the future. At the time of the promise, X is sure he can fulfill the condition, but ultimately, circumstances prevent it. If the rule is that "*asmakhta qanya*," then X will still owe Y what was promised, despite the non-fulfillment of the condition. X will not owe Y if the rule is "*asmakhta la qanya*." Similarly, if X promises to give something to Y upon the performance of a certain act or the occurrence of a certain event (with no other consideration) and the condition is fulfilled, X would have to give Y what was promised if "*asmakhta qanya*," but not if "*asmakhta la qanya*."

YD 258:10 to add: “If someone vowed [to give *tzedaqah*] by means of *asmakhta*, for example saying: ‘If I do such-and-such a thing, I will give thus-and-such to *tzedaqah*’ and he does that thing, he is obligated to give [the *tzedaqah*].”⁵⁷ Thus, notwithstanding the general rule that “*asmakhta la qanya*,” such a promise is enforceable in the context of *tzedaqah*. *Bet Yosef* to *Ṭur* YD 258 (s.v. “*kataṽ*” and “*ve-khataṽ*”) discusses the many earlier authorities who shared that view; a view that renders more promises enforceable and thereby ultimately increases the situations in which *tzedaqah* monies will become available to the poor.

The other law we will consider is the right of preemption of an adjoining landowner (“*dina de-bar mitzra*”). That is, if X and Y own adjoining fields, and X wishes to sell, Y should have the right of first refusal. *B. B. Meṣī’a* 108a-b attribute this right of first refusal to the Torah’s general command, “And you shall do that which is right and good” (Deut 6:18). *Ṭur* elaborates on this attribution with the theory that “since he wishes to sell, it is ‘good and right’ that the adjoining landowner should purchase it rather than another person.”⁵⁸ SA adds to *Ṭur*’s extensive treatment of this law by ruling at *ḤM* 175:55 that the adjoining landowner’s right of preemption does not apply to real property that has been dedicated for the use of the poor (“*heqdesḥ aniyyim*”). Thus, the persons in charge of this property may choose to sell to anyone they feel will provide the maximum benefit to the impoverished beneficiaries. A responsum of Karo’s sheds further light on that ruling.⁵⁹ In brief, “Reuben” had owned property, which apparently included land, a house, and another building attached to the house. He lost the property over time to a creditor, who permitted him to lease back only the smaller building attached to the house. “Simeon” eventually bought the house from the creditor and declared before the Muslim *qadi* and Jewish witnesses that the house was dedicated to the poor, this dedication to take effect upon the expiration of his descendants. Simeon also demanded that Reuben vacate the small building he had been renting. Reuben refused, arguing that the right of first refusal obligated Simeon to permit him to continue renting the small building. Simeon responded that the right of first refusal did not apply to a lease.

57 See also *ḤM* 207:19 (a vow generally takes effect even if pronounced in the form of an *asmakhta*).

58 *Ṭur* *ḤM* 175. *Ṭur* also points out that if the seller would somehow incur a loss by selling to the adjoining landowner, he is not required to do so.

59 *Shu”t Avkat Rokhel le-Maran Yosef Karo z”l* (New York: Menorah, 1959), responsum 119.

In his responsum, Karo reviewed and approved the reasoning of a colleague who had ruled against Reuben. Whereas Simeon had apparently not seen his dedication to the poor as a decisive factor, Karo—like his colleague—did. He wrote: “In our case, in which the poor would lose out completely—since this one [Simeon] dedicated [the property] to the poor after the expiration of his line and this one [Reuben] did not dedicate it at all, it is obvious that the law of the adjoining landowner does not apply because there is no greater ‘doing what is right and good’ than benefiting the poor.”

Part II: Fostering Communal Solidarity: Balancing the Interests of the Poor, the Community, and Private Donors

The findings in Part I of this essay demonstrate that SA emends *Ṭur*—through adding rulings based on sources *Ṭur* did not or could not have considered, or through making different interpretive choices—in ways that show a discernible trend that is favorable to the poor. Part I also demonstrates that to SA, poverty is a factor to be taken into account in the (lenient) application of certain laws to the poor. Part II turns to the larger communal implications of SA's rulings on poverty, specifically the creation and maintenance of communal solidarity between the poor and other Jews. Sections 1 and 2 demonstrate SA's interest in balancing the interests of the poor, the community, and private and family donors. SA's tendency to benefit the poor does not go so far as to prejudice the legitimate interests of others; the code seeks an equitable balance of interests, which may at times even necessitate that the interests of vulnerable others be placed ahead of the poor. Equitably balancing the interests of “haves” and “have-nots” in a society is a crucial component of fostering communal cohesion and assuring that economic differences will not result in permanent fissures within the community. Section 3 will examine the poor's obligations as Jews, and as members of their communities and families. The evidence of Part II shows SA's awareness that maintenance of communal solidarity and cohesion is an ongoing project. Recognition of the poor's obligations as well as entitlements, and the balancing of the interests of all groups, are crucial elements of that solidarity.

1. Balancing the Interests of the Poor with the Interests of Private Givers

Ṭur *ḤM* 250 discusses the post-talmudic interpretations of a passage at *b. B. Bat.* 148b, which asked—and did not answer—a question about whether or not a dying person could validly and irrevocably give *all* his property to, *inter alia*, the poor. Do we say that the dying person wished the *tzedaqah* to be irrevocable or not? Implicit in this question is another: What if the person does not die? Would a dying person irrevocably give all his property to the poor if he thought he might recover? *Ṭur* cites Maimonides and R. Meir Abulafia (ca. 1170-1244), who ruled that the property remains that of the dying person, while *Rosh* ruled that the transfer was valid because we do not invalidate people's actions on the basis of an assumption about their motives and desires, absent clear evidence of what those desires were. *SA* disagrees (*ḤM* 250:3) and takes up the position of Maimonides and Abulafia, claiming that we may reasonably assume that no person would want to put himself in the position of having nothing and needing to beg from others, and thus, the dying person's gift of all his property to the poor should be invalid. *SA* thus protects the interest of the more vulnerable person—in this case, the dying person—out of an assessment that in such a case, this interest must be viewed as weightier than that of the poor.

On the more general subject of private gifts to the poor, *Ṭur* had ruled (*ḤM* 243) that a person could not change his mind about a gift to a poor person, on the ground that "making a promise to Heaven is the same as passing something to an ordinary person."⁶⁰ That is, on the presumption that promising a gift to the poor is the equivalent of promising it to Heaven (i.e., to the Jerusalem Temple for holy purposes), the verbal declaration is enough to make the transfer of money or property obligatory and irrevocable. *Bet Yosef* (s.v. "u-mah she-katao") argues that that principle does not apply to the poor, as to whom giving cannot properly be analogized to promising a gift to Heaven for cultic use. Nevertheless, *SA* also rules at *ḤM* 243:2 that while a person is permitted to change his mind about a *large* gift to the poor, he may not change his mind about a small gift, which presumably the poor are entitled to expect.⁶¹ Once again, *SA* balances the interests of the private giver—whom he did permit to

60 See the talmudic sources at *b. Ned.* 29b, *b. Qidd.* 28b, *b. B. Meṣi'a* 6a, *b. B. Bat.* 133b, *b. 'Abod. Zar.* 63a, and *b. Tem.* 29b.

61 See *y. B. Meṣi'a* 4:2 (9c-d).

withhold a large gift from the poor—and the poor, who are seen as properly expecting a small gift, about which the giver cannot reconsider.

2. Private *Tzedakah* and *Tzedakah* within Families: Legal Obligations and Limits

As far back as the third century C.E., rabbinic law had held that *tzedakah* is to be distributed according to a list of priorities that radiate out in concentric circles from oneself. That is, the poor of one's own house take precedence over the other poor in one's town, while the latter take precedence over the poor of another town.⁶² Later, the Bavli stipulates that poor people's relatives, not the communal welfare structure, are to be their first recourse for support.⁶³ While the Bavli obligates a father to support his minor children,⁶⁴ it also quotes an apparently contradictory view that a father's obligation *qua* father only extends until the children reach the age of six.⁶⁵ Elsewhere the Bavli provides for the public shaming of a poor father who will not support his minor children, and indicates that a recalcitrant wealthy father can be legally compelled to provide that support.⁶⁶ *Tosafot*,⁶⁷ and later *Rashba*,⁶⁸ harmonize these talmudic passages by ruling that a recalcitrant father can legally be compelled to support his children up to the age of six, but can only be subjected to the penalty of public shame for failing to support minor children above that age.⁶⁹ Maimonides, followed by SA (*EH* 71:1), rules that every father can be compelled to support minor children up to the age of six, and that a resistant father with means can even be legally compelled after that only "until they reach their majority."⁷⁰

Clearly, then, the Bavli does not compel a parent to support a needy child who has reached majority. A case raising that very question came before

62 E.g., *Sifre Deut.* 116; *Mek. RI*, 19.

63 *B. Ned.* 65b.

64 *B. Ketub.* 49b.

65 *Ibid.*, 65b.

66 *Ibid.*, 49b.

67 *Tosafot* to *b. Ketub.* 65b, s.v. "aval."

68 *She'elot u-Teshuvot ha-Rashba*, 2:391.

69 Although interestingly, *Rashba's* summary of the law pertaining to support of the minor child at 3:292 of his responsa reads like that of Maimonides; to wit, that the father with means can be compelled to support his minor children above the age of six.

70 Maimonides, *Hil. Ishut* 12:14-15; see also *Mattenot Aniyyim* 10:16.

Rashba, who rules that a father in this situation *can* be compelled to support his impoverished, of-age child through the laws of *tzedaqah*.⁷¹ The father's argument seems to have been that his obligation to support his son extended no further than his obligation to support any other poor person in the city. Thus, by contributing to the communal fund, the father essentially fulfilled his obligation to his son, who could take his assistance from there. *Rashba* disagrees, building an argument that the father could be legally compelled to support his son on three sources: (a) The Bavli's general provision for compulsion in cases of *tzedaqah* (*b. B. Bat.* 8b); (b) the principle that needy people's first option for support should be their own relatives (*b. Ned.* 65b); and (c) a story at *b. B. Bat.* 174b which implies that a father can give advice to his son that he would not be permitted to give to other people in the same situation. *Rashba* arranges these sources for maximal rhetorical effect, starting with the most general talmudic approval of compulsion for *tzedaqah* (*b. B. Bat.* 8b), moving on to invoke the relatives' role as a poor person's first resort (*b. Ned.* 65b), and, finally, to the father-son relationship and the unique allowance to which this entitles the father (*b. B. Bat.* 174b).

This responsum is referred to in *Bet Yosef* to *Ṭur* YD 251 (s.v. "*u-mah shekatakav*"), as well as in *Bet Yosef* to *Ṭur* YD 257 (s.v. "*ve-khataav*"), and appears in SA YD 251:4.⁷² This ruling is beneficial to the community as well as the impoverished of-age child, because by providing that a father with means can be compelled to support the child, YD 251:4 also lessens the burden on the communal fund. The importance SA attaches to lessening the burden on the communal fund is also apparent at YD 257:8, which codifies the notion that poor people's relatives, rather than the communal welfare apparatus, should be their first resort (see also *Bet Yosef* to *Ṭur* YD 257, s.v. "*ve-khataav*").

Although relatives are the poor's first resort for help, they cannot legally be compelled to help their individual poor relative (unless, as noted, they are the father). Nevertheless, YD 257:8 is carefully worded to read that *tzedaqah*

71 *Rashba*, responsa 3:292.

72 *Bet Shmuel* to *EH* 71:1 (n. 3) ponders the apparent contradiction between *EH* 71:1 and YD 251:4. Without entering into the discussion in detail, it is possible to understand *EH* 71:1 as referring to the father's obligation *qua* father to his minor children, and YD 251:4 as referring to his primary *tzedaqah* obligation *qua* giver of *tzedaqah* as being toward his own indigent of-age child. Alternatively, of course, this could be one example among others of contradictions within SA. On the impact of such contradictions on how scholars viewed SA after its publication, see, e.g., Meir Benayahu, "Al Shum Mah."

officials “are not *obligated*” (but also not forbidden!) to support a poor person with rich relatives. By expressing the officials’ duty in this way, SA highlights their discretion and leaves them free to decide how to handle the case. Concern for the poor is balanced with flexibility for the local communal welfare institutions.

SA also adds to *Tur* the caution—based on *Mordecai*—that local *tzedakah* distributors must be very careful not to give more of the public monies to their own relatives than to others (*YD* 257:10).⁷³ SA also adds (*YD* 257:9) that private persons must not give all of their *tzedakah* to only one poor person, whether their own relative or not.⁷⁴ These two rulings aim to ensure that adequate *tzedakah* monies are available to all those who need them, not only a well-connected few.

3. The Poor’s Religious Obligations as Jews and as Members of Their Communities⁷⁵

Sections 1 and 2 demonstrate, *inter alia*, that the interests of the poor do not always or necessarily take precedence over others’ interests in SA. This essay suggests that the reason for this is that balancing the interests of different groups and protecting the legitimate interests of all, not just the poor, is crucial to maintaining communal solidarity. This final section will explore another way SA lays a legal and rhetorical groundwork for maintaining communal solidarity—the emphasis it places on the religious, communal, and familial obligations of the poor, and hence their dignity as human beings and as Jews. Robert Cover poignantly expresses the centrality of obligation—*mitzvah*—in the Jewish *nomos*. “*Mitzvah*,” he points out, is “intrinsicly bound up in a myth—the myth of Sinai.”⁷⁶ Moreover, Cover continues, being one “who acts out of obligation is the closest thing there is to a Jewish definition of completion . . . within the community,”⁷⁷ and “it is critical that the mythic center of the Law reinforce the

73 *Mordecai* (*b. B. Bat.*, para. 502) derives this principle from R. Yose’s exclamation on *b. Šabb.* 118b: “May I be [one] of the collectors of *tzedakah* and not its distributors,” which he claims *Rashi* interprets to mean that the *tzedakah* distributor may have a tendency to give more to his own relatives and thereby (in effect) steal from other poor people. Interestingly, our version of *Rashi*’s commentary does not make this point.

74 *Mordecai* to *b. B. Bat.*, para. 502, based on *b. Erub.* 63a.

75 On the late antique roots of the similar notion he terms the “agency” of the poor, see the unpublished paper of Tzvi Novick, referred to in n. 7, above.

76 Cover, “Obligation,” in *Narrative, Violence, and the Law*, 240.

77 *Ibid.*, 241.

bonds of solidarity.”⁷⁸ SA’s construction of poverty and the poor reinforces the centrality of obligation, its relationship to the “Jewish completion” of the one obligated, and the “bonds of solidarity” forged and maintained by the system of interrelated and mutual obligations among Jews. SA naturally accepts the never-questioned understanding of earlier legal authorities that poor Jews are obligated to keep all the Torah’s commandments no less than Jews who are not poor. SA nevertheless draws attention to certain elements of the poor’s obligations, namely the importance of their engagement with *mitzvot* that command behaviors or intellectual engagement intimately bound up with what we may call “the Jewish narrative”—the history of the formation, study, observance, and defense of, the Jewish people and their covenant with God. *YD* 246:1 reiterates Maimonides’ poetic *Talmud Torah* 1:8 in ruling that every Jewish male, whether rich or poor, healthy or not, young or old, is obligated in Torah study. Even the poor person who supports himself by going door-to-door is obligated to fix time for Torah study day and night (*Josh* 1:8). Torah study is a fundamental *mitzvah*, necessary for practice, but also a Jewish *paideia*, which forms the Jewish intellect and spirit. Whereas some might argue that the poor’s involvement in Torah study beyond a bare minimum is too time- or resource-consuming and that the poor and the community would be better advised to use their time and resources differently, SA strongly affirms the poor’s obligation to study Torah. Preventing the poor from doing so, or ignoring their lack of study, would have the effect of reinforcing the class differences within a Jewish community with a sense that the poor are somehow less invested in the community’s Jewish master narrative than others. Stressing their obligation to study is a powerful rhetorical way to stress the fundamental covenantal unity of the community. Similarly, *OH* 472:13 rules that a poor person must sell his clothes, or borrow money, or hire himself out in order to obtain four cups of wine for the Passover *Seder*, and *OH* 671:1 rules that he must borrow or sell his clothes to obtain oil to light the Hanukkah lights. Passover and Hanukkah also encode key elements of the Jewish narrative—the founding and preservation, respectively, of the Jewish people and their covenant with God. Poverty must not be a barrier to the poor’s participation in these rituals and their narratives, and SA’s audience—poor recipients of charity and benefactors alike—are thus made aware of the fundamental equality of the poor and non-poor in the Jewish community.

SA also illuminates the related issue of the poor's obligations to their own communities. One basic obligation of the poor (even a poor sage) is to prefer a life of struggle and even degrading work to the receipt of *tzedaqah* (YD 255:1). Moreover, it is forbidden to accept *tzedaqah* from non-Jews (YD 254:1). What is at stake is not simply the legislation of behaviors conducive to strengthening a person's own dignified sense of self, but his responsibility to the community. A community filled with dignified self-reliant people is stronger than a community filled with dependents. A Jewish community whose members rely on non-Jewish *tzedaqah* loses some of its own collective dignity in exile. In addition, a poor person who is supported through *tzedaqah* must himself give from that which was given to him (YD 248:1), and this obligation may be satisfied when two poor people exchange *tzedaqah* with each other (YD 251:12). YD 248:1 is in tension with YD 253:8, which provides that a small coin offered as *tzedaqah* by a poor person is accepted, but that he is not compelled to give one if he does not offer; similarly, if he was given new clothes and wished to return old clothes, those are accepted, but he is not required to offer them. One way to resolve this tension is that while a poor individual is obligated to take his place in society as a benefactor of others and not simply as a recipient of *tzedaqah*,⁷⁹ the community will not enforce this obligation. The poor's own sense of religious and social self and the community's sense of him require that he recognize his obligation to others and that the community assist in any necessary manner. Yet the overall precariousness of his specific situation precludes his being compelled to provide for others.⁸⁰

The poor's responsibility to the community also underlies OH 53:23, which provides that the communal prayer-leader must be paid from the communal fund. The paragraph explicitly recognizes that although the prayer-leader fulfills the religious obligations of the poor as well as the rich, the poor cannot afford as much as the rich. OH 55:21 provides that if there are eleven adult male members of a community, two of whom—one rich and one poor—wish to leave during the *Yamim Nora'im*, those two must split the payment for their

79 See *Shakh* to YD 253:8, who explains that this paragraph refers to a poor person who is offering a small coin as *tzedaqah* even though he does not have funds sufficient to provide for himself. *Shakh* also discusses the different view of *Baḥ* (R. Joel Sirkis, 1561-1640).

80 Similarly, orphans are not assessed for *tzedaqah* by the community unless their giving would enhance their reputation. Essentially, then, they are exempt (YD 248:2). Of course, as in the previous example of a contradiction between EH 71:1 and YD 251:4, the contradiction should perhaps simply be allowed to stand.

replacement, half per capita and half by ability to pay. The poor person is not exempted from participating in this payment, as the responsibility for communal prayer falls equally on rich and poor alike.

SA also highlights the poor's obligations in the marital context. Impoverished husbands cannot fall below certain minima in providing clothing to their wives (EH 73:1), food (EH 70:3), jewelry (EH 73:3), and funeral rites (EH 89:1). Falling short as to food ("if he is exceedingly poor and cannot even give her the bread that she needs"), clothing, and jewelry entitles the wife to a divorce (EH 73:5, 70:3). Correlatively, the poor wife also has obligations to her husband (EH 80:6)—grinding, baking, washing, cooking, nursing children, and placing straw before the husband's animal (other than cattle). SA's emphasis on the mutual obligations of the impoverished marital pair is a natural corollary to its emphasis on the poor's obligations to the community, as the marital unit is the fundamental unit of the community. All in all, the poor's threefold obligations as Jews, as members of their communities, and as builders of family units are crucial to their "completion"—in Cover's terms—as Jews within their communities in solidarity with Jews of greater means and social status.

Conclusion

SA's literary dependency on *Ṭur* has been long-known, as well as its tendency to make changes to *Ṭur*. By thinking about SA as not simply a "law code," "restatement," or "collection of rulings," but as a work of legal and literary interpretation in which a gifted scholar systematized his interpretations of and additions to his received legal heritage, the door is opened to searching out the "latent structures of thought" in the work—in this case pertaining to poverty, the poor, and the Jewish communities of which they are a part. Moreover, by noting the differences between the laws of poverty and charity that SA inherited and what it bequeathed, this study is able to show aspects of SA's distinctive contribution to that body of law, including its reintroduction of topics (as James Boyd White and J. M. Balkin understand the term) that would thenceforth be part of the canon of poverty and charity topics for study and application. To paraphrase James Boyd White, SA may be understood as "attempting to establish a conversation of a certain kind," and as "establishing a set of topics, a set of terms in which those topics can be discussed, and some general directions as to the process of thought and argument" by which its laws are to be applied.⁸¹

81 James Boyd White, "Rhetoric and Law," in *Heracles' Bow*, 41.

In sum, by combining detailed textual analysis and insights drawn from Law and Literature this study has been able to show: (1) SA makes changes to the laws of *tzedakah* as codified in *Tur* that tend to be favorable to the poor; (2) while adding elements favorable to the poor, SA is mindful of the need to balance the interests of the poor with those of the community and private and family donors in the interests of communal solidarity; (3) while acknowledging that poverty may be a reason for adjusting the application to the poor of certain laws, it insists upon the importance of the poor's own observance of their religious, communal, and familial obligations, even emphasizing certain *mitzvot* that encode elements of the Jewish religio-national narrative; and (4) by emphasizing the poor's obligations as well as entitlements, SA expresses a religious vision and legal desideratum that the rich and poor—despite their class difference—will constitute a unified community that shares in a common Jewish narrative. While undoubtedly an authoritative code of law, SA is also, in light of Law and Literature, a rhetorical document that creates a vision of Jewish culture, character, and community and a structure for using the language of Jewish law to continue the conversation about them.

