

RESEARCH

Nathan Lee Kaplan

Management Ethics and Talmudic Dialectics

Navigating Corporate Dilemmas
with the Indivisible Hand



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With a foreword by Asc. Prof. Dr. Thomas Petersen

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Nathan Lee Kaplan
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Acknowledgments and Dedication

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*This book is dedicated in loving memory to my Opa & Oma,
Josef and Rosa Inowlocki י"ד,
who taught me to celebrate life and not be a stranger in my own tradition
...ich liebe Euch unendlich...*

Nathan L. Kaplan

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Vorwort

Nathan Kaplans Buch *Management Ethics and Talmudic Dialectics* versteht sich als ein Beitrag zu einer Teildisziplin der modernen Wirtschaftsethik, nämlich als Beitrag zu einer Ethik der Unternehmensführung. „Ethik“ ist ein Titel, den die griechische Philosophie geprägt hat. Ethik ist die Lehre vom guten Leben und vom rechten Handeln. Zwar ist die moderne Wirtschaftsethik nicht in der universitären oder akademischen Philosophie entwickelt worden; sie ist vielmehr einerseits aus einem Interesse von Unternehmen selbst und andererseits aus einer Teildisziplin der Wirtschaftswissenschaften, nämlich der Institutionenökonomik, erwachsen. Doch bedient sich die Wirtschaftsethik philosophischer Begrifflichkeit und Argumentationsweise. Sie ist daher ein legitimer Teil der Philosophie.

Die Basis freilich, auf der das vorliegende Buch argumentiert, ist das talmudische und rabbinische Denken. Sein Untertitel „Navigating Corporate Dilemmas with the Indivisible Hand“ spielt dabei auf die berühmte „unsichtbare Hand“, die *invisible hand* im Werk Adam Smiths an; mit dieser „unsichtbaren Hand“ fördert der wirtschaftliche Eigennutz, ohne es zu wollen und zu wissen, zugleich das allgemeine Wohl, oder er vermehrt den nationalen Reichtum. Doch bleibt der Eigennutz darin eben Eigennutz, der nicht auf den fremden Nutzen sieht. Dass die Hand nun aber nicht mehr unsichtbar, sondern unteilbar ist, deutet an, dass in wirtschaftlichem Handeln das eigene und das fremde Wohl nicht getrennt werden sollen oder: sich gar nicht trennen lassen.

Wenn nun Nathan Kaplan nicht von eigentlich philosophischen Theorien, sondern vom Talmud her sich einem Terrain nähert, das die Philosophie selbst als das ihre beanspruchen kann, so stellt seine Arbeit einen Beitrag zum Gespräch zwischen Jerusalem und Athen dar. In diesem Gespräch wird zuweilen die Vermutung laut (so wie jetzt bei Henning Ritter in Bezug auf Jacob Taubes¹), alles, was die Philosophie sich mühsam erschließt, sei womöglich bereits im jüdischen Denken vorgedacht. Und die Leichtigkeit und Souveränität, mit der Nathan Kaplan den Gedanken der „Unteilbarkeit“ von geistlichem, moralischem und wirtschaft-

1 Ritter, Henning, Verehrte Denker. Porträts nach Begegnungen, Springe, 2012, S. 40.

lichem Wohlergehen in die Wirtschaftsethik einbringt, ist geeignet, dieser Vermutung neue Nahrung zu geben. Denn leicht ist die Wirtschaft der Philosophie eigentlich nie gewesen. Das sei kurz erläutert.

Der eigentliche Begründer der Ethik als einer philosophischen *Disziplin*, Aristoteles, sieht in der Sphäre der Wirtschaft nur einen untergeordneten Bereich des menschlichen Lebens. Er teilt sie ab von dem, worum es in der Ethik eigentlich geht, nämlich vom guten Leben. In der Wirtschaft, so erklärt er beiläufig im ersten Buch seiner *Politik*, gebe es „nichts Edles“. Keine sonderliche Tugend sei hier gefordert, und der edle Mensch tue gut daran, sich wirtschaftlichem Tun so weit wie möglich zu entziehen. Diejenigen aber, die aus dem Wirtschaften eine Kunst, und zwar zur Erzielung von Gewinn, machen, werden von Aristoteles verurteilt. Diese Menschen betrachtet Aristoteles mit einer Mischung aus Verachtung und Sorge. Denn die Gewinnsucht kann, wie er meint, sowohl die Tugend wie die politische Gemeinschaft korrumpieren.

Bis in die Neuzeit hinein hat in der Philosophie die Perspektive des Aristoteles auf die Wirtschaft dominiert. Doch die Neuzeit konnte den Aufstieg der Wirtschaft zu einer großen Macht im politischen Leben nicht ignorieren, und sie musste erkennen, dass die Wirtschaft eine solche Macht wurde, indem sie sich zu einer auf Konkurrenz beruhenden Marktwirtschaft entwickelte, in der das Gewinnstreben und der Eigennutz wesentliche Antriebe des Handelns sind. Es war Adam Smith, der in dieser Situation den Eigennutz zwar nicht eben ethisch adelte, aber ihm doch eine Art Unbedenklichkeitserklärung ausstellte. Mit dem Eigennutz können wir uns anfreunden, weil er durch eine *invisible hand* das allgemeine Wohl befördert. Aber eben dieses Ziel des allgemeinen Wohls können wir nicht zum Inhalt unseres Willens machen. Denn die *invisible hand* ist eben unsere rechte Hand, von der die linke nicht weiß, was sie tut (Mt. 6, 3). Die *invisible hand* ist insofern gerade keine *Indivisible Hand*, denn sie tut und will ja etwas anderes als die eigennützige oder selbstinteressierte sichtbare Hand. *Indivisibility*, Unteilbarkeit, findet sich nur in der dialektischen oder besser spekulativen Philosophie Hegels, dessen *Philosophie des Rechts* das Gewinnstreben in der Wirtschaft als integralen Bestandteil eines Lebens in der institutionellen Struktur der Sittlichkeit begreift. Denn Hegel stellt uns die Marktwirtschaft als eine Struktur vor, in der Selbstinteresse und Gewinnstreben einen vernünftigen Zweck erfüllen. Sie dienen nicht nur ungewollt dem Allgemeinwohl, sondern führen den Einzelnen auch zur Einsicht, dass alle Interessen der einzelnen Akteure ineinander verwoben sind, und lassen ihn dadurch erst begreifen, was das Allgemeinwohl und das allgemeine Interesse des Ganzen sind. Was Hegel uns gibt, ist jedoch keine Ethik im klassischen Sinn. An deren Stelle tritt bei Hegel nämlich eine Philosophie des

„objektiven Geistes“, die im Grunde eine Philosophie der Institutionen ist, welche nicht nur die Ethik, sondern auch die philosophische Rechtstheorie sowie die Gesellschafts- und Staatsphilosophie in sich enthält oder „aufhebt“. Die heutige Wirtschaftsethik jedoch ist von Hegels Idee der Einheit des menschlichen sozialen, wirtschaftlichen und politischen Lebens weit entfernt. In ihr geht es entweder um die Formulierung einer „Ordnungsethik“, die der *invisible hand* durch geeignete Institutionen aufhelfen soll, oder darum, Eigennutz und Gewinnstreben (etwa diskursethisch) an die Kandare zu legen. Es bleiben also auch hier Selbstinteresse und Wirken für das Allgemeinwohl voneinander getrennt.

Pointiert ausgedrückt könnte man sagen: Eine eigentliche Wirtschaftsethik, die wirklich eine Ethik der Wirtschaft wäre, gibt es im Grunde in der Tradition der abendländischen Philosophie nicht. Zweifellos aber gelingt es Nathan Kaplan, eine solche Wirtschaftsethik aus talmudischen Quellen zu entwickeln, in denen eine Idee der „human completeness“, der Unteilbarkeit des menschlichen Lebens gegenwärtig ist. Hieraus kann der Autor in einer sorgsam und differenzierten Argumentation konkrete Handlungsanweisungen für die Führung eines Unternehmens gewinnen, also das Denken der Tradition des Talmud auf gegenwärtige Probleme der Wirtschaft beziehen, ohne dass dies im einzelnen in irgendeiner Weise gewaltsam wirkte. Das gelingt ihm nicht zuletzt deswegen, weil er auf seine Erfahrung aus der Tätigkeit in einer großen Unternehmensberatung zurückgreifen kann. Dabei bezieht sich Nathan Kaplan direkt auf die angelsächsische Wirtschaftsethik, die weniger von grundsätzlichen Erwägungen als von konkreten Problemen und Fällen ausgeht. Ein solcher Bezug legt sich durch das talmudische Denken nahe, das, wie sich zeigt, selbst stark kasuistisch geprägt ist.

Das talmudische Denken kann selbst als „dialektisch“ bezeichnet werden (z. B. 354) und lässt sich mit einer „culture of controversy“ (355) in Verbindung bringen. Mit diesen Hinweisen spielt der Autor vor allem auf Probleme an, bei deren Lösung unterschiedlichen und sogar einander widerstreitenden Forderungen Genüge getan werden muss. Hierin bewährt sich die vorliegende Interpretation des Talmud in besonderer Weise, wie vor allem die Darstellung des „whistle blowing“ eindrücklich zeigt. Bezüge zur Aporetik der Aristotelischen Tradition könnten sich dabei nahelegen – wie etwa zu der, freilich aus einer anderen Sphäre stammenden, Gedankenfigur des gerechten Krieges. Denn bei dieser, auf Augustinus zurückgehenden und von Thomas Aquinas systematisch entwickelten Frage geht es ebenfalls um eine Abwägung zwischen konkurrierenden Gesichtspunkten der Gerechtigkeit und des Guten: Nach dieser Lehre darf auch der, der einen „gerechten Grund“ zum Krieg hat und alle friedlichen Mittel ausgeschöpft hat, den Krieg nur führen, wenn Gesichtspunkte des Guten nicht im Wege stehen. Ins-

besondere muss das durch den Krieg zu erreichende Gut größer sein als das Übel, das der Krieg selbst darstellt. Und der Kriegführende hat die Pflicht, das Übel möglichst gering zu halten. Ähnlich muss auch der Whistleblower den Nutzen seines „whistle blowing“ gegen den Schaden abwägen, der aus seinem Tun dem Unternehmen, dem, dessen Fehlverhalten er offen legt, und schließlich ihm selbst erwachsen kann.

Eine Frage sei abschließend genannt, deren Beantwortung sich der Autor nicht vorgenommen hat, die jedoch gerade durch seine überzeugende Erörterung zahlreicher unternehmensethischer Fragen und Probleme provoziert wird. Das ist die Frage danach, wie das talmudische Denken sich zu dem der Philosophie verhält. Denn jenes Denken geht aus von der Thora, deren Worte eingehend diskutiert und erwogen werden – also von dem, was die Philosophie eine positive Setzung oder eine Autorität nennt. Die Philosophie dagegen, insofern sie sich nur vom „natürlichen Licht“ der Vernunft leiten lässt, hat als Elemente ihrer Methode *Apodeixis* und *Epagoge*, also den „Beweis“ in folgerichtiger Argumentation und andererseits das Finden und Erproben von Grundsätzen, die keines Beweises fähig sind und sich nicht aus anderem deduzieren lassen. Die neuzeitliche Philosophie wollte keine Autorität neben der Vernunft mehr anerkennen, vielmehr auch die Offenbarung vor den „Richterstuhl der Vernunft“ (Kant) zitieren. Wie verhalten sich also die Einsichten des Talmud zu denen der Philosophie, sofern diese sich mit der Wirtschaft beschäftigt, und denen der Wirtschaftsethik? Kann die Philosophie durch den Talmud belehrt werden, oder ist vielmehr sie es, die den vernünftigen Gehalt in religiöser Überlieferung und Denken erkennt, prüft und ausspricht? Das Verhältnis von Offenbarungswahrheiten zu Vernunftwahrheiten beschäftigt die abendländische Philosophie spätestens seit der *Summa Theologica* des Thomas von Aquin bis hin zu Schellings *Philosophie der Offenbarung*.

Derart grundsätzliche Fragen erörtert zu sehen wird man nicht von einem Buch zur ethischen Unternehmensführung verlangen. Es ist aber ein Verdienst von Nathan Kaplan, dass er uns in seiner Begründung der Wirtschaftsethik aus Thora und Talmud vor Augen führt, dass sie uns immer noch beschäftigen sollten.

Das Buch *Management Ethics and Talmudic Dialectics* verbindet eine umfassende Perspektive mit großer Kenntnis konkreter Handlungssituationen. Es eröffnet neue Perspektiven in der wirtschaftsethischen Diskussion. Man kann ihm nur eine zahlreiche Leserschaft wünschen.

Thomas Petersen

1 Introduction

1.1 Theoretical Background

The economic crises of the past decade and the societal turmoil unleashed in their wake have shaken the trust in an invisible hand of the laissez-faire market and in the visible hand of corporate management.² As a result, a new consensus is emerging that those managing corporations ought to become more indivisible—that is, connected to the interests of their stakeholders, inseparable from societal concerns, and upholders of personal integrity. This development has given rise to a global, heated discourse on business ethics in general and management ethics in particular, to which this thesis intends to contribute a talmudic perspective.

The evolution from the invisible to the visible and then to what this book terms the indivisible hand has taken place over approximately the past two hundred years. Towards the close of the 18th century, Adam Smith argued for an emancipation of economic activity from state and church paternalism, suggesting that an individual’s pursuit of self-interest contributes to the general welfare by means of a mechanism which he famously coined an “invisible hand.”³ Through this mechanism’s power over the free market, according to Smith, an individual “pursuing his own interest . . . frequently promotes that of the society more effectually than when he really intends to promote it.”⁴ This view also served as a powerful legitimization for business conduct to be based on self-interested economic rationality alone. “It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest,”⁵ is one of Smith’s most famous views. Rather than grand religious, philosophical, or political narratives, economics itself could thereby link for-profit

2 This chapter is an updated, expanded and contextualized version of the introduction to my unpublished M.A.-thesis, which piloted the methodology of this book: Kaplan, Nathan L., *The Indivisible Hand. A Talmudic Perspective on Management Ethics*, Heidelberg, June 2011.
3 Smith, Adam, *The Theory of Moral Sentiments*, London, 1759/1761, p. 273, and *An Inquiry Into the Nature and Causes of the Wealth of Nations* [WoN], London, 1776/2009, p. 264.
4 Smith, Adam, WoN, p. 423.
5 *Ibid.*, p. 13.

activities of individual businesses to socially beneficial outcomes. This economic liberalism provided additional impetus to the momentous transfer of power from the aristocracy and clergy to the bourgeoisie that was already taking place during Smith's time. As a consequence, free-market coordination of individual actors emerged as the new economic paradigm.

Ironically, the liberal revolutions both unleashed the power of the *laissez-faire* market and gave rise to a development that would curtail it: the emergence of the business corporation. This organizational form was both enabled by liberalist ideology, which gave individual market participants the freedom of contract to establish it⁶ yet simultaneously carried qualities of the thoroughly illiberal medieval guilds and mercantilist trading companies preceding it by integrating a multitude of individual economic interests into a centralized structure.⁷ Such an integration, be it vertically or horizontally,⁸ carried significant economic benefits: transaction costs and risks decreased,⁹ while productivity and profitability increased¹⁰ as market cooperation and allocation were replaced by administrative coordination and planning. Corporations thereby became a major driver of capitalism's prosperity engine, offering significantly higher output levels at lower prices. These benefits could be reaped primarily because corporations effectively create what the economist D.H. Robertson calls "islands of conscious power in this ocean of unconscious co-operation ..."¹¹

Initially, these corporate islands were still controlled by their owners. But when dozens or even hundreds of individual businesses became integrated into unified organizations with thousands of shareholders, ownership and control began to diverge as management became responsible for the coordination,

6 Broyde, Michael J./Resnicoff, Steven H., *Jewish Law and Modern Business Structure*, in: *The Wayne Law Review*, Philadelphia, PA, Fall, 1997, p. 1780.

7 Mazumdar, D.L., *Towards a Philosophy of the Modern Corporation*, London, 1967, pp. 142f. The unifying corporate character is already evinced by the etymology of the word "corporation," which stems from the Latin *corporare* ("to form into a single body") and is codified into law, such as in §18 of the German *Aktiengesetz*, which states that the defining feature of the corporation is its integration of independent businesses under centralized management.

8 The first vertical integration into a corporation took place when industrialized mass-producers such as the Coca-Cola Company acquired businesses that supplied their inputs or marketed and distributed their products. Horizontal integration, such as the formation of General Electric, enabled companies within an industry to form a cartel strengthening their market power and control.

9 Coase, R.H., *The Nature of the Firm*, in: *Economica*, New Series, Vol. 4, No. 16, London, Nov. 1937, pp. 386-405.

10 Chandler, Jr., Alfred D., *The Visible Hand. The Managerial Revolution in American Business*, Cambridge, MA, 1977, pp. 7/315.

11 Robertson, D.H., *The Control of Industry*, London, 1923, p. 85.

planning, and leadership of both the corporation as a whole as well as its individual businesses. Consequently, a seminal study notes, “the visible hand of management replaced ... the invisible hand of market forces.”¹² The freedom of Smith’s butcher, brewer, and baker from state intervention in the 19th century thereby enabled the managers of McDonald’s, Diageo, and Nabisco a century later to exert unprecedented control over the market.¹³ These corporations grew powerful to an extent that they took on state-like qualities, and their top management began to resemble statesmen.¹⁴ By the mid-20th century, Peter Drucker described the large corporation as “America’s representative social institution,”¹⁵ and fuelled by globalization this institution has become dominant internationally as well.

At the beginning of the third century after Smith’s work, the managerial revolution that was first unleashed by and which subsequently curtailed the liberal revolution has come under significant pressure. Recurring corporate scandals have led to a decrease in trust in managers, corporations, industries, and capitalism as a whole.¹⁶ The power of both an invisible hand of the market and the visible hand of management to transform self-interested economic behavior

12 Chandler. *op. cit.*, p. 4. Incidentally, the etymology of the word “management” stems from the Latin *manus* (“hand”). Management can hence be viewed as the hand of the corporation, which is then in turn the corpus of management.

13 Smith himself was critical of such industry consolidation: “People of the same trade seldom meet together ... but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.” (WoN, p. 152.)

14 As noted by the classic work on corporate governance, “[t]he rise of the modern corporation has brought a concentration of economic power which can compete on equal terms with the modern state ... business practice is increasingly assuming the aspect of economic statesmanship.” Berle, Adolf Augustus/Means, Gardiner Coit, *The Modern Corporation and Private Property*, New York, NY, 1932, p. 313.

15 Drucker, Peter F., *Concept of the Corporation*, New York, NY, 1946, p. 5.

16 E.g., 80% of respondents in a national U.S. survey stated that accounting scandals such as the one at Enron drag down trust in corporate executives (cited in DuBrin, Andrew J., *Essentials of Management*, Florence, KY, 2008, p. 85). A further survey finds that the Enron and the Dot-com bubble as well as the ongoing Global Financial Crisis have led to a dramatic decrease of up to 20 percentage points in respondents who “trust business to do what is right.” The same survey shows that in the wake of the financial crisis, the share of respondents who trust the banking industry “to do what is right” decreased by up to 39 percentage points. (Edelman Trust Barometer Executive Summary, 2010, p. 8.) The crises and crashes of the past decade have also damaged the image of capitalism itself (see for instance BBC World Service Poll, *Wide Dissatisfaction with Capitalism*, London, November 9th 2009, and Allensbacher Archiv, *ifD-Umfragen*). The global burgeoning of social protest movements such as “Occupy Wall-Street” is a further testimony to the growing resentment people feel towards the economic status quo.

into socially beneficial outcomes is increasingly called into question.¹⁷ Similar to how the Fukushima nuclear disaster unleashed a global move for a change in energy policy, each economic crisis stirs a debate on what must change in business conduct.¹⁸

The power of managers over increasingly influential organizations has given rise to demands that their traditional mandate be reconsidered. Unemployment, poverty, home foreclosures, inflationary pressure, political turmoil, and financial market volatility fuel the desire for change. Whereas in classical business theory and U.S. law corporate management is required to maximize shareholder returns,¹⁹ the view that management should take the interests of a wider set of corporate stakeholders into account when making decisions has become increasingly prevalent.²⁰ Thus, while these traditional theories and legislations focused on the principal-agent problem of how to align and hence make indivisible, the interests of management with those of shareholders, the concern has shifted in the past few decades to making management indivisible from all the parties it affects and

17 Because, for instance, mortgage brokers extending credit to borrowers who would most likely not be able to repay it, and investment banks securitizing this debt acted in their (short-term) self-interest yet unleashed a global financial and economic crisis by doing so. The same dichotomy between individual and social benefits applies to the businesses, banks and investors involved in the Dot-com bubble of 2000, as well as to the creditors and governments involved in the ongoing sovereign debt crises. An observer expresses his concern about a possible disconnect between self-interest and societal well-being as follows: the invisible hand might have “let go of important things like the common good.” Walls, Jim, When your Calendar is a Moral Document, in: McKinsey Quarterly, Chicago, IL, January 2010.

18 For a recent contribution to this debate, see the following excellent work: Paine, Lynn Sharp et al., *Capitalism at Risk: Rethinking the Role of Business*, Harvard Business Press, Cambridge, MA, 2011.

19 This maxim is epitomized by Milton Friedman’s statement that “[t]he social responsibility of business is to increase its profits...” (Friedman, Milton, *Capitalism and Freedom*, Chicago, IL, 1962, p. 133), and was first encoded in U.S. law by the case of *Dodge vs. Ford Motor Co.*, 170 N.W. 668, Michigan, 1919, p. 8, whose ruling equates “the best interest of the corporation” with that of shareholders.

20 A major theoretical foundation of this development was provided by R. Edward Freeman’s now classic work: *Strategic Management. A Stakeholder Approach*, London, 1984. This development is increasingly prevalent in corporate practice through concepts encouraging environmental and social in addition to economic sustainability such as the “triple-bottom-line,” first propounded by John Elkington (Brown, Darrell/Dillard, Jesse, *Triple Bottom Line: A Business Metaphor for a Social Construct*, 2006, Barcelona, p. 5). Traditional economists and business thinkers often still reject this broadening of managerial responsibility, partly due perhaps to the fear that their domain of expertise will be supplanted by other social-scientific disciplines. Similar to Friedman’s prominent position, a rejection of any ethical reflection beyond traditional business doctrines is argued for by the German business administration professor Horst Albach in his paper *BWL ohne Unternehmensethik*, in: *Zeitschrift für Betriebswirtschaft*, Wiesbaden, 2005.

is affected by.²¹ The often significant influence managers have over stakeholders makes these concerns particularly relevant.²² With such shifting demands, the complexity of corporate management has grown, for it now has to expend increasing time and effort on navigating the dilemmas arising from the often competing demands of customers, employees, shareholders, suppliers, communities, regulators, the media, NGOs as well as other stakeholders.²³ And this process occurs in the context of globalization, technological innovation, and threats to corporate licenses to operate, further increasing managerial complexity and strengthening demands for managers' accountability.

As a result of these developments, the past decades have led to a veritable flourishing of the business ethics discipline and discourse.²⁴ There is now an emerging consensus that it is in a corporation's best interests that its management

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- 21 This shift is especially marked in the Anglo-Saxon economies, in which shareholder capitalism is most prevalent. In Continental Europe, however, the stakeholder model has already been much more ingrained, as a seminal study finds: according to a 1995 survey, 83% of German managers held that the companies they work for belonged to stakeholders rather than shareholders. In contrast, 75% of American and British managers considered their companies to belong to shareholders. (Quoted in: *Boards Behaving Badly: Why the Leading Citizens of Corporate Germany Are So Scandal-Prone*, in: *The Economist*, London, August 6th 2009, http://www.economist.com/node/14183029?story_id=14183029.) While German corporations had since begun to embrace a more salient shareholder orientation, the pendulum has later swung back to the stakeholder perspective in the wake of the economic, financial, and corporate crises of the U.S.
 - 22 Regarding managerial influence on employees, for instance, Ronald Sims notes that “[r]esearch over a period of more than twenty-five years clearly supports the conclusion that the ethical philosophies of management have a major impact on the ethical behavior of their followers [and] employees.” Sims, Ronald R., *The Challenge of Ethical Behavior in Organizations*, in: *Journal of Business Ethics*, Vol. 11, Issue 7, 1992, pp. 505-538.
 - 23 Cavanagh, Gerald, F./McGovern, Arthur F., *Ethical Dilemmas in the Modern Corporation*, New York, NY, 1988.
 - 24 Business ethics has consequently become a “hot topic.” Corporations are introducing ethics codes and social responsibility charters (see illustration 1 for the various components of corporate ethics programs). Politicians, media and NGOs criticizing business for failing to take societal interests into account have become a daily occurrence. Business ethics has become an independent academic discipline, with research centers and conferences, scholarly journals and societies, books, articles, and university professorships and courses. A subsection of the business ethics discipline studies management ethics (see for instance, Maak, Thomas/Pless, Nicolas, *Responsible Leadership*, New York, NY, 2006, and Blanpain, Roger et al. (eds.), *Rethinking Corporate Governance: From Shareholder Value to Stakeholder Value*, Amsterdam, 2011). In management education, the business ethics field is becoming increasingly visible through widespread ethics courses (see for instance, Gentile, Mary C./Piper, Thomas R., *Can Ethics be Taught? Perspectives, Challenges, and Approaches at Harvard Business School*, Boston, MA, 1993, p. 3) and initiatives such as the MBA Ethics Oath (Anderson, Max/Escher, Peter, *The MBA Oath. Setting a Higher Standard for Business Leaders*, New York, NY, 2010).

focuses on more than strict shareholder value maximization.²⁵ Managers are responding accordingly not just to do what is right, but also to mitigate the risks of ignoring business ethics.²⁶ Amidst this shifting perception of corporate responsibility, the autonomy of the economy from other social systems is scaled back as regulation of the business and financial sectors increases and management is called upon to concern itself with the interests of a broader set of constituents.²⁷

25 As an indication of a resulting paradigm shift, both the current and former global managing directors of McKinsey, a consulting firm that supports the development of shareholder capitalism on a global scale, argued for a broadening of management responsibility beyond strict shareholder value maximization. See McKinsey's Ian Davis: Maximizing Shareholder Value Doesn't Cut It Anymore, in: Knowledge@Wharton, November 1st, 2006 <http://knowledge.wharton.upenn.edu/article.cfm?articleid=1590&specialid=59>, and Barton, Dominic, Capitalism for the Long Term, in: Harvard Business Review, Cambridge, M.A., March 2011. Barton also made the following outspoken statements in an interview with an Israeli newspaper: "There are two processes taking place at the same time: a tendency towards avarice, envy, greed Milton Friedman style ... I think the public's perception is that businesses have become more selfish. I think that this began before the crisis began but subsequently worsened. On the other hand, I think there is a perception emerging that not everything should revolve around value to shareholders but around all stakeholders ... When you work with a company you think about all the interested parties—the community, employees, suppliers, taxpayers, consumers—and not just the shareholders ... Yes that's what we do. It is impossible to separate between shareholder value and the value of the parties at interest. It is in fact the same thing. I believe that we need a more updated capitalism. We have become too focused on the short term and not on the long term." (In: Tsiptori, Eli, McKinsey's Hypocrisy Over Cheese Prices, in: Globes, June 27th, 2011, <http://www.globes.co.il/serveen/globes/docview.asp?did=1000658412&fid=4111>.)

The following management guide is commonly held to have coined and formalized the concept of "Shareholder Value": Rappaport, Alfred, *Creating Shareholder Value: A Guide for Managers and Investors*, New York, NY, 1986/1997. For further excellent arguments urging a transcendence of a narrow understanding of this concept, see the following two publications by Lynn Sharp Paine: *Value Shift: Why Companies Must Merge Social and Financial Imperatives to Achieve Superior Performance*, New York, NY, 2004, and *Cases in Leadership, Ethics, and Organizational Integrity: A Strategic Perspective*, Burr Ridge, IL, 1997.

26 See illustration 2 for some of the risks associated with unethical business conduct.

27 By reintegrating the economy with broader societal concerns, this development scales back the separation of the economy from other self-referential societal systems propounded by Luhmann (*Wirtschaft als Soziales System*, in: *Soziologische Aufklärung*, Bd. 1, Wiesbaden, 1991, p. 211). One could argue that this process is leading to the economy being colonized by surrounding societal systems, similar to how Habermas described the colonialization of the *Lebenswelt* by the economy (*Theorie des kommunikativen Handelns*, Bd. 2: *Zur Kritik der funktionalistischen Vernunft*, Frankfurt a. M., 1981, pp. 488-547). Interestingly, this development is in line with Adam Smith's vision. While Smith argued for an emancipation of the economy, he simultaneously believed that "[m]en could safely be trusted to pursue their own self-interest without undue harm to the community not only because of the restrictions imposed by the law, but also because they were subject to built-in restraint derived from moral, religious custom, and education." (Coats, Alfred William, *The Classical Economists and Economic Policy*, London, 1971, p. 9.) Smith's theory of moral sentiments hence establishes preconditions enabling his "invisible hand" to promote societal welfare through the pursuit of individual self-interest.

Management is thereby urged to become and is becoming further indivisible from the needs of its stakeholders, from societal well-being, and from high standards of personal integrity.²⁸ Engulfed in and slowly emerging from what is most probably the greatest economic crisis since the Great Depression,²⁹ the business world is heeding these calls and also seeking guidance from unconventional yet exceedingly traditional sources to repair capitalism and the corporation. Religion has become one such source.³⁰ Yet a holistic and integrated study on management ethics from a talmudic perspective is remarkably absent from the business ethics literature, a gap that this thesis intends to address.

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- 28 These three dimensions of indivisibility can be interpreted to correspond to the three levels of business ethics analysis and argument propounded by Robert Solomon: the micro level (“the rules for fair exchange between two individuals”), the macro level (“the institutional or cultural rules of commerce for an entire society”), and the molar level (regarding rules for “the basic unit of commerce today—the corporation.”) Solomon, Robert, *Business Ethics*, in: Singer, Peter (ed.), *A Companion to Ethics*, Malden, MA, 1991, p. 359. Indivisible management requires a connection to and concern for the norms, values and beliefs on all these three levels.
- 29 IHR Press Release, Three Top Economists [Roubini, Rogoff, Behraves; nk] Agree 2009 Worst Financial Crisis Since Great Depression; Risks Increase if Right Steps are Not Taken, in: Reuters, Feb 27th 2009, <http://www.reuters.com/article/2009/02/27/idUS193520+27-Feb-2009+BW20090227>.
- 30 Religious perspectives are increasingly present both in business ethics theory and practice. Religious business ethics is a growing subfield of the business ethics discipline, with its own academic professorships and publications (see for instance O’Brien, Thomas et al. (eds.), *Religious Perspectives on Business Ethics: An Anthology*, Lanham, MD, 2006 and the burgeoning literature in the fields of Jewish, Christian and Islamic business ethics). In practice, the growing importance of religious perspectives was evident at the 2010 World Economic Forum in Davos, where “values” was one of the focus areas and a special panel was held about possible insights from the world’s religions to reform the capitalist system (World Economic Forum, *Faith and the Global Agenda: Values for the Post-Crisis Economy*, Geneva, 2010). Also, the topic of the 2010 Jahrestagung of the German Business Ethics Network was “Religion: Störfaktor und Ressource in der Wirtschaft,” and in 2011 an international conference was held at Ben Gurion University titled “Practical Wisdom for Management from the Jewish Tradition.” The shock of crisis calls for reorientation, and religion can provide guidance and grounding in this process. A case in point is when Dominic Barton led McKinsey out of an insider trading scandal and invoked religious language when doing so, calling the actions of the accused “sacrilegious” in light of the consulting firm’s “almost Puritan” culture (in an interview with Stefan Stern of the Financial Times titled “A Strategy for Staying Sacred,” August 15th, London, 2010). Of course, business and religion have been intricately connected for millennia, until the Enlightenment emancipated the former from the latter to a certain degree (Deutschmann, Christoph, *Die Verheißung des absoluten Reichtums. Zur religiösen Natur des Kapitalismus*, Frankfurt a. M., 2001).

1.2 Research Questions and Methodology

This book's research questions are based on work developed in an internal, global knowledge competition organized biannually by the management consultancy McKinsey & Company.³¹ During the six-month effort from spring to fall 2010, I was fortunate to establish and lead a team of four consultants studying the relevance of business ethics for corporations and the resulting implications for their management. With two academic business ethicists³² and four senior McKinsey leaders as mentors,³³ our core team³⁴ developed a taxonomy of the business areas in which ethical corporate management dilemmas most frequently arise, as well as a management system aimed at addressing these dilemmas. As a disclaimer, it is important to note that all findings, results, and end-products of this effort do not necessarily represent the views of all these involved parties and are neither official McKinsey frameworks nor formal recommendations to its clients. Nonetheless, the following seven dimensions of our taxonomy can be treated as a consensus view of the key corporate areas in which ethical management dilemmas most frequently occur due to conflicting values, beliefs, and norms:

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|------------------------------|----------------------|
| 1. Philosophy and Spirit | 5. Environment |
| 2. Regulation and Compliance | 6. Value Chain |
| 3. Governance | 7. Product and Brand |
| 4. Society | |

This corporate ethics taxonomy is based on intensive problem-solving sessions and has been corroborated through further expert interviews and literature reviews.³⁵ While our aim was to build a framework whose dimensions are as

31 The goal of McKinsey's "Practice Olympics," as the competition is called, is to enable non-partner consulting teams to proactively and independently develop knowledge in an area of their interest under the mentorship of McKinsey partners and external advisors with the aim of subsequent implementation of the developed solutions in a client context.

32 Kirk Hanson, Professor and Executive Director at the Markkula Center for Applied Ethics at Santa Clara University, and Phil Mirvis, Senior Research Fellow at the Center for Corporate Citizenship at Boston College.

33 Ian Davis, former global Managing Director; Lenny Mendonca, Director of the Public Sector Practice and Firm Knowledge and former Chairman of the McKinsey Global Institute; Jeremy Oppenheim, Director of the Sustainability & Resource Productivity Practice; and Sheila Bonini, Senior Expert leading market research on Sustainability and Corporate Reputation and co-leading the Sustainability Transformation service line.

34 My fellow team members were Noémie Brun from McKinsey's Lyon Office, Nikhil Jain from the Silicon Valley Office, and Dr. Wiebke Pekrull from the Frankfurt Office.

35 Illustration 3 depicts examples of performance impact along the taxonomy's seven dimensions, showing that the management of business ethical dilemmas is important not just from a moral perspective but from an economic one as well.

mutually exclusive and collectively exhaustive as possible,³⁶ the taxonomy is not fixed in stone and should be further reflected upon, challenged and adapted as new facts and phenomena emerge.³⁷ Nonetheless, the management system we developed, called the “Ethics Radar,” is ready to be implemented in corporations and bases itself on our taxonomy.³⁸ This thesis examines issues in each of the taxonomy’s seven dimensions.³⁹ In management practice, the key question is how to deal with these issues and dimensions from within large-scale, global business organizations. This thesis thus aims to provide a holistic and inter-connected study of the key ethical challenges facing contemporary corporate management and to develop a perspective on how talmudic teachings might suggest dealing with the dilemmas underlying them.⁴⁰

The practice-based corporate issues studied in this thesis function as an anchor in what Jacob Neusner termed the “ocean of the Talmud.”⁴¹ Yet why would one want to go fishing for answers in an ancient rabbinic work in the first place? Given the sources used by parts of the contemporary business ethics literature and the qualities of the Talmud, perhaps the more appropriate question

36 Termed MECE, these two conditions are a common approach of McKinsey problem-solving to structure facts and thinking. For a short exposition of this methodology, see: Rasiel, Ethan M., *The McKinsey Way. Using the Techniques of the World’s Top Strategic Consultants to Help You and Your Business*, New York, NY, 1999, pp. 6-8.

37 Thus far, the taxonomy has proven valid and useful. Yet unlike most mathematical models, it deals with oftentimes qualitative, unmeasurable, and shifting phenomenon such as values, norms, and beliefs, and should hence be open for continuous adaptation. As Karl Popper notes, even the best of scientific theories cannot be verified. Rather, they can only be corroborated or falsified (Popper, Karl Raimund, *All Life is Problem Solving*, London, 1999, pp. 10ff.).

38 For a depiction of this management tool, see illustration 4. Here, the supervision and management of the taxonomy’s seven business ethics dimensions are institutionalized and operationalized.

39 Three of these issues were studied in my unpublished M.A.-thesis, piloting the approach planned for this Ph.D.-thesis (Kaplan, Nathan L., *op. cit.*). In order to offer a complete view of all seven taxonomy dimensions, these three issues (culture quality, whistle-blowing, executive compensation) are included in this book as an expanded, updated and contextualized version.

40 This book does not intend to provide normative advice on how these dilemmas should be managed, for that will vary by organization and context. Nor does it intend to judge which corporations and managers are ethical and which are less so. Instead, this book analyzes the dilemmas of the above business ethics taxonomy from a talmudic perspective with the aim of providing impulses, ideas, and warnings that can then be applied back to a given situation at hand. As illustration 4 shows, the aim of the developed Ethics Radar management system is to put business ethical dilemmas “on the map” to enable their proactive management, ongoing supervision, and possible resolution. The perspectives offered in this book can function as one source guiding this process.

41 Neusner, Jacob, *Invitation to the Talmud: A Teaching Book*, Atlanta, GA, 1998, p. 167. Neusner uses this metaphor to describe the depth and breadth of the Talmud, the entirety of which (Bavli, Yerushalmi, Tosefta, Midrashim, etc.) can barely be learned within a lifetime.

is *why not?* For instance, Harvard Business School's leading Business Ethics Professor Joe Badaracco offers managers a mélange of Aristotle, Kant, Nietzsche, and Machiavelli (amongst others) to deal with moral dilemmas.⁴² Most of these sources do not, of course, deal directly with business issues and must hence be abstracted for an application to the economic realm. The same institution's Professor of Management Practice, Sandra Sucher, encourages her readers "to develop their own workable definition of moral leadership" using an eclectic mix of novels, plays, short stories, and historical accounts.⁴³

The main reason for these "mix-and-match" approaches is that each of their sources individually would not be able to provide managers with appropriate guidance to navigate today's complex corporate environment. These central two issues of contemporary management ethics drawing on interdisciplinary and unconventional sources, i.e., the mostly arbitrary fusion of traditions and the application of non-economic sources to the business world, are prevalent throughout the literature.⁴⁴ The Talmud can avoid these pitfalls, given that it

42 Badaracco, Joseph, *Defining Moments: When Managers Must Choose Between Right and Right*, Cambridge, MA, 1997.

43 Sucher, Sandra, in: Harvard Business School Working Knowledge, Cambridge, MA, 2007 on her book, *The Moral Leader: A Literature-Based Leadership Course*, Cambridge, M.A., 2007.

44 The mix-and-match approach is exemplified by works such as *Beyond Integrity: A Judeo-Christian Approach to Business Ethics* (Rae, Scott B./Wong, Kenman L., Grand Rapids, MI, 2004), which suggests that the Jewish and Christian traditions can be formed into a unified perspective on business ethics. The Jewish business ethics literature also falls prey to mixing and matching, as in Meir Tamari's overall excellent work *With all your Possessions: Jewish Ethics and Economic Life* (Jerusalem/Northvale, NJ, 1998), which draws on a mélange of biblical, talmudic and post-talmudic literature as well as stories of chassidic rabbis to form its perspective. A central problem with these approaches is that the broader the source base, the easier it is to extract only those traditions within that base that are conducive to the author's arguments (Neusner also criticizes this point regarding Tamari, calling his approach ahistorical, in his *The Economics of the Mishnah*, Chicago, IL, 1990, p. 8). For further extrapolations of non-economic works to the business world, see for instance Bowie, Norman, *Business Ethics: A Kantian Perspective*, New York, NY, 1998, which already on its back cover claims to answer the question of how "a business firm in a capitalist economy should be structured and managed according to the principles of Kant's ethics." See also Gould, Stephen J, *The Buddhist Perspective on Business Ethics: Experiential Exercises for Exploration and Practice*, in: *Journal of Business Ethics*, Vol. 14, Nr. 1, pp. 63-70, Amsterdam, 1995, where Buddhist teachings are applied to business issues. And in Sun Tzu and the *Art of Business: Six Strategic Principles for Managers* (McNeilly, Mark R., Oxford, 2000), the author attempts to show how the writings on military strategy by the prominent Chinese general apply to the contemporary corporate setting. All such studies fall prey to the assumption that the traditions on which they base themselves can be interpretatively extrapolated from their own domain (philosophy, religion, warfare respectively) into the business realm, rather than basing themselves on sources that deal with economic and business issues directly.

a) deals directly with economic, business, and financial issues,⁴⁵ b) combines homiletic idealism with case-based pragmatism,⁴⁶ and c) is a self-contained work.⁴⁷ Beyond being a promising source by avoiding pitfalls, the Talmud is renowned for its intellectual sharpness, creative insights, methodological discipline, and rigorous analyses. Also, the talmudic conception that truth is attained through a combination of *Offenbarungswissen* and *Vernunftwissen*, i.e., knowledge based on both revelation and reason, removes the Talmud from the often esoteric mechanics of purely religious doctrines and instead enables it to participate in a rational business ethical discourse.⁴⁸ Furthermore, the Talmud treats the economy as an integral part of its holistic vision,⁴⁹ hence making it a valuable source for insights

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- 45 The Talmud hence goes beyond what Richard T. De George labels “theological ethics” (in: *Theological Ethics and Business Ethics*, in: *Journal of Business Ethics*, Vol. 5, pp. 421-432, 1986), and because it deals with economics and business directly it is in fact better applicable to the business world than the philosophical traditions he bases himself on.
- 46 The Talmud is hence neither too idealistic for corporate practice nor too pragmatic for those seeking to repair it.
- 47 Of course, the Talmud spans a millennium of Jewish history in the Land of Israel and the Diaspora, with the Mishnah codifying oral traditions from over seven centuries of *halakhic* discourse (~500 BCE—220 CE), and the subsequent Palestinian and Babylonian Gemarah being compiled between 350—500 CE. Yet despite its many components and influences, the Talmud upon its codification presents itself as a unified and complete work, which according to rabbinic tradition was revealed along with the written Torah at Mount Sinai (bBer 5a; yPea 2,1 17a [Venice and Krotoshin Editions], Piotrkow Edition: yPea 2,4 13a). The fact that the Gemarah itself and subsequent generations of scholarship (such as the Tosafists and the medieval Pilpulists) have striven to reconcile seeming contradictions and redundancies within the Talmud further supports the feasibility of viewing its traditions as a unified whole. In any case, the critique that using the entire Talmud as a single source falls prey to an invalid “mix-and-match” approach would then also apply to the many contributions to the business ethics literature that base themselves on the Bible, the canon of which consists of multi-era traditions as well (McDonald, Lee Martin/Sanders, James A., *The Canon Debate*, Peabody, MA, 2008, Ch. 10). Viewing the Talmud as a whole hence seems justified, and studying the teachings of its sages definitely avoids the arbitrariness of fusing moral philosophers, political scientists, war strategists, etc. into a unified vision of management ethics.
- 48 While rabbinic doctrine views the talmudic tradition of the oral Torah as revealed at Mount Sinai alongside the written Torah (bBer 5a, ExR 47,1), or at least sees a direct link between the two (mAv 1,1), the talmudic sages themselves develop their own arguments and conclusions through a systematic, complex and advanced array of logical and hermeneutical principles (such as the seven rules of Hillel and the 13 rules of R. Ishma’el found in the introduction of the Sifra). Revelation is thereby a foundation upon which reason unfolds, as epitomized by the talmudic tradition that the Torah is “not in heaven” but should rather be interpreted and developed further on earth by mankind (Dtn 30,12; bBM 59b). There is hence no strict dichotomy between reason and revelation, nor between philosophical and rabbinic thought (cf. Neusner, Jacob, *Jerusalem & Athens. The Congruity of Talmudic & Classical Philosophy*, Leiden/New York, NY, 1997).
- 49 As evinced by Seder Neziqin (in which most economic and business traditions are contained) being but one of six mishnaic orders and its containing the three Bava tractates alongside the judicial teachings of Tractate Sanhedrin and the ethical maxims of Tractate Pirqei Avot.

into how corporate management is and can further become indivisible from broader societal concerns. Finally, the fact that most of the talmudic sages themselves had non-academic jobs, pursued business dealings, and judged civil cases forms their perspective that proper economic activity and sufficient material well-being are essential elements of a good life well lived, indivisible from human wholeness.⁵⁰ Bringing all these qualities of the Talmud to bear in the business and management ethics discourse can be a fruitful enterprise by giving the descriptive development towards a higher degree of indivisibility in all three noted dimensions a normative and prescriptive foundation.

Given these potential advantages, it is perhaps surprising that the flourishing field of Jewish business ethics has not already completed what this thesis sets out to do. But when analyzing the structure of the field, the reasons become clearer. The contemporary literature on Jewish business ethics can be categorized into three types: i) *halakhic*, ii) academic, and iii) commercial. The first type consists almost exclusively of rabbinic responsa and expositions of topics not directly related to corporations but rather to smaller-scale businesses.⁵¹ The religious language and legalistic framework of these works makes them even more distant to the concerns of corporate managers, particularly for the vast majority amongst them that does not view *Halakhah* as authoritative. Also, rabbinic literature does not base itself on the Talmud exclusively, but mostly on the codes and subsequent responsa instead. For readers outside the *halakhic* framework, which most managers and academics are, these works are difficult to comprehend and often lack relevance. Particularly the gap between the values of religious rabbis and those of secular managers can constitute an unbridgeable divide between the two groups.⁵²

50 The direct engagement of the talmudic sages with economic matters might also explain why the Talmud does not share the suspicion and condemnation of economic, business, and financial activity found in the works of philosophers such as Aristotle and Marx.

51 Prime examples of this type are the works on business *Halakhah* by R. Nachum Rakover, R. Tzvi Spitz and R. Moshe Feinstein.

52 This divide is reflected by a recent *Charedi* (Israeli ultra-Orthodox) responsum that prohibits purchasing shares of Israeli companies because shareholders thereby become “full partners in investments that involve Torah prohibitions: that earn yields from profits [generated] by selling on Shabbat ... and Yom Kippur; from [television] channels that are full of filth; and from obscene advertising,” as a booklet published by the Court of Justice of the Edah haChareidis (Badatz) justifies the ruling. (Cited in: Toker, Nati, Rabbinical Court Forbids Haredim from Investing in Israeli Companies, in: Haaretz, May 7th, 2010, <http://www.haaretz.com/print-edition/business/rabbinical-court-forbids-haredim-from-investing-in-israeli-companies-1.288841>.) Now if the *Charedi* rabbis prohibit owning shares in Israeli corporations, how much more so would they discourage people from becoming managers in them, *ceteris paribus*? This is compounded by the general *Charedi* discouragement of pursuing a worldly occupation.

Secondly, the academic contributions to the field of Jewish business ethics have done much to bring Jewish perspectives into the broader business ethics discourse.⁵³ But they also fall prey to the “mix-and-match” approach, using sources from all eras of Jewish tradition to argue for their respective position, and focusing mostly on general business issues as opposed to specific dilemmas of corporations.⁵⁴ Thirdly, the commercial works are essentially self-help business guides by rabbis or journalists.⁵⁵ Because this segment appeals to a popular audience, it mostly lacks the analytical rigor, holistic perspective, and corporate applicability necessary to inform management practice.

This study builds on the existing literature, but aims to make a contribution to the field through its holistic relevance for corporate practice, particularly its top management,⁵⁶ and its exclusive focus on talmudic sources.⁵⁷ It intends to do so by means of the following five-step methodology: i) the starting point is an issue within corporate practice from our ethics taxonomy noted above. Drawing on case examples, academic business research, my studies in economics and my professional experience particularly in management consulting, the issues to be analyzed are discussed from an economic, business, and corporate perspective.

53 Meir Tamari, Aaron Levine, Hershey Friedman, and Moses Pava are the most prolific academics in the field of Jewish business ethics.

54 Of course, all business issues can be potentially relevant for corporations, which are a particular form of organizing business enterprises. For instance, the following two papers deal with issues that are relevant for corporate managers as well, but not exclusively: Fogel, Joshua/Friedman, Hershey H., Conflict of Interest in the Talmud, in: Journal of Business Ethics, Vol. 78, 2008, pp. 237-246, and Carver, Robert H., If the River Stopped: A Talmudic Perspective on Downsizing, in: Journal of Business Ethics, Vol. 50, 2004, pp. 137-147. Because such papers deal with single business issues, they do not account for specific intricacies of corporate practice and cannot provide a holistic perspective on management dilemmas and the interrelationship between them. There are as yet no works dealing exclusively with issues from the perspective of corporate managers, which is why Moses Pava suggests that “Jewish business ethics can and must recognize that organizational [rather than individual or national; nk] issues provide some of the most important and fertile ground for a discussion of business ethics.” In: Pava, Moses L., Business Ethics. A Jewish Perspective, New York, NY, 1997, p. 71.

55 See for instance Brackman, Levi, Jewish Wisdom for Business Success, New York, NY, 2008; Kahaner, Larry, Values, Prosperity, and the Talmud. Business Lessons from the Ancient Rabbis, Hoboken, NJ, 2003; and Lapin, Daniel, Thou Shall [sic] Prosper: Ten Commandments for Making Money, Hoboken, NJ, 2009.

56 Top management refers to the Chief Executive Officer (CEO) and the other executive officers on the management board.

57 By talmudic sources this book refers to the entire body of classic rabbinic literature (ספרות תלמודית), i.e., Mishnah, Tosefta, Talmud Bavli and Yerushalmi, and *halakhic* and aggadic Midrashim. An inclusion of the extra-canonical rabbinic traditions contained therein need not fall prey to the “mix-and-match” approach because the rabbis themselves view these works as forming a holistic tradition, with common sages, themes, forms, and contents. This thesis also studies biblical traditions when they form the foundation of particular talmudic sources.

ii) Based upon the first step, an ethical analysis then inquires what the clashing forces and interests are that cause dilemmas underlying the respective issues. For this analysis, I draw on my undergraduate and graduate studies in philosophy, particularly economic ethics. This second step also functions as the research query applied to the Talmud, because only by extracting the underlying forces of ethical issues in corporations can talmudic teachings germane to these issues be identified, particularly because the Talmud developed long before the corporate construct even existed. iii) In the third step, the relevant talmudic sources are presented, analyzed and discussed.⁵⁸ There is here a special emphasis placed on contextualizing the respective traditions so as to avoid falling prey to *Steinbruch-exegesis*⁵⁹ and what Gadamer calls “die voreilige Angleichung der Vergangenheit an die eigene Sinnerwartungen,”⁶⁰ so as to instead attempt “die Überlieferung so [zu] hören, wie sie sich in ihrem eigenen anderen Sinne hörbar zu machen vermag.”⁶¹ In order to achieve these aspirations, complete *Sugyot* (talmudic passages) are given preference to fragmented excerpts, and a theoretical, methodological framework reflects the degree of legitimacy in applying talmudic concepts to corporate practice.⁶² For the extraction and analysis of relevant traditions, I draw on my learning in talmudic academies and my graduate Jewish studies, as well as on the secondary Jewish business ethics literature. iv) In the fourth step, an ethical analysis of the talmudic sources attempts to extract their philosophical content, which in the next step is then applied back into corporate practice to

58 The talmudic sources are quoted in the original Hebrew or Aramaic, to which my English translation is provided in the footnotes. While my translation is cross-checked with the Soncino and Artscroll editions, it tends to be more literal than these to express the exact wording of the talmudic sources in order to neither precipitate interpretations nor applications.

59 Lit. “quarry exegesis,” referring to the practice of selectively extracting individual traditions from a certain work and then purposefully assembling and combining them outside their actual context, in order to support the claim that the constructed meaning was already intended in the original work.

60 “The premature alignment of the past with our own expectations of meaning...” Gadamer, Hans-Georg, *Wahrheit und Methode: Grundzüge einer philosophischen Hermeneutik*, Tübingen, 1960, p. 289.

61 “... to hear the tradition in its own different meaning with which it itself can be heard.” *Ibid.*

62 The framework is based on a matrix analyzing the degree of abstraction necessary for the application of talmudic concepts onto corporate practice vis-à-vis their original context on the one axis and the relevance of the concepts to management on the other. Legitimacy of application grows as abstraction decreases and relevance increases. Therefore, concepts that permit a direct application to the corporate context with a high relevance for contemporary management are given preference in this study. Direct applications that have little relevance to management bear the risk of constituting a homiletical ivory tower that might be inspiring to some but unpractical to most, while high degrees of abstraction alongside strong management relevance risk a premature harmonization of talmudic teachings with contemporary demands and expectations. See illustration 5 for a portrayal of this framework.

provide guidance and insight into the dilemma in question.⁶³ v) The purpose of the fifth and concluding step is to arrive at an answer to Kant's fundamental question of ethics, *Was soll ich tun?* ("What should I do?")⁶⁴, in the context of corporate management. In order to avoid naïve and unwarranted conclusions, the aspiration here is to also critically reflect on how prevalent the respective sources are in the talmudic tradition, whether generalizations are appropriately drawn from them, and what the probability is that they can function as an inspirational guide for actual management practice.

Picture the above methodology as three stages with steps leading up and back down again.⁶⁵ The first level relates primarily to the business corporation, the second to ethics, and the third to the Talmud. The corporate foundation of this approach ensures that the practical philosophy on step two and the talmudic analysis on step three remain relevant to managerial practice. Ethics thereby functions as a bridge between the codes of the corporate and those of the talmudic realms, hermeneutically bridging the gap between the two domains by extracting, translating, and applying the demands, values, beliefs, and norms at stake. This philosophical methodology simultaneously attempts to make the talmudic sources

63 The structure of this book's chapters combines the first two steps of the five-step methodology in the opening section, places the third step into the middle section, and the last two steps into the third section of each issue analysis, as visualized in illustration 6.

64 Kant, Immanuel, *Logik. Ein Handbuch zu Vorlesungen*, Wiesbaden, 1800/1958, A26, p. 448. Kant's question is better suited to tackle the aporetic character of corporate dilemmas than the answers his philosophy provides, for he believes the right course of moral action to be straightforward and easily determined: "Was ... zu tun sei, ist für den gemeinsten Verstand ganz leicht und ohne Bedenken einzusehen ... was Pflicht sei, bietet sich jedermann von selbst dar." (Kant, Immanuel, *Kritik der Praktischen Vernunft*, Berlin/New York, NY, 1788/1971, §8, Lehrsatz IV, Anmerkung II, p. 36.) The longing for such unambiguous solutions in Kantian philosophy likely results from the turmoil of the Enlightenment age, similar to the seeking of absolute knowledge and security that gave rise to Cartesian and Hobbesian thought. Yet in corporate practice there is often no absolutely right course of action in light of ethical dilemmas caused by competing yet legitimate claims. Talmudic thought hence might be better suited to deal with such aporetic dilemmas, for as this book attempts to show it not just accepts but fosters ethical conflicts through its dialectical method. This differentiation to Enlightenment thinking might be caused in part because the Talmud is rooted in a monotheistic and teleological worldview that perceives a fundamental unity and security underlying all of creation, making it less threatening to deal with differing interests and opinions. A similar mechanism underlies Eastern thought (e.g., Lao-Tse), ancient Greek philosophy (primarily Aristotle) and tragedy (e.g., Sophocles' *Antigone*). Here, too, trust in a harmonious cosmos leads to openness towards moral ambiguity and conflict. For a brief exposition on Eastern paradoxical logic, see Fromm, Erich, *Zen Buddhism and Psychoanalysis*, London/New York, NY 1960/1993, pp. 101f. For applications of the aporetic method in Ancient Greek philosophy, see Jäger, Werner, *Aristoteles: Grundlegung einer Geschichte seiner Entwicklung*, Hildesheim, 1955/2006, pp. 24, 132, 276, 281, 417f.

65 See illustration 6 for a visualization of this methodology.

fruitful for readers of all faiths and cultures.⁶⁶ And the rigorous textual analysis of the Talmud in its original Hebrew and Aramaic forms aims to understand the meaning its sages had in mind before drawing conclusions about its applicability to, endorsement of, or contradiction with contemporary corporate practice.

Because this thesis draws on three domains (corporations, philosophy, and the Talmud), it risks being caught in the middle. Many corporate managers are simply not interested in talmudic perspectives on some of the ethical dilemmas they might face. Academics, particularly in Europe, might disdain the applied nature of this thesis for being too practical by the standards of the academy. And many rabbis will most likely disapprove of focusing on the Talmud to the exclusion of the later codes and responsa and of treating its traditions as a valuable perspective rather than as authoritative law and dogma. Yet the risk of alienating all three groups can be perceived as an opportunity for this book, because by navigating the *Spannungsfeld* between strikingly different world-views, the dialectic between them might enable new perspectives on key dilemmas of corporate management to flourish.

After the preceding discussion of this book's intentions, taking note of particular traps it hopes to eschew is in order. Those involved in the academic study or professional implementation of business ethics are likely to regularly be asked whether their field constitutes an oxymoron. The reactions which those engaged in Jewish business ethics might encounter when naming their field can be somewhat more amusing and perhaps worrying. Just some of those directed at me over the past years include: "Are there any?" "Fascinating—what *is* the Jewish

66 As envisioned by Habermas in his call to make religious traditions fruitful for societal discourse: "Religiöse Überlieferungen leisten bis heute die Artikulation eines Bewusstseins von dem, was fehlt. Sie halten eine Sensibilität für Versagtes wach. Sie bewahren die Dimensionen unseres gesellschaftlichen und persönlichen Zusammenlebens, in denen noch die Fortschritte der kulturellen und gesellschaftlichen Rationalisierung abgründige Zerstörungen angerichtet haben, vor dem Vergessen. Warum sollten sie nicht immer noch verschlüsselte semantische Potenziale enthalten, die, wenn sie nur in begründende Rede verwandelt und ihres profanen Wahrheitsgehaltes entbunden würden, eine inspirierende Kraft entfalten können?" (Habermas, Jürgen, *Zwischen Naturalismus und Religion: Philosophische Aufsätze*, Frankfurt a. M., 2005, p. 13.) Even without such secularization, the fact that most corporate managers are not Jewish does not imply that talmudic teachings on economics and business cannot apply to them. As Nachmanides notes, all people, i.e., not just Jews, are responsible to uphold Torah commandments of economic relevance: e.g., appointing judges, pricing, removing a neighbor's landmark, i.e., infringing on property rights, appointing bailees, committing theft, causing oppression, paying wages, damaging property or the environment, buying and selling, and lending and borrowing. (*Ramban*, Gen 34,13, based on the Noachide Laws codified by bSan 56a-b, quoted in: Tamari, Meir, *The Challenge of Wealth. A Jewish Perspective on Earning and Spending Money*, Jerusalem/Northvale, NJ, pp. 24f.)

secret for business success?” “That’s going to be a short book.”⁶⁷ These reactions reflect the stereotypes that Jews are somehow adept at making money and potentially dishonest when doing so.⁶⁸ With these stereotypes in mind, a thesis on Jewish business ethics risks falling into two particular traps: defensiveness, attempting to debunk the prejudice that Jewish business ethics are unethical mostly by presenting them as a stellar and unrivalled model of honesty and integrity; and divulgence, perpetuating the myth of superior Jewish business acumen through self-professed guides claiming to enable the emulation of this purported superiority. Hoping to steer clear of these traps, I intend in this thesis to honestly reflect the dialectical complexity of the Talmud onto some of the most pressing questions of management ethics.

67 This was recorded after speaking with an acquaintance of Jewish descent, a (Muslim) colleague, and a long-time (atheistic) friend, respectively. Such statements are generally only expressed after a certain degree of intimacy or at least informality has been reached in a relationship, whereas a professional or academic context will generally evoke more “politically correct” reactions, normally exhibiting a mildly surprised interest in the topic and in the reasons for choosing to study it.

68 These reactions might be classifiable into two perspectives, which incidentally reflect a general tendency in the discourse on Jewish business ethics: the “admiration” and the “cynical” perspectives. The former perceives Jews as possessing distinctive business acumen and is epitomized in Asia—for instance by the mandatory Talmud lessons in South Korean schools (see the following report for further information, <http://www.ynet.co.il/articles/0,7340,L-4046985,00.html>), the publishing boom of Chinese books examining the talmudic sources of “Jewish business success” (a trend analyzed by the following Newsweek story: <http://www.newsweek.com/2010/12/29/in-china-pushing-the-talmud-as-a-business-guide.html#>), and the Taiwanese Talmud Hotel which aims at providing its guests the opportunity to “experience the Talmud way of becoming successful,” offering them a copy of the Talmud-Business Success Bible as well (for the hotel website, visit: <http://talmud.hotel.com.tw/eng/>). The second, “cynical” perspective views Jews as excessively self-interested regarding financial matters and morphs into a “conspiratorial” perspective in its extreme manifestation. These views have become somewhat taboo in many parts of the world due to the anti-Semitic stereotypes regarding the money-hungry Jew aspiring to control the global economy and its financial markets (for an exposition of these stereotypes in the wake of the Madoff scandal, see the following publication: Foxman, Abraham H., *Jews and Money: The Story of a Stereotype*, London/New York, NY, 2010). Despite their mostly contrary normative judgments, both the “admiration” and “cynical” perspectives share the descriptive belief that Jews possess a distinct and advantageous mastery of business.

2 Ethics Taxonomy Dimension 1: Philosophy and Spirit

2.1 Issue 1: Corporate Mission, Vision, and Values

2.1.1. *The Philosophy of a Corporation and that of its Leaders*

The codification of corporate mission, vision, and values statements has become an increasingly prevalent norm, helping corporations with the integration and alignment of decentralized organizations⁶⁹ while simultaneously enabling the coordination of a multitude of individuals from diverse backgrounds.⁷⁰ Just as with any other organization, corporations benefit from imbuing their members with a unified sense of purpose, with common aspirations, and with shared beliefs, and these are primarily expressed by means of mission, vision, and values statements, respectively. These statements can be viewed as a corporation's philosophy,⁷¹ of which the shaping and reinforcing has consequently become a core function of management.⁷²

The relationship between a manager's personal philosophy and that of the corporation for which he works can be symbiotic.⁷³ For example, Jochen Zeitz, Director of the luxury goods holding company Kerin (formerly PPR) and Chairman of its board's sustainable development committee, is a vocal supporter of concepts such as environmental sustainability and humane workplace con-

69 Collins, James C./Porras, Jerry I., *Organizational Vision and Visionary Organizations*, in: *California Management Review*, Vol. 34, No. 1, Berkeley, CA, 1997, p. 234.

70 Wieland, Josef, *Formen der Institutionalisierung von Moral in amerikanischen Unternehmen. Die amerikanische Business-Ethics-Bewegung: Why and how they do it*, Bern, 1993, p. 5.

71 It is important to differentiate corporate from academic philosophy. The former primarily involves the instrumental development of values, norms, and beliefs to guide organizational and individual business conduct rather than the latter's focus on scholarly research, publication, and teaching.

72 Ulrich, Peter/Fluri, Edgar, *Management*, Bern/Stuttgart, 1992, p. 17.

73 For practical purposes, this book uses masculine forms but intends to be gender-neutral, unless stated otherwise.

ditions.⁷⁴ These concepts are, in turn, elements of the PUMA Vision program, an ethical framework serving as the foundation of the sportswear company Puma's institutionalized values.⁷⁵ Zeitz, who began his Puma career at the age of twenty-five and led the company out of near bankruptcy to then transform it into the world's third largest sportswear corporation as its Chairman and CEO,⁷⁶ publicly displays integrity between his personal and corporate philosophy.⁷⁷ Such congruence can work both ways: with a manager's personal philosophy influencing that of the corporation, and with an organizational philosophy influencing that of a manager. A further case in point is Sir Richard Branson, founder and Chairman of the branded venture capital conglomerate Virgin Group, whose fun-loving and risk-taking image is a key success factor for the group's companies, which communicate values such as "we're not afraid to think differently" and "fun is the secret of Virgin's success."⁷⁸

Conversely, a perceived incongruence between corporate and personal philosophy can damage both a career as well as a company. Take so-called sex scandals for instance. Lord John Browne, former group CEO of the oil conglomerate BP and responsible for rebranding the group as a sustainable energy company,⁷⁹ resigned amidst allegations of misappropriating company funds to support a male lover he was in a secret relationship with, regarding whom he admitted to have

74 In addition to his philanthropic activities and publicity work, Zeitz emphasizes these concepts in his business ethics bestseller *Gott, Geld und Gewissen. Mönch und Manager im Gespräch*, Münsterschwarzach, 2010, in which he engages in a dialogue with the Benedictine cellarer and author Anselm Grün. Zeitz is also a co-founder and co-chair with Richard Branson of the B Team, a prominent initiative whose stated mission is to "create a future where the purpose of business is to be a driving force for social, environmental, and economic benefit." (<http://bteam.org/about/vision/>)

75 Puma Sustainability, http://about.puma.com/?page_id=10.

76 Böll, Sven, Ende einer Ära. Puma-Chef Zeitz hat nach 17 Jahren genug vom Tagesgeschäft, in: *Spiegel Online*, October 18th 2010, <http://www.spiegel.de/wirtschaft/unternehmen/0,1518,723683,00.html>.

77 An anecdote supporting the frequently postulated notion that "doing good is good business," i.e., that management ethics can influence purchasing decisions and hence the bottom-line, was shared by my advisor Ronen Reichman, who having read about Zeitz's integrity in a first draft of this chapter noticed an increased motivation within himself to choose Puma sneakers for his son when they were shoe-shopping together.

The following paper contains a literature review regarding the question of whether and how consumers are willing to incorporate ethical considerations into their product purchase decisions and already concluded over a decade ago that there is "by now little doubt that business ethics do indeed figure significantly" into these decisions: Crane, Andrew, *Unpacking the Ethical Product*, in: *Journal of Business Ethics*, Vol. 30, Issue 4, April 2001, pp. 361-373.

78 About Virgin, <http://www.virgin.com/about-us/>; Virgin Media Vision and Values; <http://careers.virginmedia.com/about/our-vision-values.html>.

79 Exemplified by the "beyond petroleum" slogan and the green flower logo introduced by Browne.

made “untruthful” statements in court.⁸⁰ While perjury can harm anyone’s career, a leader who heads a company branding itself with a green image and a “responsibility to set high standards: to be ... committed to integrity,”⁸¹ is especially prone to damaging accusations of hypocrisy and an ensuing breakdown of trust.⁸² Such is also the case with Dov Charney, founder and CEO of the clothing company American Apparel, which developed its supposedly fairer treatment of workers into a unique value proposition with advertising claims such as “sweatshop free.”⁸³ This marketing strategy may have backfired as numerous former employees filed sexual harassment lawsuits against Charney⁸⁴ and questionable employment practices were made public,⁸⁵ which is perhaps why the company no longer emphasizes superior working conditions to sell its products.⁸⁶

The demanded congruence between corporate philosophy and personal conduct implies that managers must either believe in their corporation’s existing mission, vision, and values or they must shape these according to their own beliefs. Otherwise, both cognitive dissonance and accusations of lacking integrity are likely to arise. The resulting dilemma hence requires managers to assimilate into their corporate philosophy, or else to adapt it to suit their own. Yet in order to determine whether a particular corporate philosophy is sound, and in order to be capable of developing a compelling new one, managers need their own views about the ideal purpose, aspirations, and values of business in general. One possible source to inform and inspire such views is the Talmud.

80 BBC News, BP Chief Executive Browne Resigns, London, May 1st, 2007, <http://news.bbc.co.uk/2/hi/business/6612703.stm>.

81 BP Code of Conduct, <http://www.bp.com/sectiongenericarticle.do?categoryId=9003494&contentId=7006600>.

82 As reflected by the words of Justice Eady, judging Browne’s case: “I am not prepared to make allowances for a ‘white lie’ told to the court in circumstances such as these - *especially by a man who prays in aid of his reputation and distinction* [emphasis added; nk], and refers to the various honours he has received under the present government, when asking the court to prefer his account of what took place.” Cited in: The Guardian, BP’s Browne Quits Over Lie to Court About Private Life, London, May 2nd, 2007, <http://www.theguardian.com/business/2007/may/02/media.pressandpublishing>.

83 See <http://www.shop-in-paris.com/shops/american-apparel-saint-honore/> for a photograph of an American Apparel retail store featuring this claim on its façade.

84 For the most recent of these charges, see Chang, Andrea, Ex-American Apparel Worker Accuses CEO of Forced Sex, in: Los Angeles Times, Los Angeles, CA, March 8th, 2011.

85 For an overview of these practices, see Yang, Xifan, Das Ende der Coolness, in: Süddeutsche Zeitung, May 16th 2010.

86 American Apparel. Our Workers, <http://americanapparel.net/contact/ourworkers.html>.

2.1.2. *The Discovery of Faithful and Graceful Business*

The business ethics literature has thus far not yet developed a single contribution that examines how corporate mission, vision, and values might be informed by Jewish traditions.⁸⁷ This is both unfortunate and surprising given how important the management task of shaping corporate philosophy is and given that there are important Jewish traditions relevant for this task. The following exposition intends to fill the resulting gap and does so primarily by means of two talmudic passages.⁸⁸

In typical dialectical manner, two of the most interesting traditions of the Talmud on how to conduct business and which role economic activity plays in a life well lived feature in the tractate dealing with the weekly period of hallowed repose from all business activity. Nestled between mishnaic norms on how to properly observe the Shabbat, the homiletic teaching of Rava on bShab 31a and the *aggadic* narrative of R. Shimon b. Yochai two folios further on in the second longest tractate of the entire Talmud⁸⁹ offer thought-provoking and inspiring perspectives on the meaning of labor, business, and the economy in the context of life and society. These traditions will now be analyzed in turn and in depth.

87 A number of articles have been written about how “Jewish values” have influenced individual businessmen, most notably Aaron Feuerstein of the textile company Malden Mills, who after a fire had burned down his factory explained his decision to continue paying the salaries of his workers without a legal obligation to do so with his adherence to Jewish values (see, for instance the following three articles in the Journal of Business Ethics: Van Buren, Harry J., Acting More Generously Than the Law Requires: The Issue of Employee Layoffs in *Halakhah*, Vol. 19, No. 4, 1999, pp. 335-343; Seeger, Matthew W./Ulmer, Robert R., Virtuous Responses to Organizational Crisis: Aaron Feuerstein and Milt Colt, Vol. 31, No. 4, 2001, pp. 369-376; Bandsuch, Mark R./Cavanagh, Gerald F., Virtue as a Benchmark for Spirituality in Business, Vol. 38, No. 1-2, 2002, pp. 109-117.) Yet these works do not explicitly study textual traditions, let alone talmudic ones, but rather base themselves primarily on anecdotes of the values with which Feuerstein was raised and which he subsequently continued to hold dear. Moses Pava has authored a paper whose purpose, namely to deduce “the substance of Jewish business ethics,” seems valuable to inform a corporate mission, vision, and values statement, yet the three dimensions he develops are unfortunately both too vague and excessively particularistic to be of practical use for managers in a corporate context (the dimensions are: 1. recognizing God as the ultimate source of value, 2. acknowledging the centrality of the community, 3. holding out the promise that men and women (living in community) can transform themselves). Pava, Moses, The Substance of Jewish Business Ethics, in: Journal of Business Ethics, Vol. 17, No. 6, 1998, pp. 603-617; this paper also features in Pava’s work, *Business Ethics: A Jewish Perspective*, New York, NY, 1997, pp. 83-112.

88 Despite the prevalence in the Jewish business ethics literature of Rava’s and R. Shimon b. Yochai’s teachings that are examined in this section, these traditions have not yet been applied to the issue of corporate philosophy, and their content is mostly analyzed only superficially, with a lack of philological focus on the exact wording of the traditions and of contextual perspective particularly regarding the biographies of the two sages.

89 At 157 folios, the Bavli’s Tractate Shabbat is exceeded in length only by its Tractate Bava Batra, which contains 19 additional folios.

The Afterlife's Six Responsibilities of Life

According to Rava, a person has six responsibilities in life, based on which he will be judged in the hereafter. They are presented as follows: אמר רבא בשעה שמכניסין אדם לדין אומרים לו נשאת ונתת באמונה קבעת עתים לתורה עסקת בפריה ורבייה צפית לישועה פלפלת בחכמה הבנת דבר מתוך דבר.⁹⁰ By framing its message through a set of questions, this tradition fosters responsibility; reflecting on anticipated future questions can develop a desire and ability to respond to them in the present.⁹¹ The first realm for which one is responsible to give an accounting of, then, is the economic one, since that is what Rava's נשאת ונתת (lit. "have you taken and given") refers to.⁹² This suggests that economic activity consists of both

90 bShab 31a: Rava said, "At the hour when man is entered into judgment [they] say to him: 'Did you trade faithfully? Did you fix times for Torah? Did you deal with procreation? Did you look forward to salvation? Did you engage in the dialectics of wisdom? Did you understand one thing from another?'"

Although this teaching is perhaps the most frequently cited Jewish tradition in the contemporary business ethics literature, an in-depth exposition and interpretation of its meaning is remarkably absent. Instead, the literature tends to extract the first question and use it as an almost apologetic "proof" that the talmudic sages generally value business ethics highly (for instance, Hershey Friedman concludes one of his papers with Rava's teaching, presenting it with the remark that "... the talmudic sages thought that business ethics was so important that Rava claimed that the first question an individual is asked in the next world at the final judgment is, 'Were you honest in your business dealings?'" in: *Biblical Foundations of Business Ethics*, in: *Journal of Markets & Morality* 3, no. 1, 2000, p. 54).

For those daunted by Rava's stricture of faithful dealing and the difficulty to implement such a high ethical standard into practice, it may be encouraging that a parallel tradition (cited in YalqS, Yeshayahu, 33) of his first question seems to have a significantly lower expectation level: כלום נשאת ונתת באמונה ("have you traded *anything* faithfully")? [Emphasis added, nk.]

91 Etymologically, the word "responsibility" is incidentally rooted in the Latin *responsus* ("to respond").

92 There are a number of reasons for this translation. First of all, preceding Rava's teaching is a *Drasha* ("interpretation") of Resh Laqish in which he bases the ששה סדרי משנה ("Six Orders of the Mishnah") on Isa 33.6. Since the first Order, זרעים ("Seeds") deals mostly with matters relating to agricultural activity, and Rava's six questions follow the same procession, it is likely that "take and give" refers to matters of earning a livelihood as well. As the Goldschmidt Talmud translation formulates it: "[I]n den ... 6 Fragen sollen die 6 Sektionen der Mišna angedeutet sein. Die 1. behandelt Dinge des Lebensunterhalts..." (bShab 31a, translated by Lazarus Goldschmidt, Berlin, 1930.) In light of this interpretation, translations such as those offered in the Artscroll Series ("Did you conduct business transactions faithfully?") or in the Jewish business ethics literature (e.g., "Have you been honorable in business?," in: Pava, Moses L., op. cit., 1997, p. 51) seem to do both too much and too little with the source text. Too much, because they turn Rava's first question into a promotion of business activity, although the literal "take and give" can just as well refer to teaching, medical, or manual work, for instance. Too little, because the agricultural foundation of Rava's first question (both related to Seder Zeraim and to his own occupation of wine-growing) is lost in the term "business," and with that the important semantic relationship in Hebrew between

receiving and offering and that it is a central, perhaps even primary concern of the ideal life. Furthermore, this passage not only demands *that* one engage in trading but teaches *how* one ought to do so as well: באמונה (*beEmunah*, with/in faith). In the following, a three-pronged methodology is used to understand what ונתת בשאיתך באמונה might mean. Firstly, the etymology of אמונה is briefly analyzed. Secondly, the parallels between the talmudic principle of ונתת בשאיתך באמונה in other legal systems are investigated. Thirdly, a number of biblical and rabbinic traditions are reviewed that deal with the concept of trading faithfully.

The literal translation of the adverbial באמונה, which appears in the Bible (תנ"ך) and classical rabbinic works (ספרות חז"ל) in 104 separate sources,⁹³ is "in faith." The etymological root of אמונה is א-מ-נ, which besides spelling the affirmative "Amen"⁹⁴ means reliability, dependence, belief, trust, endurance, care, covenant, and actuality.⁹⁵ To trade *beEmunah* thus means conducting business in a manner that evokes these concepts and is hence semantically connected to the meaning of the legal term "good faith," which a standard U.S. law dictionary defines as "[a] state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage."⁹⁶ Both literally and semantically, ב-אמונה hence relates to *in* good faith. The parallel legal terms in Roman, German, and Israeli law are, respectively, *Bona Fide*, *Treu*

the economy and sustenance (כלכלה means both) as well. The Soncino Edition's translation may also not be an ideal vehicle to transport Rava's intended meaning: "Did you deal faithfully [i.e., with integrity]" [brackets from text; nk]. While "dealing" reflects the literal "take and give," it is an activity that broadens the realm of Rava's teaching beyond the economic, which was probably not his intention. Hence, "trade" may be the most suitable translation, as it relates to both income-generation as well as to exchange transactions. This translation does not preclude any type of work, as every economic activity and form of labor require exchange.

Overall, Rava's tradition is also a good example of how talmudic business ethics strive towards presenting themselves as based on a chain of tradition dating back to the Bible itself, given that his questions are said to be connected to the Orders of the Mishnah, which are in turn derived from a biblical verse. This is a particular manifestation of the dogma that the rabbinic oral law itself was already revealed to Moses on Mount Sinai (see for instance bBer 5a, ExR 47,1).

93 Bar Ilan Responsa Project, search term: באמונה.

94 Amen (אמן), which according to bShab 119b is itself an acronym for "God, faithful King" (אל מלך נאמן), thus further supports the connection between באמונה and faith.

95 Clark, Matityahu, *Etymological Dictionary of Biblical Hebrew*. Based on the Commentaries of Samson Raphael Hirsch, Jerusalem/New York, NY, 1999, p. 11. Faith also implies tranquility, as reflected by the comment of R. Eli'ezer haZaken that someone who has a loaf of bread in his basket today but asks what he will eat tomorrow is lacking in faith (bSot 48b).

96 Black's Law Dictionary, 9th ed., St. Paul, MN, 1891/2009.

und Glauben, and בְּתוֹם לֵב.⁹⁷ To integrate these concepts into practice is not just a homiletic ideal, but a *halakhic* duty as well. As Aaron Levine notes, since every contract contains “an implied covenant of good faith and fair dealing,” it is a legal requirement to trade faithfully based on the obligation of *Dina deMalkhuta Dina* (the law of the land is binding law).⁹⁸

How faith relates to economic transactions according to the Bible is exemplified by the narrative of King Josiah, who orders money to be directed to the temple workmen for repairs but does not demand an accounting of how they put their funds to use, for which he gives the following reason: הֵם עֲשִׂים. ⁹⁹ כִּי בְּאֵמוּנָה, הֵם עֲשִׂים. Because the workmen act faithfully, they are trusted to make responsible use of the funds entrusted to them. Such conduct becomes a matter of *imitatio Dei* in the Psalms: כִּי-יִשָּׁר דְּבַר-יְהוָה; וְכָל-מַעֲשָׂהוּ, בְּאֵמוּנָה.¹⁰⁰ Faithful acts are thereby upright, evoke trust, and reflect divine integrity.

Classical rabbinic sources on the concept of לשאת ולתת באמונה can also give a better understanding of what exactly Rava might be urging with his first question.¹⁰¹ A practical application of trading faithfully is codified in the Tosefta, where a *Halakhah* rules: הַגּוֹשָׁא וְגוֹתֵן בְּאֵמוּנָה וְהָאוֹמֵל לְחַבְרִירוֹ עַל מִנַּת שְׂאִין לֶךְ עָלֶי אֹנְאָה אֵין

97 The obligation of trading in good faith (לשאת ולתת באמונה) is itself also a basic and fundamental part of Israeli contract law. Rava's principle, along with some of the sources that this section discusses, is commonly brought forward in Israeli court cases. See for instance: Warhaftig, Shilem, *דיני חוזים במשפט העברי*, Jerusalem, 1974, p. 16, as noted in the following court ruling of the Jerusalem district court from 1986, http://www.psakdin.co.il/fileprint.asp?FileName=/Mekarkein/Private/ver_euqg.htm: (ד"ר שילם ורהפטיג רואה את החובה לשאת ולתת באמונה כחלק בסיסי (ויסודי בדיני החוזים)). The ruling also lists further sources stressing the importance of trading in good faith and is an interesting example of how this principle is applied in practice. For a further such application by Israel's Supreme Court, see the ruling by Rubenstein, Eliakim, ישראל בן אבן נ' דלתות המדיה בע"מ, Jerusalem, 2005. Warhaftig also dedicates two chapters of his work on commercial law in *Halakhah* to the concept of faithful dealing, see: Warhaftig, Shilem, *דיני מסחר במשפט העברי*, Jerusalem, 1990, pp. 51-98. Here, Warhaftig connects *masa u-matan be'emunah* to fair trade (סחר הוגן). See also Warhaftig's monography on the concept of תוֹם לֵב: Warhaftig, Shilem, תוֹם לֵב בְּדִינֵי חוּזִים, Jerusalem, 1975.

98 Levine, Aaron, Performance Appraisal and *Halakhah*, in: Hazon Nahum. Studies in Jewish Law, Thought, and History Presented to Dr. Norman Lamm on the Occasion of his Seventieth Birthday, New York, NY, 1997, p. 626.
See pp. 175-180 for a discussion of the *Dina deMalkhuta Dina* maxim.

99 II Kings 22:7: ... for they act faithfully.

100 Ps. 33:4: For straight [i.e., upright] is the word of God; and all His acts [are] faithful.

101 As noted in the introduction, this book studies not just strictly talmudic traditions, but rather includes all classical rabbinic sources included in ספרות חז"ל as well. (Occasionally, later rabbinic works such as those by R. Shlomo Yitzchaki or Maimonides might be included to elucidate these earlier sources.) Due to the historical, personal and content-based links between the Talmud (i.e., Mishnah and Gemarah) and the works of Tosefta and Midrash, this methodological approach should not detract from but rather reinforce this book's development of a talmudic perspective.

לו עליו אונאה.¹⁰² Maimonides explains what the case of such an exempt “faithful dealer” is: a seller who, before a transaction, states to his buyer what the true value of the item to be exchanged is and how much he intends to profit from the transaction.¹⁰³ Faithful dealing in this case thus involves a transparent disclosure of interests and benefits. Perhaps because such transparency dissolves information asymmetries, the purchaser has no justification to later claim he was overcharged. Or maybe the honesty of the seller voids the right of the buyer to be compensated for price fraud.

Irrespective of the underlying *ratio* for this ruling, the honorable dealing it encourages is encouraged and praised by the rabbis. For instance, a Baraita discussing four sets of three questions which Alexandrians raised to R. Yehoshua b. Chananya presents one of the questions as: *מה יעשה אדם ויתעשר?*¹⁰⁴ to which R. Yehoshua responds: *ירבה בסחורה וישא ויתן באמונה*.¹⁰⁵ This connection between faithful dealing and the promise of blessings is already found in the Bible: *אִישׁ חִלּוּל* (קידוש השם), while conversely portraying the failure to do so a desecration of God’s Name (*הַחִלּוּל הַשֵּׁם*).¹⁰⁷ This juxtaposition is transmitted in a further *aggadic* tradition as well, where the person who deals faithfully is described as doing God’s will and is contrasted with someone who God despises for saying one thing with his mouth and another with his heart, thereby showing a lack of integrity.¹⁰⁸ The rabbinic praise of trading faithfully is also found in a Mekhilta that offers a remarkable interpretation of a biblical injunction demanding upright behavior (*וְהִיָּשֶׁר בְּעֵינָיו* (תעשה),¹⁰⁹ teaching that dealing faithfully in a pleasant manner is akin to upholding the entire Torah: *שכל מי שנושא וגותן באמונה ורוח הבריות נוחה הימנו מעלין עליו כאלו קיים*

102 tBM 3,22: He who trades faithfully, and says to his fellow, “on condition that you do not have any [right to apply the laws of] *Ona’ah* [price fraud] upon me” — [the *Halakhah* is that] there is no *Ona’ah* upon him.

Cf. bBM 51a-b. See pp. 84-87 for a study of the institution of *Ona’ah*.

103 Mishneh Torah, Sefer Kinyan, Hilkhoh Mekhirah, 13,5.

104 bNid 70b: What should a person do in order to become rich?

105 Ibid.: Engage in much trade, and deal faithfully.

When the Alexandrians thereafter comment that many had tried doing so but had nonetheless failed to become wealthy, R. Yehoshua responds that a person must also ask for mercy from the One Who is the source of all enrichment, i.e., God.

106 Prov 28,20: The faithful man receives abundant blessing, while he who runs towards riches will not be clean.

107 bYo 86a.

108 YalqS, Mishlei, 12.

109 Ex 15,26: And do that which is upright in His eyes.

את כל התורה כולה.¹¹⁰ Given that this tradition is most probably the earliest rabbinic source connecting the activity of dealing with the adverb “faithfully,” it might have served as the basis for Rava’s principle of faithful trading.

Despite the obvious centrality of this principle, the obligation to trade in good faith is but one of six dimensions for which a person bears responsibility, according to Rava. For his economic question is followed by five others relating to study, procreation, outlook, intellect, and learning, respectively. Hence, Rava’s teaching suggests balancing a range of human capabilities and activities. For instance, times for Torah study are to be fixed, so that one does not engage in the necessary earning of a livelihood all day long.¹¹¹ The six questions are hence not separate demands but rather relate to each other through an equilibrium that is to be achieved between them.

While Rava does not make explicit who is making these demands, it is most likely the Heavenly Court (בית דין של מעלה).¹¹² Hence, trading faithfully, balanced with the other five of life’s responsibilities, is postulated to be a matter of justice, demanded by a court of law with the power to reward and punish. Furthermore, because it is the Heavenly Court adjudicating how well a life was lived, responsibility is transposed beyond this world into eternity, raising consequences of earthly action into the Heavens. This perspective can in itself lead to more sustainable behavior, as a person may be willing to forego the temptation of short-term gains for the promise of eternal peace. The awareness of temporal existence as an anteroom to an infinite palace,¹¹³ combined with the belief that every moment of good deeds in this world is more valuable than all of life in the next,¹¹⁴ might make the possible pecuniary sacrifices of trading faithfully easier to bear. Conversely, making deals unfaithfully becomes less advantageous when benefits are short-term but the consequences infinite. The long-term orientation Rava encourages may hence induce sustainability by fostering the faithful dealing that evokes the necessary trust for society and the economy to endure.

The fact that it is a Heavenly Court asking Rava’s questions imbues his teaching with metaphysicality, for this court of law pronounces its judgment in

110 MekhY, Beshalach (מסכתא דייסע), 1: Everyone who deals faithfully and who comforts the spirit of creation, it is as if he upholds the entire Torah.

111 *Rashi*, bShab 31a, s.v. קבעת עתים.

112 According to Pharisaic tradition, this court judges a person upon entrance into the afterlife. For teachings about its posthumous tribunal, see for instance bRH 8a and bTem 3a-b. An earthly court would not hold a person accountable for Rava’s questions.

113 mAv 4,21.

114 Ibid. 4,22.

the afterlife.¹¹⁵ Working, studying, procreating, hoping for a better future, learning, and understanding are thereby framed as activities with spiritual significance. This metaphysical perspective is further strengthened by the conclusion of Rava's teaching, which adds a foundation to the six previous responsibilities: ואפ"ה אי יראת ה' היא אוצרו אין אי לא לא.¹¹⁶ This addition seems to indicate that being accountable for the court's six questions is a necessary but not sufficient condition for a positive verdict. In a parable explaining this conclusion, Rava compares the person answering the six questions without ever having been in awe of God to an agent being instructed to bring up a certain measure of wheat who fails to add a preservative to it, after which he is told: מוטב אם לא העליתה.¹¹⁷ A reverent connection to the divine as the ultimate treasured value is thus perceived as preserving the accomplishments of a life well lived. נשאת ונתת באמונה thereby takes on a meaning beyond that of being a trustworthy interpersonal trader to include a relationship with a higher power as well. Similar to how Abraham believed in God (ה'אמן, ביהוה),¹¹⁸ for which he was credited with righteousness, conducting one's business *beEmunah* also implies having faith in the justice of a divine economic path.

It is unknown whether Rava emphasized faithful dealing because he adhered to this ideal himself or rather because he regretted not having done so.¹¹⁹ He was a very wealthy leader of Babylonian Jewry who lived from 299 to 352 CE.¹²⁰ Some of his actions and teachings seem to reflect a philosophy at odds with faithful dealing. As Graetz comments, “[e]in anderer Fehler Rabas¹²¹ war, daß er,

115 As Schopenhauer notes, the awareness of life's finiteness (*Endlichkeit*) develops “the unique human *desire for metaphysics*: (man) is thus an *animal metaphysicum*” [“das dem Menschen allein eigene *Bedürfnis einer Metaphysik*: er ist sonach ein *animal metaphysicum*.”] In: *Die Welt als Wille und Vorstellung*, Zweiter Band, Kapitel 17: Über das Metaphysische Bedürfnis des Menschen, Zürich, 1819/1977, p. 186. Similarly, belief in an afterlife can inspire a metaphysical perspective on this-worldly actions.

116 bShab, op. cit.: And even so, if the awe of God is his treasure—yes, and if it is not—no.

117 Ibid.: It would have been better if you had not brought it [the wheat] up.

118 Gen 15,6.

119 Rabbinic teachings can be a result of either. For instance, Hillel's aphorisms in *Pirquei Avot* are said to be a direct reflection of his gentle, patient, kind manner. On the other hand, Yehoshua b. Perachia's dictum to “judge everyone favorably” (mAv 1,6) may be the result of regret regarding his harsh treatment of a disciple (cf. bSot 47a; bSan 107b). According to scholarly research, it seems probable that this disciple was Jesus of Nazareth).

120 Graetz, Heinrich, *Geschichte der Juden. Von den Ältesten Zeiten bis auf die Gegenwart*, Bd. IV, 1908/1998, Leipzig, p. 329; bBM 73a.

121 An alternate spelling of Rava, not to be confused with the third-generation Babylonian Amora'im Rabbah b. Nachmani (who was the uncle of Rava's classic debating partner, Abbaye) and Raba b. R. Huna (whom Rava revered, as portrayed below). Rava himself was a fourth-generation Amora.

obwohl sehr bemittelt, vom Eigennutze nicht frei war und ihn bei manchen Gelegenheiten durchblicken ließ.”¹²² For instance, Rava uses his dialectical prowess to find a way by which he may keep a deposit entrusted to him after the owner’s death, rather than passing it on to his depositor’s heir.¹²³ He seems to exploit loopholes in the interest prohibition, permitting the handout of money to a potential creditor so that he in turn lends it to a third party,¹²⁴ and he is accused of usury by the rabbis for charging a higher rent on his fields than the common amount.¹²⁵ Also, he prohibits the manager of an *Iska* (‘‘investment loan’’)¹²⁶ from using the capital he receives for anything but commercial uses, ruling that the *Iska* investor may say to its manager that the funds were not given to the latter for recreational spending.¹²⁷

Rava makes his appreciation of wealth explicit, stating that his three wishes in life are the wisdom of R. Huna and the riches of R. Chisda, both of which he says have already been attained by him, and the modesty of Rabba b. Huna, which was not (yet) granted.¹²⁸ Given this pursuit of prosperity, perhaps the dream-interpreter Bar Chedya is correct in predicting that when Rava’s business failed, he would be so grieved that he would lose his appetite to eat.¹²⁹ Viewed in light of these traditions, the first of Rava’s six questions might be regarded as the result of self-scrutiny after having attained much success in his business dealings, some of which may not have been as faithful as he aspires to in retrospect. Thus, Rava asks himself perhaps as he reflects upon his past economic achievements in the context of the future world which he believes awaits him: ‘‘Have you traded faithfully?’’

122 Graetz, Heinrich, op. cit., p. 330: ‘‘A further mistake of Rava was that, although he was very wealthy, he was not free of self-interest and allowed it to shimmer through on some occasions.’’ Graetz’s implication that the pursuit of self-interest is to be avoided seems to be at odds with major streams of talmudic thought. See particularly Hillel’s famous aphorism in mAv 2,14 (discussed on p. 121, fn. 480) and the overall discussion on the talmudic stance towards self-preservation on pp. 121-125.

123 bBB 149a.

124 bBM 69b.

125 Ibid.,73a.

126 For a detailed discussion of the *Iska*, see pp. 139-145.

127 bBM 104b.

128 bMQ 28a.

129 bBer 56a. To Abbaye, the dream interpreter says that his business will prosper to such an extent that from sheer joy he will lose his appetite to eat.

The Epiphany of the Cave

In contrast to Rava's possible biographical narrative, the following *aggadic* tradition featuring R. Shimon b. Yochai (*Rashbi*; second century, fourth-generation Tanna) moves in the opposite direction, from a rejection of temporal pursuits and a critique of self-interest towards a respect of earthly activity and an embrace of economic development:¹³⁰

And why is he [R. Yehudah b. R. Ila'i] called the first speaker in all places? ¹³¹ For R. Yehudah, and R. Yossi, and R. Shimon were sitting, and Yehudah the son of proselytes was sitting near them.	ואמאי קרו ליה ראש המדברים בכל מקום דיתבי רבי יהודה ורבי יוסי ורבי שמעון ויתבי יהודה בן גרים גבייהו
R. Yehudah opened and said, "How pleasant are the works of this people [the Romans] —they developed markets, they developed bridges, they developed baths."	פתח ר' יהודה ואמר כמה נאים מעשיהן של אומה זו תקנו שווקים תקנו גשרים תקנו מרחצאות
R. Yossi was silent.	ר' יוסי שתק
Answered <i>Rashbi</i> , "Everything that they developed they haven't developed except for their own needs—they developed markets to place prostitutes in them; bathhouses, to indulge themselves in them; bridges, to collect tolls from them." ¹³²	נענה רשב"י ואמר כל מה שתקנו לא תקנו אלא לצורך עצמן תקנו שווקין להושיב בהן זונות מרחצאות לעדן בהן עצמן גשרים ליטול מהן מכס

130 bShab 33b.

131 This question is based on the *Daf's* preceding *Sugya*, where R. Yehudah b. R. Ila'i is described by the Gemarah as the first speaker on all occasions as he is the first to answer a medical question (ibid.).

132 In a parallel tradition, R. Shimon b. Yochai criticizes the Romans for building markets in order to sell slaves in them, constructing bathhouses to engage in sexual immorality, and erecting bridges for the efficient transportation of armies to subjugate other peoples (bBer 35b). A similar critique of "ignoble" intentions is reflected in a tradition which teaches that when the Romans and the Persians appear before the Heavenly Tribunal, they will appeal to God's mercy by stating that all their achievements were for the sake of Israel learning Torah, to which God will respond, "You foolish ones among peoples, all that which you have done you have only done to satisfy your own desires." (bAZ 2b.) Underlying both these criticisms is the deontological assumption that the intention of an action is what determines its moral worth, and self-interest is an ignoble motive. In contrast, R. Yehudah's perspective is more consequentialistic, leaving him in awe of Roman civilization's economic and cultural achievements.

<p>Yehudah the son of proselytes went and related their words,¹³³ and they were heard by the government. They [the officials] said, “[R.] Yehudah, who exalted [us], shall be exalted;¹³⁴ Yossi, who was silent, shall be exiled to Sepphoris; Shimon, who censured, shall be executed.”</p>	<p>הלך יהודה בן גרים וסיפר דבריהם ונשמעו למלכות אמרו יהודה שעילה יתעלה יוסי ששתק יגלה לציפורי שמעון שגינה יהרג</p>
<p>He [<i>Rashbi</i>] and his son went and hid in the <i>Beit Midrash</i> [house of study and interpretation]. Every day, [his wife] brought to them bread and a jug of water from their home, and they wrapped [the bread to eat it].</p>	<p>אזל הוא ובריה טשו בי מדרשא כל יומא הוה מייתי להו דביתו ריפתא וכוזא דמיא וכרכי</p>
<p>When the decree was made harsher, he said to his son, “Women, their mind is susceptible [lit. light] upon them.¹³⁵ Perhaps they [the Romans] will torture her [<i>Rashbi</i>’s wife, who brought them the bread and water], and she will reveal us.” They went and hid in a cave.</p>	<p>כי תקיף גזירתא א"ל לבריה נשים דעתן קלה עליהן דילמא מצערי לה ומגליא לן אזלו טשו במערתא</p>
<p>A miracle occurred and a carob tree and a well of water were created for them. They would remove from themselves their clothing and sit up to their necks in sand. The whole day they studied, and at the time of prayer they dressed, covered [up], and prayed. And then they took off their clothes again so that these would not wear out.</p>	<p>איתרחיש ניסא איברי להו חרובא ועינא דמיא והוו משלחי מנייהו והוו יתבי עד צוארייהו בחלא כולי יומא גרסי בעידן צלויי לבשו מיכסו ומצלו והדר משלחי מנייהו כי היכי דלא ליבלו איתבו</p>
<p>[Thus they dwelt] twelve years in the cave. Elijah [the prophet] came and stood at the opening of the cave, and said, “From where will it be made known to Bar Yochai that Caesar is dead and his decree has been annulled?” [So] they emerged.</p>	<p>תריסר שני במערתא אתא אליהו וקם אפיתחא דמערתא אמר מאן לוודעיה לבר יוחי דמית קיסר ובטיל גזירתיה נפקו</p>
<p>They saw people that were plowing and sowing. He [<i>Rashbi</i>] exclaimed, “They forsake eternal life</p>	<p>חזו אינשי דקא כרבי זרעי אמר מניחין חיי עולם ועוסקין בחיי</p>

133 According to *Rashi* (s.v. וסיפר דבריהם, bShab loc. cit.), Yehudah b. Gerim relates the words to his students or parents without the intent of denunciation, yet he is overheard by Roman authorities.

134 *Rashi* (s.v. יתעלה, ibid.) explains that the exhalation consisted in R. Yehudah receiving the honor of being the first speaker on all occasions, which answers the question at the outset of our *Sugya*.

135 An analysis of this statement’s possible meanings is beyond the scope of this thesis.

and engage in temporal life [lit. in life of an hour].” ¹³⁶ Every place onto which they [<i>Rashbi</i> and his son] cast their eyes was immediately burnt.	שעה כל מקום שנותנין עיניהן מיד נשרף
A Heavenly Voice came forth, and she said to them, “Have you come out to destroy my world? Return to your cave!”	יצתה בת קול ואמרה להם להחריב עולמי יצאתם חזרו למערתכם
They returned and dwelt there for twelve months, saying: “The judgment of the wicked [to be purified] in <i>Gehinnom</i> [is] twelve months.” A Heavenly Voice came forth and said, “Come out of your cave.” They emerged.	הדור אזול איתיבו תריסר ירחי שתא אמרי משפט רשעים בגיהנם י"ב חדש יצתה בת קול ואמרה צאו ממערתכם נפקו
[...] ¹³⁷	[...]
[<i>Rashbi</i>] said, “Since a miracle has occurred, let me go and remedy something, as it is written: ‘And Ya’akov came whole/in peace [to the city of Shechem].’” ¹³⁸	אמר הואיל ואיתרחיש ניסא איזיל אתקין מילתא דכתיב ויבא יעקב שלם
And Rav said [that whole/in peace refers to]: wholeness in his body, wholeness in his money, wholeness in his scholarship [lit. in his Torah].	ואמר רב שלם בגופו שלם בממונו שלם בתורתו
“... and [Ya’akov] was gracious to the city.” ¹³⁹ Said Rav, “He developed coinage for them.” And Shmuel said, “He developed markets for them.” And R. Yochanan said, “He developed baths for them.”	ויחן את פני העיר אמר רב מטבע תיקן להם ושמואל אמר שווקים תיקן להם ור' יוחנן אמר מרחצאות תיקן להם
[<i>Rashbi</i>] said, “Is there something that I can develop?” ¹⁴⁰	אמר איכא מילתא דבעי לתקוני

136 The concept of forsaking eternal life to engage in temporal life is found in numerous talmudic traditions encouraging a transcendence of worldly pursuits. For a discussion of this maxim, see: Rubenstein, Jeffrey L, *The Culture of the Babylonian Talmud*, Baltimore, MD/London, 2005, pp. 32ff.

137 The ensuing interaction between *Rashbi* and a man holding myrtle in honor of the Shabbat, as well as the reunion of *Rashbi* with his father-in-law (cited in this book’s next chapter) are omitted here, as they are not directly germane to the talmudic philosophy of business.

138 Gen 33,18.

139 Ibid. The literal meaning of this verse’s ending is “and Ya’akov encamped before the city,” whereas the Talmud interprets *ויחן* as graciousness, primarily because it contains the word *חן* (grace).

140 The *Sugya* concludes with R. Shimon b. Yochai purifying a cemetery, and leaving Yehudah the son of proselytes as a “heap of bones” after merely looking at him surprisedly that he is still alive.

The above *Sugya* can be viewed as a talmudic *Bildungsroman*, with its protagonist coming to realize that economic activity is a worthwhile and central component of a complete life, rather than a mere temporal pursuit to be disregarded for the attainment of a blessed afterlife. The Talmud at first relates a certain ambiguity towards the value of markets, bridges, and baths by simultaneously lauding them (with R. Yehudah's praise), being uncertain about them (with R. Yossi's silence), and criticizing them (with R. Shimon b. Yochai's condemnation). The latter's initial critique of the Romans cost him his freedom, as did his subsequent one of the agricultural laborers. During his first exile in the cave, *Rashbi* and his son are engrossed completely in the spiritual world, engaging only in study and prayer, receiving their material sustenance from a miraculous source, and making an effort not to wear out their garments, perhaps so as not to require the purchase or production of new ones. After their first emergence from the cave, father and son look with devastating contempt upon engagement in temporal, worldly pursuits, which in their view is dichotomous vis-à-vis dedication to a blessed afterlife.

Yet upon leaving the hiding place a second time, R. Shimon b. Yochai is inspired to develop and to improve the physical world, to repair a lack therein in the here and now. The talmudic account of this epiphany, both in terms of text and meaning, reflects the central rabbinic concept of תיקון עולם (*Tikkun Olam*, lit. repairing the world).¹⁴¹ In a review of the twenty-three cases in which the Talmud invokes this principle, David Widzer concludes "that the use of the phrase *mipnei tikkun ha'olam* [for the sake of repairing the world; nk] indicates an amendment to, or clarification of, the existing legal system or social order, specifically designed to address an issue of social status, prevent some harm to society, maintain the communal wellbeing, and/or to best orient the society in service to God."¹⁴² These cases include enactments regarding the *Get* (bill of divorce),¹⁴³ the ransoming of captives,¹⁴⁴ Hillel's famous *Prozbul*,¹⁴⁵ and the sale of fields in

141 For studies and applications of the *Tikkun Olam* concept, see: Diamant, Nathan J./Shatz, David/Waxman, Chaim Isaac (eds.), *Tikkun Olam: Social Responsibility in Jewish Thought and Law*, Northvale, NJ, 1997; Dorff, Elliot N., *The Way Into Tikkun Olam (Repairing the World)*, Woodstock, VT, 2005; Fine, Lawrence, *Tikkun: A Lurianic Motif in Contemporary Jewish Thought*, in: Neusner, Jacob et al. (eds.), *From Ancient Israel to Modern Judaism: Intellect in Quest of Understanding—Essays in Honor of Marvin Fox*, Vol. 4, Providence, RI, 1989.

142 Widzer, David S., *The Use of Mipnei Tikkun Ha'Olam in the Babylonian Talmud*, in: *CCAR Journal: A Reform Jewish Quarterly*, Spring 2008, p. 42. The *Tikkun* that R. Shimon b. Yochai proceeds to undertake further supports the connection between our *Sugya* and the concept of *Tikkun Olam*, for he purifies a place of doubted cleanliness, thereby benefiting society through clarifying the place's legal status.

143 See for instance mGit 4,1-2; bGit 3b, 34b, 36a, 86a.

144 mGit 4,6; bKet 52b.

145 mGit 4,3.

the Land of Israel to so-called idolaters.¹⁴⁶ The common denominator in all these cases is that the status quo leads to suboptimal outcomes, e.g., decreasing accessibility to credit as the Sabbatical Year nears, a predicament which measures done for the sake of *Tikkun Olam* intend to rectify.

R. Shimon b. Yochai bases his resolve to repair the world on a biblical narrative of Jacob, who after having survived an assault by his brother Esau comes to the city of Shechem whole, in peace. The Talmud interprets that Jacob was thereupon gracious to this city, and the inserted rabbinic views of what this graciousness consisted in, as well as what the preceding wholeness consists of, are telling. According to Rav's interpretation of the biblical verse's beginning, human completeness has three components: physical, financial, and spiritual/intellectual wholeness. Jacob is thereby portrayed as whole and at peace because he is healthy, wealthy, and wise. This interpretation can thus be understood as a rejection of R. Shimon b. Yochai's stance before he emerged from hiding a second time. Similar to Plato's Simile of the Cave,¹⁴⁷ where those within the cave fall prey to illusions, *Rashbi's* first cave-dwelling gives him the misconception that all temporal pursuits, such as earning a livelihood, are a waste of time and energy. The Talmud instead finds that the agricultural workers' productivity is an important means to attain an essential element of human completeness, namely an income.

The three interpretations of the biblical verse's ending have a similar this-worldly message, perceiving the institution of coinage, markets, and baths as an act of grace. Rather than condemning the establishment of Roman markets as an overly self-interested pursuit, as *Rashbi* had previously done, the Talmud teaches that they can constitute an important contribution to societal well-being.

However, the epiphany experienced by R. Shimon b. Yochai in the cave need not necessarily reflect a drastic change of heart. His motivation for contributing to the development of his community is a metaphysical miracle; his desire to affect a *Tikkun* is hence not motivated primarily by self-interest but rather by a connection to something greater than the self, particularly the divine.¹⁴⁸ Also, the result he hopes to achieve with his contribution is, unlike the Roman accomplish-

146 mGit 4.9. For further traditions invoking *Tikkun Olam*, see bGit 32a, 40b, 41b, 45a-b.

147 Plato, *The Republic*, Book VII, London, 1955/2003, 516a-517a.

148 This is not to say that the Talmud categorically urges a rejection of self-interest but rather that the pursuit of self-interest ought to be enlightened, as reflected by Hillel's famous aphorism: *הוא היה אומר, אם אין אני לי, מי לי; וכשאני לעצמי, מה אני; ואם לא עכשיו, אימתי* (mAv 2,14): He used to say, "If I am not for myself, who is for me? And if I am for myself, what am I? And if not now, when?"

For a discussion on the legitimacy of self-interest from a talmudic perspective, see pp 121-125.

ment as portrayed in his earlier critique, neither sexual (זונוות), self-indulgent (לעדין), nor wealth-generating (מכס) but rather a state of sanctification, grace, and beauty (קדוּ).

In both teachings of Rava and *Rashbi* analyzed above, the Talmud portrays economic activity as an essential element of a life well lived, albeit under certain conditions: Rava believes that economic activity should be actualized through faithful conduct and balanced with life's further responsibilities, whereas R. Shimon b. Yochai emphasizes the importance of pure motives and noble consequences when engaging in societal, economic, and human development. Both sages value the economy as indivisible from a fulfilled, good life and promulgate reflection on how to harness its beneficial potential while mitigating its risks.

The talmudic philosophy of business as reflected in the above narratives is hence typically dialectical—simultaneously demanding the pursuit of economic activity and urging a reflective engagement with it. This dialectic is epitomized by a famous Midrash which teaches that the evil inclination (יצר הרע) is deemed very good by God, because if it did not exist people would no longer engage in business: רבי נחמן בר שמואל בר נחמן בשם רב שמואל בר נחמן אמר הנה טוב מאד זה יצר טוב והנה טוב מאד זה יצר רע, וכי יצר הרע טוב מאד, אתמהא, אלא שאלולי יצר הרע לא בנה אדם בית ולא נשא אשה, ולא הוליד ולא נשא ונתן, וכן שלמה אומר כי היא קנאת איש מרעהו.¹⁴⁹ Similar to Adam Smith's invisible hand, this tradition teaches that self-interested desires lead to socially beneficial outcomes. The motivating force underlying business activity is thereby taught to be of questionable worth but simultaneously and paradoxically considered to be very good. This is perhaps also the reason why the above talmudic passages featuring Rava and *Rashbi* both encourage economic activity while concurrently warning of its improper pursuit.

Nonetheless, the dialectic ambivalence of this talmudic philosophy seems primarily directed towards the effect of business on an individual engaged in it himself, whereas two further traditions indicate that one person's economic activity can be a source of gratitude and benefit for another. The following Mishnah teaches that someone who is forbidden to benefit from his fellow may not do any business with him: המוּדָר הַנָּהָה מִחֲבֵירוֹ לֹא יִשְׁאִילֵנוּ וְלֹא יִשְׁאֵל מִמֶּנּוּ לֹא יִלוּנוּ וְלֹא יִלוּנוּ מִמֶּנּוּ

149 GenR 9,7: R. Nachman b. Shmuel b. Nachman said in the name of Rav Shmuel b. Nachman, “Behold, it was very good.’ (Gen 1,31.) This is the good inclination. ‘And, behold, it was very good.’ [Ibid, emphasis added.] This is the evil inclination. Yet how can the evil inclination be very good, I wonder?! But if it were not for the evil inclination, people would not build houses, nor marry a woman, nor procreate, nor trade. Hence, [King] Solomon says, ‘[Again, I considered all labor, and all excelling in work] that it is a man’s rivalry with his neighbor. [This also is vanity and striving after the wind.]’” (Eccl 4,4.)

150 Underlying the prohibition of this *Halakhah* is the posited beneficial nature of commercial and financial transactions. Buying and borrowing and selling and lending are thereby all considered sources of mutual benefit. Business is thus declared to be an interpersonally beneficial activity. This sentiment is also reflected in the following famous teaching of Ben Zoma.¹⁵¹

בן זומא ראה אוכלוסא על גב מעלה בהר הבית, אמר: ברוך חכם הרזים, וברוך שברא כל אלו לשמשני. הוא היה אומר: כמה יגיעות יגע אדם הראשון עד שמצא פת לאכול: חרש, וזרע, וקצר, ועמר, ודש, וזרה, וברר, וטחן, והרקיד, ולש, ואפה, ואחר כך אכל, ואני משכים ומוצא כל אלו מתוקנין לפני. וכמה יגיעות יגע אדם הראשון עד שמצא בגד ללבוש: גזז ולבן ונפיץ וטוה וארג, ואחר כך מצא בגד ללבוש, ואני משכים ומוצא כל אלה מתוקנים לפני כל אומות שוקדות ובאות לפתח ביתי, ואני משכים ומוצא כל אלו לפני

The gratitude and amazement of Ben Zoma are an unequivocal homily to the division of labor, describing market suppliers as “repairers” while perceiving their products and services as a reason to bless God. Not unlike Adam Smith praising the specialization of pin-makers for spurring growth,¹⁵² Ben Zoma lauds market participants’ coordination and cooperation to discern and fulfill demands, needs, and wants, enabling the transcendence of the incessant labor with which he would have otherwise been confronted with.

According to the talmudic traditions analyzed in this section, economic activity in general and business in particular are indivisible, essential components of a complete and fulfilled life, spheres of opportunity in which to make graceful contributions to society, sources of mutual benefit, and reasons for gratitude, so long as they are engaged in responsibly.

150 mNed 4,11: He who is forbidden by vow to benefit from his fellow may neither lend to him nor borrow [items] from him, and may neither extend nor receive a [financial] loan from him, and may neither sell nor buy from him.

151 bBer 58a: Ben Zoma saw a crowd on one of the steps of the Temple Mount. He said, “Blessed is He That discerns secrets, and blessed is He Who has created all these to serve me.” He [i.e., Ben Zoma] used to say, “What multitude of labors Adam the first [human] had to endure until he found bread to eat: he plowed, and sowed, and reaped, and bound, and threshed, and winnowed, and selected the ears, he ground [them], and sifted [their flour], he kneaded and baked, and then after [all] that he ate. Whereas I arise, and find all these things done [lit. repaired; *metuknin*, related to *Tikkun*; nk] before me. And what multitude of labors Adam the first had to endure until he found a garment to wear: he sheared, and washed [the wool], and combed, and spun, and wove, and then after [that] he found a garment to wear. All peoples come early to the entrance of my house, and I arise and find all of them before me.”

152 Smith, Adam, *WoN*, pp. 7ff.

2.1.3. *From the Court and Cave to the Boardroom*

How can the preceding discussion inform and inspire a manager responsible for developing a corporate mission, vision, and values? As the analyzed talmudic traditions deal with philosophical (*hashkafic*) guidance for individuals, the application to an organizational level requires some abstraction. This effort is worthwhile though, as questions regarding the spirit of an organization are a top-of-mind concern for many contemporary executives. The three central components of a formal corporate philosophy are now analyzed in turn.

The Mission Statement

A mission statement codifies the *raison d'être* of an organization, answering why a company is in business and hence defining its purpose.¹⁵³ Imbuing stakeholders with such a united mission is a central function of the corporation, as the management thinker Peter Drucker describes in the introduction to his magnum opus: “The multinational corporation brings together in a common venture ... people from a great many countries with different languages, cultures, traditions, and values, and unites them in a common purpose.”¹⁵⁴ While the intuitive and perhaps cynical reason for a corporation’s existence is profit generation or even maximization, the business community is increasingly coming to realize (and to rediscover) that this purpose is correct but insufficient, because the pragmatism resulting therefrom does not connect, as a Harvard Business School study finds, “to other people in some substantial way, and to larger purposes.”¹⁵⁵ What might the proper reason for engaging in business be according to Rava’s and R. Shimon b. Yochai’s teachings discussed in the previous section?

For Rava, trading responsibly in business is a central factor in the adjudication of the Heavenly Court, alongside study, procreation, optimism, dialectics, understanding, and an awe of God. From this perspective, a possible purpose of business is to conduct it faithfully in order to fulfill a divine or at least talmudic

153 For instance, the Internet giant Google codifies its mission as follows: “Google’s mission is to organize the world’s information and make it universally accessible and useful.” <http://www.google.com/corporate/>.

154 Drucker, Peter F., *Management. Tasks, Responsibilities, Practices*, New York, NY, 1999, p. 10.

155 Piper, Thomas H. et al., *Can Ethics be Taught? Perspectives, Challenges, and Approaches at Harvard Business School*, Cambridge, MA, 1993, p. 4. That human motivation depends on such a connection to a greater good and larger purpose has more recently also been argued in the following business book bestseller: Pink, Daniel H., *Drive. The Surprising Truth About What Motivates Us*, New York, NY, 2009.

blueprint for a just and responsible life. Furthermore, by referring to economic activity as “taking and giving” (לשאת ולתת), Rava emphasizes that business is an exchange relationship, in which one must both receive and offer faithfully. Combined, these two insights might suggest that a corporation formulate its mission in terms of what it takes (e.g., human, natural, and financial resources), and what it gives (e.g., products, services, jobs), emphasizing as its reason for conducting business the aspiration to make central contributions to a good, just, responsible, and thus balanced life of those trading for and with it.

According to the above narrative of R. Shimon b. Yochai, economic activity can grace society, while the financial prosperity it can lead to is an essential element of human wholeness and peacefulness. Material well-being is thereby indivisible from holistic well-being. Yet simultaneously, the purpose of business ought to transcend excessively greedy, base, egoistic motivations—those conducting it should instead aspire to perceive the economy as a sphere from which to contribute to and improve society. For instance, the Messe Frankfurt Group, the world’s largest trade fair corporation, uses the slogan “We make markets. Worldwide.”¹⁵⁶ From a talmudic perspective, this seems like an excellent mission statement, given that the second narrative analyzed above lauds markets as a graceful contribution to society. And it is definitely a better slogan than “We make money. Worldwide.” For the Talmud teaches through *Rashbi* that pecuniary benefits alone, in and of themselves, are not a worthy purpose for the construction of bridges. Rather, a bridge should primarily be developed as a contribution to society, and the financial rewards that it generates ought to be perceived as a means towards the wholeness and peacefulness of the people reaping them. Human and societal development are the ends, for which economic activity, financial prosperity, and material fullness are the means. Parts of this perspective seem to be increasingly prevalent in corporate practice. Recent research suggests that “over a fifth of *Fortune* Global 500 companies already have a clear, society-focused purpose underpinning their activities.”¹⁵⁷

156 <http://www.messefrankfurt.com/frankfurt/en/messe/unternehmensprofil.html>.

157 Connoly, John/Sproul, David, The Benefits of Business, in: *The Economist*, London, April 9th, 2011, p. 19.

The Values Statement

While the mission statement of a corporation describes *why* it is in business, the values statement codifies *how* it conducts its business.¹⁵⁸ Rava in bShab 31a clearly communicates a set of values: faithful dealing (i.e., reliable, honest, trustworthy, enduring, and caring business conduct), responsibility, balance, long-term orientation, and spirituality. A corporation might integrate these values by emphasizing a) the importance and legitimacy of business, b) the good faith in which it pursues its mission, c) its ability to respond to the demands of those judging it, i.e., its stakeholders, d) the centrality of enabling a balance between work and further responsibilities of life, e) the priority of long-term justice over short-term benefits, and f) the importance of spirituality in the workplace.

The central values emerging from the narrative of *Rashbi* in bShab 33b are a) inspired intentions; b) human completeness consisting of health, wealth, and wisdom; and c) societal development. A corporation can integrate these values by imbuing its organization with an enlightened motivation for being in business, by contributing towards or at least not impinging on the physical, financial, and spiritual/intellectual well-being of its stakeholders and by gracing society with a *Tikkun*.

The Vision Statement

The vision statement formulates a future state the corporation aspires towards, given its purpose and values.¹⁵⁹ Yet in practice it frequently appears to be the case that visions and missions are somewhat interchangeable or at least that one follows from the other. For the purpose that a corporation understands as the reason for its being in business simultaneously refers to a future state it aspires towards, and vice versa. At McKinsey, for instance, there is no formal vision statement, yet the consultancy's vision can be deduced from its mission statement: "to help our clients make distinctive, lasting, and substantial improvements in their performance and to build a great firm that is able to attract, develop,

158 For instance, Puma's core official values are fairness, honesty, positivity, and creativity. <http://vision.puma.com/us/en/>.

159 For instance, the online-retailer Amazon offers the following vision statement: "Our vision is to be earth's most customer centric company; to build a place where people can come to find and discover anything they might want to buy online." <http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-faq#14296>.

excite, and retain exceptional people.”¹⁶⁰ This dual mission implies a vision of an enduring firm with actualized capabilities to achieve its intended performance impact and to attract its desired staff.¹⁶¹

Given that we have already developed a blueprint for corporate missions and values from the above passages featuring Rava and *Rashbi*, and that corresponding visions can easily be deduced there from,¹⁶² let us extract a vision from the above Mishnah in *Nedarim* and teaching of Ben Zoma. The former paints an aspiration of business as a win-win activity, and demands staying true to one’s vows. Translated into a vision statement, this can imply a commitment to strive towards a state of continuous fulfillment of the promises inherent in the corporate mission and values, with the hope of leading towards a constant state of mutual benefit for the corporation and the stakeholders it deals with. A corporation might also pursue a vision of having customers that are as grateful for and amazed by its products and services as Ben Zoma is with those of the traders and craftsmen coming to his doorstep.

Overall, the talmudic philosophy and spirit of business reflected in the above traditions urge indivisibility. For Rava, business is an integral component of a life well lived and to be balanced and integrated with life’s further responsibilities. In a time when the legitimacy of for-profit enterprises and even capitalism as a whole is increasingly under attack, while businesses simultaneously expect an unprecedented degree of dedication and productivity from those working in and for them, the combination of these two lessons, i.e., business’s legitimacy and responsibility, is particularly relevant. Also, Rava’s teaching urges indivisibility from the further domains of life along which he views humanity as being judged and from an inspired, treasured connection to the divine. Thirdly, the integrity Rava demands through the concept of faithful trading warns of a separation between how one takes and how one gives when exchanging in the market and consequently demands faithful dealing in both transactional directions—with the gain of one party in a business exchange inseparable from the benefit of another.

160 http://www.mckinsey.com/en/About_us/Our_Values.aspx.

161 Further aspects of McKinsey’s vision can be derived from its values statement (see http://telecoms.mckinsey.com/html/about_us/mckinsey_mission.asp). For instance, the value of “following the top-management approach” implies aspiring towards a client base of leaders responsible for large organizations, and “using our global network to deliver the best of the Firm to all clients” emphasizes the vision of an interconnected, international consultancy.

162 According to Rava, a vision of a company that receives a positive verdict from those who judge it, that is, its stakeholders and enables those working for and with it to fulfill life’s six responsibilities and to maintain a treasured relationship to the divine; and according to *Rashbi*, a vision of a company that contributes to human wholeness and societal development through graceful intentions and contributions.

According to the narrative featuring *Rashbi*, financial, material well-being is indivisible from the other components of human wholeness, particularly health and wisdom. An imbalance between the three is hence to be avoided—financial benefits bestowed by a corporation should not come at an excessive cost of good health and continuous learning, for instance in its workforce. Furthermore, the intentions underlying economic development and business pursuits ought to be indivisible from the aspirations to contribute gracefully to society.

Combined, these findings can provide executives only with the foundation for a talmudic corporate philosophy and spirit. The specific formulation and institutionalization of mission, vision, and values statements will and must vary by the unique characteristics of an individual organization. Yet with the foundations developed in this chapter at hand, a corporate leader can at least determine whether an existing organizational philosophy is already adequate and praiseworthy from a talmudic perspective, and then how it might have to be shaped and reformed in order to avoid the excruciating dilemma of being a central member in an organization with which one cannot identify.

2.2 Issue 2: Corporate Culture Quality

2.2.1. *Shared Identities, Clashing Cultures*

The fact that countless different definitions of the term ‘organizational culture’ have been proposed indicates both the importance as well as the elusiveness of the phenomenon it refers to. Edgar Schein, a pioneer in the study of corporate culture, describes organizational culture as “the deeper level of basic assumptions and beliefs that are shared by an organization, that operate unconsciously and define in a basic taken-for-granted fashion an organization’s view of itself and its environment,”¹⁶³ whereas Deal and Kennedy offer the terse definition of “the way things are done around here.”¹⁶⁴ More recently, Hill and Jones incorporate both mental and behavioral aspects by defining organizational culture as “the specific collection of values and norms that are shared by people and groups

163 Schein, E.H., *Organizational Culture and Leadership*, London, 1985, quoted in: Campbell, David J./Craig, Tom, *Organisations and the Business Environment*, Oxford, 1988/2005, p. 491.

164 Deal, Terrence E./Kennedy, Allan A., *Corporate Cultures: The Rites and Rituals of Corporate Life*, 1982, New York, NY, quoted in: Campbell, David J./Craig, Tom, op. and loc. cit.

in an organization and that control the way they interact with each other and with the stakeholders outside the organization.”¹⁶⁵

What all these descriptions have in common is that organizations develop distinctive collective identities. The quality of the resulting subcultures is an increasingly pressing issue of practical and theoretical concern for a number of reasons. First of all, the sheer quantity of people employed by corporations and hence exposed to and assimilating into the respective organizational cultures is striking.¹⁶⁶ Secondly, as organizations become increasingly dispersed due to the effects of globalization and information technology, the unifying function of corporate culture is an invaluable enabler of cross-border and cross-culture integration, cooperation, and coordination.¹⁶⁷ Thirdly, the flipside of corporate culture’s unifying and enabling function is its disabling quality; establishing and perpetuating one culture can lead to a clash with another and thereby to significant business disruptions and managerial dilemmas.¹⁶⁸

165 Hill, Charles W./Jones, Gareth R., *Strategic Management Theory: An Integrated Approach*, Mason, OH, 2009, p. 394.

166 For example, the retail giant Wal-Mart has 1.8m employees, a number approximately equal to the population of Northern Ireland, or to the Muslim population in the United Kingdom. The four largest German employers have as many people working for them as the country’s entire public sector (1.6m). (Frankfurter Rundschau, Die größten Arbeitgeber in Deutschland 2008; Anzahl der Beamten und Richter in Deutschland zum 30. Juni 2009, and <http://de.statista.com/statistik/daten/studie/37096/umfrage/beamte-und-richter-in-deutschland/>.)

167 A globally unified corporate culture enables a seamless operation of increasingly international teams based on shared understandings, tools, and processes, thereby drastically increasing productivity and decreasing transaction-costs. Corporate culture shares this enabling function with corporate philosophy, because of the recursive interrelationship between the two: the former is to a large extent determined by the latter as expressed through mission, vision, and values statements (cf. this book’s previous chapter), and the latter might be adapted because it no longer corresponds to the empirical reality of the former (e.g., following a post-merger integration). In fact, Marvin Bower defines corporate philosophy with the same “the way we do things around here” as the Deal and Kennedy definition of culture, based on extensive interviews with executives (Bower, Marvin, *The Will to Manage*, 1966, New York, NY, p. 22).

168 These clashes can occur within or between corporations, as well as between a corporate culture and a non-corporate culture. For instance, within media and entertainment conglomerates there is frequently a culture clash between the organizational subculture of the so-called “suits” and that of the “ponytails,” i.e., the business and creative staff. And during the first wave of large M&A transactions in the 70s and 80s up to two-thirds of mergers failed due to issues such as cultural assimilation (Davy, J.A. et al., *After the Merger: Dealing with People’s Uncertainty*, in: *Training and Development Journal*, Issue 42, Hoboken, NJ, 1988, pp. 56-61). Also, as western corporations expand into certain regions, cultural values such as gender equality or freedom of expression can become the basis of conflicts (not to say that gender equality has been entirely achieved in western companies, nor that there is a single compass to assess appropriate freedom of expression). For an applied management ethics perspective on cross-cultural ethical conflict, see: Hamilton, J. Brooke/Hill, Vanessa et al., *Google in China: A Manager-Friendly Heuristic Model for Resolving Cross-Cultural Ethical Conflicts*, in: *Journal of Business Ethics*, Vol. 86, No. 2, 2008, pp. 143-157.

Due to these main reasons, the shaping of organizational culture has become a key responsibility of corporate leaders. How might the talmudic sages have approached this managerial challenge? In order to study this question, two approaches are combined in the following analysis. Firstly, the perspective of the Talmud on what constitutes an ideal occupation can provide insights and guidance on the corporate culture that might have been desired by the talmudic rabbis. This approach rests on the key assumption that since the Talmud promotes and discourages certain occupational characteristics, its sages would have suggested instituting a corporate culture that enables its members to pursue and avoid these same characteristics. Secondly, the culture of the great talmudic academies (*Yeshivot*) in Babylonia is analyzed, based on the assumption that their cultural norms and values can be applied to a corporate culture. Some of these *Yeshivot* combined thousands of members into a permanent institution and hence can offer fruitful insights into the cultural context in which the Talmud encourages collective coordination and cooperation.

2.2.2. *The Talmudic Work Ethic and the Yeshivah Culture*

The Talmudic Work Ethic

The talmudic sages expressed their vision of the ideal means to earn a livelihood. These criteria for determining which occupations should be pursued and which avoided can be viewed as the talmudic work ethic.¹⁶⁹ Its foundation consists of three main components:

- i) the productivity imperative,
- ii) the transcendence of labor, and
- iii) the contribution to societal welfare.

As pointed out, studying these components shows the Talmud's ideal for pursuing a livelihood and thereby provides insights and guidance into which corporate culture might enable the actualization of these ideals. All three elements of the talmudic work ethic are reflected by a tradition which the Gemarah relates

169 The term "work ethic" has become synonymous in common usage with attributes such as the diligence of the Protestant work ethic studied by Max Weber. In the following, the term is used in its literal meaning, i.e., the set of moral principles regarding the right and wrong way to work.

as a favorite saying amongst the rabbis of Yavne: אני בריה וחברי בריה אני מלאכתי בעיר והוא מלאכתו בשדה אני משכים למלאכתי והוא משכים למלאכתו כשם שהוא אינו מתגדר במלאכתי כך אני איני מתגדר במלאכתו ושמה תאמר אני מרבה והוא ממעיט שנינו אחד המרבה ואחד הממעט ובלבד שיכוין לבו לשמים.¹⁷⁰ The procession from creation to labor and the emphasis on an early start to the workday paint a picture of i) work as a natural component of life that should be engaged in diligently. And the view that the actual output of work matters less than the spirit with which it is produced and the connection to heaven that it maintains urges ii) a transcendence of productivity pressures with spiritual endeavors. On the other hand, the perception of those who work in an entirely different field as a fellow or even friend whose occupation is not to be impinged upon portrays an ideal in which iii) one's individual economic activity does not disrupt that of another, thereby securing societal peace. These three components of the talmudic work ethic are now analyzed in turn.¹⁷¹

170 bBer 17a: I am a creation and my fellow is a creation. I work in the town, and he works in the field. I rise early for my work, and he rises early for his work. Just as he does not do [lit. restrict] my work, I do not [lit. restrict] his work. And perhaps you will say that I do much and he does little. As we have learned [bMen 110a], one who does much and one who does little [are equal], if only they direct their hearts towards the Heavens.

171 I am indebted to the following paper for leading me to many of the sources in the following section on the talmudic work ethic: Friedman, Hershey H., Ideal Occupations: The Talmudic Perspective, 2002, in: Jewish Law, <http://www.jlaw.com/Articles/idealoccupa.html>. The aim of the following section differs from Max Weber's famous study about the *Wirtschaftsethik des Judentums* (Weber, Max, *Gesammelte Aufsätze zur Religionssoziologie*, Band 1, Tübingen, 1921) in numerous respects. Whereas Weber focuses on *das antike Judentum* and dedicates only an appendix to *die Pharisäer*, the work ethic presented in this thesis is based exclusively on Pharisaic traditions (which mostly of course have biblical precedents). Furthermore, Weber describes the historical genesis of the Pharisees, their sociological constitution and their overall ethical outlook, whereas this study analyzes talmudic traditions themselves, focusing on teachings that are relevant for economic ethics (*Wirtschaftsethik*). The talmudic work ethic presented in this thesis is hence closer methodologically to the parts of Weber's famous study of the Protestant ethic (*Die Protestantische Ethik und der Geist des Kapitalismus*, Tübingen, 1920) that draw on *wirtschaftsethische* findings from Luther's writings.

Talmudic Work Ethic Element 1: The Productivity Imperative

Following in the biblical tradition of honoring work,¹⁷² many of the talmudic rabbis valued labor highly.¹⁷³ Accordingly, the advice of Shmaya¹⁷⁴ codified in Tractate Avot is to love work (אהוב את המלאכה).¹⁷⁵ R. Yehoshua b. Levi teaches that Adam was consoled by what at first seemed to be the curse of having to eat bread by the sweat of his brow, because the labor of baking bread differentiates humans from animals.¹⁷⁶ According to R. Gamliel, laboring in a craft secures property and privacy like a hedge around a vineyard or a fence surrounding a ditch.¹⁷⁷ And R. Tarfon's analogy of God as an employer expresses a call for diligence in both divine and productive service.¹⁷⁸

Even the most basic forms of labor are perceived as praiseworthy, as expressed by R. Yehudah and R. Shimon, who while carrying a pitcher or a basket on their shoulder state that work is great and bestows honor: גדולה מלאכה שמכבדת אה בעליה.¹⁷⁹ The Gemarah even compares the effort needed to earn a living to the final redemption and the splitting of the Red Sea.¹⁸⁰ And the entire first exposition of the AvRN to Shmaya's above dictum is a homiletic appeal to engage in labor and avoid idleness: like the Torah itself, it should be cherished and respected as both were given per covenant; someone without work should actively seek a task to occupy himself with, such as improving dilapidated property of his neighbor; work is a precondition for the *Shekhinah* (divine presence) to dwell within Israel; and when man perishes it is only due to unemployment.¹⁸¹ Consequently, being out of work is strongly discouraged: for instance, R. Shimon b. Gamliel

172 As expressed in the numerous biblical productivity imperatives, such as Ex 20,8; 31,15; Lev 25,3, and Dtn 11,14. See also Ps 128,2.

173 A content analysis of 900 talmudic traditions relating to work finds that 84% of all "ideational references" to the value of labor were positive, reflecting a "high esteem of work and craft." Mannheim, Bilha/Sella, Avraham, Work Values in the Oral Torah, in: Journal of Psychology and Judaism, Vol. 15, No. 4, 1991, pp. 241-260, cited in: Schnall, David J., The Employee as Corporate Stakeholder, in: Levine, Aaron/Pava, Moses (eds.), Jewish Business Ethics. The Firm and Its Stakeholders, Northvale, NJ/Jerusalem, 1999, p. 51.

174 One of the earliest Pharisaic leaders and a *Nasi* of the Great Sanhedrin, i.e., the highest-ranking member of the supreme rabbinic court.

175 mAv 1,10.

176 bPes 118a.

177 tQid 1,9.

178 mAv 2,18.

179 bNed 49b: Great is work for it honors its master. Note the wording of this expression, which implies that a worker is (or at least ought to be) the master of his labor, and not vice versa.

180 bPes, loc. cit.

181 AvRN A 11,1. AvRN B 11,1 further emphasizes that a person is obligated (חייב) to love and engage in work.

teaches in a Mishnah that if a man vows that he forbids his wife to do any work he must divorce her because of the boredom caused by idleness: שהבטלה מביאה לידי שיעמום.¹⁸² The importance which the sages assigned to labor is further reflected by the fact that many of them pursued occupations besides their rabbinic duties.¹⁸³

Talmudic Work Ethic Element 2: The Transcendence of Labor

Similar to biblical work ethic, the talmudic rabbis pursued a dialectic between productivity and a hallowed repose, such as via the Shabbat and *Chagim* (holidays).¹⁸⁴ Numerous rabbinic ordinances, such as the fixed daily prayers and additional holidays, further restrict the time that is available to work. Hence, the sages aspired to balance the time and effort spent on labor with that designated for spiritual pursuits, in particular Torah study.¹⁸⁵ This might also explain why

182 mKet 5,4: Idleness leads to boredom.

In the preceding teaching of this Mishnah, R. Eli'ezer warns that idleness can lead to unchastity. It is likely that the sages encouraged the pursuit of an occupation in this case to prevent their spouses from harboring adulterous temptations, perhaps similar to the teaching that "All Torah study without work will result in waste and cause sinfulness" (mAv 2,2).

183 Hershey Friedman (op. cit.) lists some examples: "Hillel was a woodchopper before he became the Nasi ... and Shammai the Elder was a builder. Abba Chilkiyah was a field laborer; Rabbi Yochanan b. Zakkai was a businessman for forty years; Abba Shaul was a gravedigger; Abba Chilkiyah was a field worker; Abba Oshiyah was a launderer; Rabbi Shimon P'kuli was a cotton dealer; Rabbi Shmuel b. Shilas was a school teacher; Rabbi Meir and Rabbi Chananel were scribes; Rabbi Yossi b. Chalafta was a tanner; Rabbi Yochanan Hasandlar was a shoemaker; Rabbi Yehoshua b. Chananiah was a blacksmith; Rabbi Safra and Rabbi Dimi of Nehardea were merchants; Rabbi Abba b. Zavina was a tailor; Rabbi Yosef b. Chiya and Rabbi Yannai owned vineyards; Rabbi Huna was a farmer and raised cattle; Rabbi Chisda and Rabbi Papa were beer brewers; Karna was a wine smeller (he determined which wine could be stored and which had to be sold immediately); Rabbi Chiya b. Yosef was in the salt business; Abba Bar Abba, (father of Mar Shmuel) was a silk merchant; and (Mar) Shmuel was a doctor."

184 The repose of the Shabbat is directly connected to the labor demanded in the remaining six days of the week, see Ex 20,8-10. The festivals also reflect the dialectic between work and rest, because three of the five (Pessach, Sukkot, Shavu'ot) track the agricultural cycle (Ex 12,16; Lev 23,6-36). Also, the Sabbatical Year (*Shmitah*) connects the work demanded during six years with the holy rest of the land in the seventh (Lev 25,3-5). Based on biblical law, in addition to the 52 weekly days of Shabbat per year, the rabbis instituted 13 annual festival days (nine in Israel) on which work is prohibited (Rosh Hashanah (2), Yom Kippur (1), Sukkot (2), Shemini Atzeret (1), Simchat Torah (1), Shavu'ot (2), and Pessach (4)). In a given year, this leads to a decrease in available labor time of 18 percent, which grows to a third regarding agricultural work when accounting for the impact of the *Shmitah* per seven-year cycle.

185 In the study of Mannheim and Sella cited above, 65% of the talmudic traditions analyzed "prescribed that the learning of Torah and work should be pursued jointly." Mannheim, Bilha/Sella, Avraham, op. cit., p. 51.

some of the rabbis worked in fairly menial and less time-intensive occupations despite their sharp intellect. Thereby, productivity is important, but so is its transcendence. This tension is reflected particularly well by the following dictum of R. Meir codified in the last Mishnah of Tractate Qiddushin: לעולם ילמד אדם את בנו אומנות נקיה וקלה ויתפלל למי שהעושר והנכסים שלו שאין אומנות שאין בה עניות ועשירות.¹⁸⁶ While the obligation to teach children a craft can be interpreted to imply that they should be productive in later life, the emphasis on this craft being clean and easy urges the pursuit of occupations that leave enough time for the transcendence of work and that are not demeaning to an extent that this transcendence is precluded.

The classic *Machloket* (Torah debate) regarding the proper balance between labor and its transcendence, in this case with Torah study, takes place between R. Shimon b. Yochai and R. Ishma'el. The latter states that the reason why the Bible contains productivity imperatives is because otherwise the prophetic verse urging ceaseless Torah study (לא-יָמוּשׁ סֵפֶר הַתּוֹרָה הַזֶּה מִפִּיד, וְהִגִּיתָ בוֹ יוֹמָם וְלַיְלָה)¹⁸⁷ might have been taken literally. Instead, R. Ishma'el continues by saying that the Bible demands that Torah scholarship be balanced with economic pursuits: ואספת¹⁸⁸ R. Shimon b. Yochai challenges this view, asking what will remain of the Torah (תורה מה תהא עליה) if a man plows in the plowing season, and sows in the sowing season, and reaps in the reaping season, and threshes in the threshing season, and winnows in the windy season.¹⁸⁹ Note that neither position in the *Machloket* argues for only working—R. Ishma'el suggests a combination between work and study, while R. Shimon b. Yochai worries that the time-pressures of work might preclude Torah study. The majority opinion seems to follow R. Ishma'el, as the advice following this *Sugya* (talmudic passage) shows: Abbaye and Rava are famous for disagreeing with each other, but both seem to concur that Torah study without work is not sustainable—the former states that many have followed the advice of R. Ishma'el, and it has worked well for them, whereas others have followed R. Shimon b. Yochai and

186 mQid 4,14: A person should always teach his son a profession [lit., a craft] that is clean and easy, and should pray to Whom [all] wealth and property belongs, for there is no profession without poverty and wealth in it, and poverty does not come from the profession, and wealth does not come from the profession, rather all is according to his merit.

187 Jos 1,8: This book of Torah shall not depart from your mouth, rather you shall meditate therein day and night.

188 bBer 35b: "You shall gather in your corn" [Dtn 11,14], meditate in them [the words of Torah] with the custom of a worldly occupation.

The term *Derech Eretz* (דרך ארץ) literally translates as "way of the land." In rabbinic literature it can mean earning a livelihood as well as ethical conduct in general.

189 Ibid.

have not been successful.¹⁹⁰ And the *Sugya* closes with the tradition according to which Rava requests that disciples and rabbis do not appear before him to be taught or judged during the months of corn ripening, vintage and oil pressing, in order to prevent them from being anxious about the food supply during the remaining year.¹⁹¹ These teachings urge a balanced approach for pragmatic reasons: Torah study alone often does not work well and may lead to existential anxiety.

However, the *Sugya* closes with a statement that warns of prioritizing the value of work above that of Torah study: דורות הראשונים עשו תורתן קבע ומלאכתן עראי זו וזו נתקיימה בידן דורות האחרונים שעשו מלאכתן קבע ותורתן עראי זו וזו לא נתקיימה בידן.¹⁹² Note that this warning implies a balanced approach as well, albeit one in which Torah study is the anchor, and economic activity is auxiliary to it. This dialectic between work and study is also supported by Mishnayot throughout Tractate Avot, teaching that Torah combined with a worldly occupation avoids sin,¹⁹³ one cannot earn a livelihood without Torah and vice versa,¹⁹⁴ yet engaging excessively in commerce precludes wisdom,¹⁹⁵ and one should toil less in business than in Torah.¹⁹⁶ These Mishnayot confirm the majority view of the above *Sugya* in Tractate Berakhot: work is a necessary and beneficial complement to Torah learning, but the relative valuation of the latter should be greater. Therefore, both the demand to labor as well as that to transcend it are integral elements of the talmudic work ethic.

The dialectic between the first two elements of the talmudic work ethic are reflected in the following tradition: based on the verse in Exodus codifying that the thief of an ox must pay a fivefold fine, whereas that of a sheep must pay only a fourfold one,¹⁹⁷ R. Meir deduces how valuable labor is, because the ox is a work animal but the sheep is not.¹⁹⁸ R. Yochanan b. Zakkai suggests a different reason for the fine differential. According to him, this *Halakhah* teaches the greatness of human dignity—because the thief had to carry the sheep on his shoulder in a demeaning fashion, his financial punishment is less severe than

190 bBer 35b.

191 Ibid.

192 Ibid.: The first generations made their Torah [study] fixed and their work subsidiary, and both prospered in their hands. The later generations that made their work fixed and their Torah [study] subsidiary, neither prospered in their hands.

193 mAv 2,2.

194 Ibid. 3,20.

195 Ibid. 2,6.

196 Ibid. 4,12.

197 Ex 21,37.

198 bBQ 79b.

when he steals an ox, which walks by itself. Inherent in these opinions is the view that labor is of great importance but should not impinge upon human dignity by precluding a balanced life.

Talmudic Work Ethic Element 3: Contributions to Societal Welfare

Considerations of societal impact inform the Talmud's view on ideal occupations. For example, the Gemarah explains that one possible rationale why the Mishnah renders gamblers ineligible to act as witnesses or judges is: שאין עסוקין ביישובו של עולם.¹⁹⁹ One reason given for this exclusion is that those pursuing an occupation that does not contribute to societal development are not trusted. Another reason offered for the ineligibility of gamblers is that the person offering the gamble does not expect the other to win and hence can be accused of theft.²⁰⁰ Thereby, those pursuing an occupation based on deceit are also not trusted. The gambler is hence disqualified if he has no other means of earning a livelihood than rolling dice, the reason for which is that gambling does not, according to the Talmud, benefit society as a whole and that it can cause harm. In a similar vein, the Talmud warns against pursuing work that might provide temptations to engage in theft and corruption.²⁰¹

Conversely, occupations that *do* have a beneficial societal impact are endorsed, as is touchingly demonstrated by the following *Sugya*: R. Beroka Hoza'a asks Elijah the Prophet whether there are any people in the market in which he is standing that are destined for the World to Come (איכא בהאי שוקא בר עלמא (דאחי),²⁰² to which the prophet replies "no." A bit later, two people pass by them, whereupon Elijah says that these two are destined for the World to Come. Curious about the reason, R. Beroka asks the two what their work is, to which they respond: אינשי בדוחי אנן מבדחינן עציבי אי נמי כי חזינן בי תרי דאית להו תיגרא בהדיהו.²⁰³ According to this narrative, engaging in work that increases peace and happiness in the world is rewarded with entry into paradise. Yet the beginning of this same *Aggadah* (homiletic tradition) also communicates the message that it is less an occupation itself but what one makes of it that matters. Before pointing out the two jesters, Elijah shows R. Beroka another man

199 bSan 24b: For they do not deal with the settlement [or: contribute to the community] of the world.

200 Ibid.

201 bQid 82a.

202 bTaan 22a.

203 Ibid.: We are jokers [i.e., jesters], we cheer up the sad. Also, when we see two people quarrel, we exert ourselves to achieve peace between them.

with a share in the World to Come—a jailer who risks his life to ensure that imprisoned women are not raped and who uses his position to warn the Jewish community of harsh decrees issued against it.²⁰⁴ Given such praise of socially beneficial work, it is perhaps not surprising that the sages made this value a matter of *imitatio dei*: a Midrash teaches that since creating the world, God has been active in it as a *Shadchan*, matching people up for marriages.²⁰⁵ This interesting perspective implies that being engaged in an occupation, particularly in one that creates win-win situations for humanity, is a divine activity.

The Culture of the *Yeshivah*

Whereas individual sages actualized the talmudic work ethic analyzed in the previous section, the culture of the Babylonian rabbinic academies (*Yeshivot*) was expressed in the context of an institutionalized social organization. Especially during the period of the Stammaim,²⁰⁶ organized academic institutions developed —“permanent organizations with corporate identities that transcend the individuals present at any given time.”²⁰⁷ In terms of applicability to corporate practice, the culture of the *Yeshivah* hence has a pro and a con relative to the talmudic work ethic. The advantage is that the *Yeshivot* brought together thousands of individuals under a common purpose and in an institutionalized organization,²⁰⁸ similar to the context in which corporate culture develops, whereas the talmudic work ethic was not expressed in a collective setting. However, the *Yeshivah* was a place of study and teaching, more similar to a university than a business firm.²⁰⁹ Therefore, what its culture implies for a corporation requires a higher degree of inter-

204 bTaan 22a. See the chapter on whistle-blowing (section 3.2.2.) for a discussion of whether risking one’s life for someone else is required from a talmudic perspective.

205 GenR 68,4. Besides mentioning the matching of spouses, this Midrash also portrays God as matching children to their parents and wealth to its owner.

206 The anonymous redactors of the Bavli, 450-650 C.E.

207 Rubenstein, Jeffrey L., *The Culture of the Babylonian Talmud*, Baltimore, MD/London, 2003, p. 16.

208 E.g., bKet 106a states that when the visiting rabbis departed from the school of Rav, 1,200 permanent scholars remained.

209 This qualification is increasingly losing its force as the previously separated realms of the academy and the company are converging with universities increasingly being run like a corporation (“publish or perish”-ethics, fierce competition for research grants, etc.), and corporations becoming more similar to universities (knowledge workers, corporate colleges, etc.). See Carey, James C., *University or Corporation? Dangers that Lurk in the Imitations of ‘Big Business’*, in: *The Journal of Higher Education*, Vol. 27, No. 8, November 1956, pp. 440-444; Blass, Eddie, *The Rise and Rise of the Corporate University*, in: *Journal of European Industrial Training*, Vol. 29, Issue 1, 2005, pp. 58-74.

pretation than what a work ethic does, since the latter is already an economic and business-related concept. With this in mind, the following core components of the culture in the Babylonian *Yeshivot* are now analyzed in turn:

- i) ambition,
- ii) consideration, and
- iii) elitism.²¹⁰

Yeshivah Culture Element 1: Ambition

For the members of the *Yeshivot*, the purpose for which they congregated was of the utmost importance. Torah study for them was “the greatest commandment, the most noble practice, and a universe-maintaining activity.”²¹¹ This esteem of Torah was of course already expressed in earlier generations of rabbinic Judaism. For instance, the mishnaic Tractate Avot is filled with exaltations and praises of Torah such as the following: *אם עשית תורה הרבה--אל תחזיק טובה לעצמך, כי לכך הפוך בה והפך*,²¹² *שניים שהיו יושבין, ואין ביניהן דברי תורה--הרי זה מושב לצים*²¹³ and *גמול בה, דכולא בה*.²¹⁴ But while the Mishnah describes Torah as an essential component of life, albeit one that should be balanced with other activities,²¹⁵ the Gemarah

210 This thesis derives these three components based on Rubenstein’s terrific study of Babylonian academic culture, which he structures along seven chapters. Because Rubenstein’s chapters are not intended to be mutually exclusive, this thesis synthesizes Rubenstein’s sources and structure into a three-fold cultural taxonomy, intended to be both mutually exclusive and collectively exhaustive. This synthetic approach is important for the extraction of the *Yeshivah*’s cultural essence, which in turn is needed to support this culture’s application to corporate practice. Also, Rubenstein expends much effort to support his theory of a discontinuity between the Stammaitic and pre-Stammaitic periods, as well as between the Babylonian and the Palestinian cultures. For the purposes of this thesis, all talmudic traditions dealing with the culture of the rabbinic academies are of value, irrespective of the period or location from which they emerged. For further insightful studies of the Babylonian *Yeshivot*, see Gafni, Isaiah, *יהודי בבל בתקופת התלמוד*, Jerusalem, 1975/1990, pp. 177-203, and *יהדות בבל ומוסדותיה בתקופת התלמוד*, Jerusalem, 1975, pp. 79-104.

211 Rubenstein, op. cit., p. 31.

212 mAv 2,9: If you have learned much Torah, do not claim credit for yourself, because for that sake you were created.

213 Ibid. 3,3: Two that sit together without words of Torah between them—behold, this is a session of scorners.

214 Ibid. 5,21: Delve into her [the Torah] and delve into her, for everything is in her.

215 E.g., mAv 1,2 teaches that Torah is one of three things which sustain the world (the other two are *עבודה* [Temple service/prayer/work] and *גמילות חסדים* [deeds of loving kindness]), and mAv 4,17 teaches that besides the crown of Torah, there is also the crown of priesthood, the crown of kingship, and that of a good name, which is the greatest of all. Also, as noted in the previous section on the talmudic work ethic, mAv 3,21 states that there can be no Torah without an occupation (*דוך ארץ*, lit. “way of the land”) nor without material sustenance (*קמח*, lit. “flour”), and vice versa.

occasionally develops a perspective that portrays Torah as the only pursuit that truly matters.²¹⁶ Perhaps as the *Yeshivah* began to play an increasingly central and important role in rabbinic culture, a scholastic outlook and academic pre-occupations eclipsed the importance of all other pursuits. Yet for the sages of the *Yeshivah*, simply engaging in the greatest pursuit possible was not sufficient. Rather, they were driven by a passionate ambition to become the best within that pursuit. This drive is expressed by a) the aspiration of academic status and b) the fervent method of dialectical Torah study.

Regarding a) Many talmudic traditions reflect a rabbinic desire to achieve prominent academic rank. For instance, when Rava and Abbaye consult the dream-interpreter Bar Chedaya, he offers Abbaye (who paid him) glowing dream-readings with promises of many children, much prosperity, and the status of becoming the head of the *Yeshivah*: נפק לך שמא דריש מתיבתא הויית אימתך נפלת בעלמא,²¹⁷ and מלכא הויית וקאי אמורא עלך²¹⁸. Only after Rava also pays Bar Chedaya does he receive interpretations promising him wealth and success, including the prediction that Abbaye will die and that the presidency of his college will be offered to Rava, after which his teachings will disseminate throughout the world.²¹⁹

On the following folio, there are more indications that achieving high academic status was the stuff of rabbinic dreams: הרואה אווז בחלום יצפה להכמה... והבא עליה הוי ראש ישיבה אמר רב אשי אני ראיתיה ובאתי עליה וסלקית לגדולה²²⁰. Here the position of *Rosh haYeshivah* is portrayed as even greater than wisdom itself, the attainment of this position becomes a fantasy with sexual qualities (albeit somewhat idiosyncratic ones), and the great sage R. Ashi even confirms this interpretation and makes the dream a reality.²²¹ Similarly, the same *Sugya* suggests:

216 E.g., a tradition passed on in the name of R. Eli'ezer throughout the Bavli teaches: גדולה תורה לא נתקיימו שמים וארץ ("Great is Torah, for were it not for Torah, the Heavens and earth would not be sustained," bPes 68b; bNed 32a). And bAZ 3a states: מנין שאפילו עובד כוכבים וכו' ("From whence [do we know] that even the idolator who toils in Torah is like the High Priest?") bMeg 16b even teaches that Torah study is superior to saving a life, building the Temple, and honoring parents.

217 bBer 56a: Your name will rise up [i.e., be great] like that of the head of the *Yeshivah*, and your people will be in awe of you.

218 Ibid.: You will become a king [head of the *Yeshivah*] and an *Amora* [an interpreter] will stand beside you.

219 Ibid.

220 bBer 57a: He who sees a goose in a dream can expect wisdom ... And he who has intercourse with her [the goose] will be the head of the *Yeshivah*. Said Rav Ashi: "I saw her and had intercourse with her and rose to greatness."

221 Note that R. Ashi was the first redactor of the Gemarah and that he reestablished the academy at Sura—further expressing the values of excellence in Torah study and academic status.

הנכנס לאגם בחלום נעשה ראש ישיבה ליער נעשה ראש לבני כלה.²²² These two interpretations are surrounded by further dreams that are meant to be good omens (e.g., for wealth, security, piousness), further reinforcing the desirability of attaining a high academic rank. In fact, preceding the dream-interpretations, the *Sugya* includes a teaching that states: אין מראין לו לאדם אלא מהרהורי לבו.²²³ Attaining high academic status was therefore likely to be a matter close to rabbinic hearts and minds.

The ambition of the talmudic sages was reinforced by the hierarchical organization of the *Yeshivah*. Already the title of the academic president, *Resh haMetivta* (“Head of a Study Session”) or *Rosh haYeshivah* (“Head of the *Yeshivah*”), designates a hierarchy between the sages. This institutional structure becomes apparent in various talmudic depictions of academic life. For instance, R. Yochanan is perplexed that Isi b. Chini refers to the Head Teacher (ריש סדרא) in Babylonia simply by his name Abba Arikha, without preceding it with the honorific title ‘Rav’: אבא אריכא קרית ליה דכירנא כד הוה יתיבנא אחר י”ז שורן אחוריה דרב: אבא אריכא קרית ליה דכירנא דגור מפומיה דרב לפומיה דרבי ומפומיה דרבי לפומיה דרב ולית אנא ידע מה הן אמרין ואת אבא אריכא קרית ליה.²²⁴ Inherent in this rebuke are both the depiction of a hierarchical organization in the *Yeshivah*, with the teacher at the head and the most prolific students in the front rows, as well as the awe, admiration, and respect of the lower ranks towards the higher ones.

A further story narrates how R. Yochanan sits atop seven cushions facing seven rows of students, who are positioned according to their scholarly ability. R. Kahana is at first placed in the first row because he is believed to be a great sage but then is moved back row by row until he sits all the way in the back due to his disappointing scholarly performance. However, when R. Yochanan makes a disparaging comment about R. Kahana, the latter decides to show his true Torah proficiency and begins to raise numerous objections. At the end of the lesson, R. Kahana is seated in the front row again, and all seven cushions are removed from under R. Yochanan, making him sit on the ground.²²⁵ And R. Eleazar b. R. Shimon was perturbed to be placed in a position parallel to R. Yehudah haNasi, exclaiming insultedly: קא חשביתו ליה כוותי.²²⁶ Whereupon he strove to show his superiority by predicting the latter’s objections and rendering

222 bBer loc. cit.: He who enters a marsh in a dream will be made the head of a *Yeshivah*, into the forest—the head of a study-session.

223 bBer 55b: A man is shown in his dream only what is suggested by his heart’s thoughts.

224 bChul 137b: Abba Arikha you call him? Once I was sitting seventeen rows behind Rav, in front of Rabbi [Yehudah haNasi], sparks of fire flew from the mouth of Rabbi to the mouth of Rav, and from the mouth of Rav into the mouth of Rabbi, and I didn’t know what they were saying. And you call him Abba Arikha?!

225 bBQ 117a-b.

226 bBM 84b: Do you think he is equal to me?!

his responses useless. The culture of the *Yeshivah* was hence extremely hierarchical, yet simultaneously fervently meritocratic.²²⁷ Within this institutional framework, the rabbis were driven by a burning ambition to achieve greatness.

Regarding b) The importance of dialectic activity in rabbinic culture is inherent in the structure of the Talmud itself, the dynamic of which is based on a continuous give-and-take (*Shaqla veTarya*) between a thesis (*Chidush*), anti-thesis (*Kashya*), and synthesis (*Teretz*).²²⁸ This methodology is exemplified by the comments following R. Shimon b. Yochai's second emergence from the cave in which he was hiding from the Romans.²²⁹ After R. Pinchas b. Yair cries when seeing the injuries his son-in-law's exile had inflicted, R. Shimon b. Yochai responds: אֲשֶׁרִיךְ שְׂרָאִיתָנִי בְּכֶךְ שְׂאִילְמֵלָא לֹא רָאִיתָנִי בְּכֶךְ לֹא מִצָּאָת בִּי כֶךְ.²³⁰ The ensuing Gemarah then explains what R. Shimon b. Yochai is happy about despite his physical afflictions; originally, when R. Shimon b. Yochai raised an objection to his father-in-law, R. Pinchas b. Yair solved it with twelve solutions. But after his time of Torah study in the cave, when his father-in-law raised an objection, R. Shimon b. Yochai solved it with 24 solutions.²³¹ Dialectical ability, i.e., quickly developing a prodigious quality and quantity of arguments while simultaneously neutralizing challenges, is thereby the defining measure of Torah proficiency. This ability accordingly also becomes the means to advance up the academic hierarchy, e.g., R. Natan and R. Meir were readmitted to the *Yeshivah* after R. Shimon b. Gamliel ejected them, because they threw written objections into the study hall and then threw in solutions to those same objections to which the *Nasi* himself could not respond.²³² The sages valued dialectical argumentation to such

227 Although lineage, not just merit, also played a role in determining academic rank, as is studied in the section on elitism.

228 The overarching thesis of this book, i.e., that perhaps the most significant contribution a talmudic perspective on management ethics can make to the business ethics discourse is its acknowledgment of and engagement with dialectical complexity, is hence not based (primarily) on the heterogeneity of the Talmud, but rather on the particular thinking of its sages. For studies on talmudic dialectics and argument, see Luzzatto, Moshe Chaim, דרך תבונה, *The Ways of Reason. The Classic Guide to Talmud Study*, Jerusalem, 1989/1997 and Dolgopolski, Sergey, *What is Talmud? The Art of Disagreement*, New York, NY, 2009; Neusner, Jacob, *Ethnic Trait or Religious Value: Why We Jews Enjoy a Good Argument*, in: *Judaism*, Vol. 46, No. 181, New York, NY, 1997, pp. 25-32; Kraemer, D.C., *The Mind of the Talmud: An Intellectual History of the Bavli*, Oxford, 1990; Hahn, Aaron, ספר עוקרי הרים, *The Rabbinical Dialectics: A History of the Dialecticians and Dialectics of the Mishnah and Talmud*, Charleston, SC, 1879/2010.

229 A narrative presented in the previous chapter (section 2.1.2.).

230 bShab 33b: Happy are you that you see me like this, for if you had not seen me like this, you would not have found me like this.

231 Ibid.

232 bHor 13b.

an extent that, as Ronen Reichman points out, “the idea of discursivity becomes a necessary precondition in order to achieve a ‘correct’ judicial decision.”²³³ The fact that numerous traditions teach that dialectics could restore the Torah were it to be forgotten underlines this importance of discursivity.²³⁴

According to Jeffrey Rubenstein, one result of this emphasis on argumentation is found in the *Yeshivah*, where “[a] highly competitive, even combative ethos prevails... The sages attempt to excel in dialectic argumentation. Debate is simultaneously the means to greater status and even rank.”²³⁵ Analytical skill and intellectual acumen thereby become prized qualities. This is expressed by the academy’s high regard for *Pilpul*, a term derived from פלפל (pepper) to describe “sharp” analysis. For instance, the Gemarah reports that when R. Chisda and R. Sheshet once met, the former’s lips trembled at the latter’s knowledge of mishnaic traditions, whereas R. Sheshet’s entire body shook from the acumen in *Pilpul* of R. Chisda: רב ששת מרתע כוליה גופיה מפלפוליה דרב חסדא.²³⁶ Both the competitive nature of rabbinic culture and the importance it attributes to intellectual sharpness become apparent in this narrative, where sages tremble with fear of being exposed by the other’s knowledge, but especially by dialectical skill.²³⁷ In order to develop this skill, rabbis preferred to learn in groups or pairs, where they could hone their sharpness through heated debate. This is implied by R. Chama b. Chanina’s interpretation of Prov 27,17²³⁸ which he applies to scholarly debate: לומר לך מה ברזל זה אחד מהדד את חבירו אף שני תלמידי חכמים מהדדין זה.²³⁹ Through its emphasis on communal yet hierarchical study, the *Yeshivah* fostered a culture in which competitiveness prevailed alongside in-

233 Reichman supports this point with mSan 11,4, which teaches the paradoxical *Halakhah* that in the case of a defendant accused of a capital crime, a Sanhedrin in which all judges argue for a guilty verdict must acquit the defendant. Thereby, “one can find truth only by discursively-controversially debating the case.” Reichman, Ronen, Aspects of Judicial and Legislative Decision-Making Within the Talmudic Legal Discourse, in: Bouston, Ra’anan S. et al. (eds.), *Envisioning Judaism*, Vol. 1, Part II, Tübingen, 2013, cited from manuscript of paper held at international conference on Legal Theory and *Halakhah*, Hamburg, November 1st 2010, p. 10.

234 See, for instance, bKet 103b, bBM 85b.

235 Rubenstein, op. cit., p. 2.

236 bEr 67a: Rav Sheshet’s entire body trembled from the *Pilpul* of Rav Chisda.

237 This combative communication style of the Babylonian *Yeshivot* may have survived in a completely different context on the streets of New York City, where Jewish conversational style is known for its aggressiveness and contentiousness. See: Tannen, Deborah, *New York Jewish Conversational Style*, in: *International Journal of the Sociology of Language*, Issue 30, 1981, pp. 133-150.

238 Iron sharpens iron; and a man sharpens the countenance of his colleague. : ברזל קברזל יתד; ואיש יתד פני-רעהו.

239 bTaan 7a: This tells you that just as with iron, one piece of iron sharpens the other, also two scholars sharpen each other in *Halakhah*.

tellectual sharpening and hence mutually beneficial collaboration. Alongside the drive for academic status, dialectical prowess became a hallmark of rabbinic ambition.

Yeshivah Culture Element 2: Consideration

Ambition led to a combative environment between the sages, as well as to tensions with their families. The Talmud therefore instituted two central mechanisms to address the resulting dilemmas: consideration for the well-being of a) family and b) colleagues.

Regarding a) The ambition of the talmudic sages to achieve greatness in Torah scholarship within the institutional structure of the *Yeshivah* necessarily led to tensions in their familial life. The sages faced a fundamental dilemma because becoming a Torah master and climbing the academic ranks required incessant study and passionate dedication, yet the Torah itself declared marriage,²⁴⁰ marital sex,²⁴¹ procreation,²⁴² and teaching one's children²⁴³ to be *Mitzvot* ("commandments"), hence precluding celibacy as a solution to the rabbinic dilemma between dedication to Torah and that to family. As a result, the "sages therefore faced a fundamental systemic tension, in that competing commandments pulled them in opposite directions. For many, it was undoubtedly difficult to find the right balance."²⁴⁴ A sage could not fulfill the Torah's commandments without his wife, yet she could also impede his academic career.

The necessity of having to deal with this dilemma is expressed through a series of codified norms about sages leaving their homes for a certain period in order to focus on Torah study. The Mishnah teaches: התלמידים יוצאין לתלמוד תורה. שלא ברשות שלשים יום הפועלים שבת אחת.²⁴⁵ Inherent in this law is both that scholars may leave home against the will of their family to pursue Torah studies, but also

240 Dtn 24,1; 24,5.

241 Ex 21,10.

242 Gen 1,28.

243 Dtn 11,19.

244 Rubenstein, loc. cit., p. 102. The fact that women were excluded from academic life made the tension all the greater, because their husbands were forced to separate from female contact when going to study. The tension was further increased by the polygamy of talmudic times. Also, scholars in Babylonia probably spent more time away from their families than their Palestinian counterparts, making the fulfillment of marital obligations a particularly great challenge for the members of the Babylonian *Yeshivot*.

245 mKet 5,5: Students may leave for Torah study without permission [from their wives for a period of] 30 days. Laborers, one week.

that they may only do so for a limited amount of time, albeit one that is over four times longer than that permitted to laborers. The Mishnah then continues to teach the amount of time a husband is obligated to be with his wife in order to fulfill the Torah's conjugal duties—between every day (for men without an occupation) to once in six months (for sailors).

Taking up these norms, the subsequent Gemarah elaborates: ברשות כמה כמה דבעי.²⁴⁶ But the qualification is quickly added that, according to Rav, spending one month at the academy and one month at home, whereas R. Yochanan holds that one month at the academy for each two months at home is appropriate. Regarding the time required to fulfill the Torah's conjugal duties, R. Ada b. Ahavah then says in the name of Rav that the mishnaic norms are a minority view of R. Eli'ezer, whereas the majority of sages holds: התלמידים יוצאין לת"ב וג'.²⁴⁷ Rava immediately follows this statement, warning that there were sages who relied on the words of Rav Ada b. Ahavah to their peril: ועבדי ועבדו בנפשיהו.²⁴⁸ To support this point, two stories are then told which portray the damaging effects of sages neglecting their conjugal duties. R. Rachumei would normally come home on the eve of Yom Kippur, but on one occasion he was so engrossed in his studies that he did not return as usual. His wife was expecting him, thinking: השתא אתי השתא אתי.²⁴⁹ When he did not arrive, she became distressed and a tear (אחית) fell from her eye, whereupon the roof (אפחית) on which R. Rachumei was sitting collapsed and his soul departed. Similarly, Yehudah b. R. Chiya would come home every Shabbat eve, but once his studies captivated him to such an extent that he did not. His father-in-law R. Yannai then overturned his bed, believing: שאילמלי יהודה קיים לא ביטל עונתו הואי.²⁵⁰ Thereupon, Yehudah passed away. Embedded within these two cautionary tales, the norm is taught in the name of Shmuel that the conjugal duty of Torah scholars (עונה של) (תלמידי חכמים) is to be fulfilled every Shabbat night.²⁵¹ The Talmud thus warns against the view that a Torah scholar needn't attend to his wife, but simultaneously allows him to pursue his studies away from home even against her will, for a certain amount of time. Despite these attempts to strike a balance, if the distribution of their time and effort is any indication, it appears that the sages of the

246 bKet 61b: With permission [from their wife], [sages may stay away from home to study as much as] they desire.

247 Ibid. 62b: Students who leave for Torah study [may do so] for two or three years without permission.

248 Ibid.: And lost their souls [i.e., lives].

249 Ibid.: Now he is coming, now he is coming.

250 Ibid.: Were Yehudah alive, he would not neglect his conjugal duties.

251 Ibid.

Yeshivot in practice directed more of their passion towards their studies than their spouses.²⁵² Nonetheless, the ideal propounded by the Talmud is devotion to Torah study while promoting, or at least not jeopardizing, familial well-being.

Regarding b) The Talmud encourages a competitive culture: “competition (lit. “jealousy”) among scribes expands wisdom” (קנאת סופרים הרבה חכמה).²⁵³ This competitive drive results in open displays of aggression and hostility. When R. Yochanan responds to a proposed solution in a scholarly debate with such forcefulness that he silences Resh Laqish, the former exclaims: קצצתינון לרגלוהי קצצתינון לרגלוהי.²⁵⁴ And when Karna taught that market overseers may regulate both measures and prices, although Shmuel told him to instruct that only the former may be regulated, the latter curses him: מה שמך קרנא תיפוק ליה קרנא בעיניה.²⁵⁵ In a similar vein, the Talmud cites a Midrash interpreting Dtn 20,19²⁵⁶ to mean that: אם ת”ה הגון הוא ממנו תאכל ואותו לא תכרת ואם לאו אתו תשחית וכרת.²⁵⁷ Under the constant threat of being attacked by academic colleagues, Torah scholarship resembled a martial art, which perhaps explains the prohibition of bringing weapons into the study houses: אין נכנסין בכלי זיין לבית המדרש.²⁵⁸ This combative culture was a hallmark of the Babylonian *Yeshivot*,²⁵⁹ and it led, in fitting dialectical fashion, to a strong concern with mutual consideration.

252 E.g., bKet 62b features reports of Torah scholars spending up to twelve consecutive years studying away from home, resulting in the suffering of their wives and the alienation from their children. And in what might be a talmudic vision of the ideal spouse, R. Akiva’s wife urges him to spend 12 years, and then another 12 years away from home to study, for which he is blessed upon his return with her complete dedication and half her father’s money, as well as 24,000 students (Ibid. 62b-63a). That the dedication to Torah relative to family life was a social expectation is exemplified by the stories which relate that Rabbi Yehudah haNasi’s son was ashamed that he wanted to study “only” six years before his marriage rather than 12 and actually preferred to marry before beginning his studies. The devotion to Torah is also expressed through erotic imagery—e.g., R. Shmuel b. Nachmani compares Torah study to blissful sexual intercourse (bEr 54b).

253 bBB 21a.

254 bMe’i 7b: I cut the legs off this child.

Cf. bBQ 81b, where R. Chiya says to a sage observing a legal stringency, “Had you not been R. Yehudah b. Kenosa, I would have cut off your joints with an iron saw.”

255 bBB 89a: What is your name? Karna? Let a horn (*Karna*) grow out of your eye.

256 bSan 82a: כי מִמֶּנּוּ תֹאכַל, וְאֹתוֹ לֹא תִכְרֵת. (“For you may eat of them [the trees of a besieged city], but you shall not cut them down.”)

257 bTaan 7a: If a Torah scholar is worthy, you can eat [i.e., learn] from him and you should not cut [him] down; but if he is not, you should destroy him and cut him down.

258 bSan 82a.

259 This becomes especially apparent through the difference between Babylonian and Palestinian rabbinic culture, as described by bSan 24a, which observes that Palestinian scholars are pleasant and gracious to each other in *halakhic* discourse, whereas scholars in Babylonia are bitter to and inflict damage upon each other. Probably as a consequence of these cultural differences, the Bavli contains a much stronger emphasis on the theme of mutual consideration.

As Rubenstein points out, the Stammaim “were well aware of the detrimental effect of this climate [of hostility and verbal violence] and the wounds suffered by offended parties. They tried to improve the academic ethos by stressing the importance of cordial relations, creating exemplary models of earlier sages who behaved modestly, and promising rewards to scholars who maintained a humble attitude while engaging in debate.”²⁶⁰ An example of the development of role-models to counter the culture of hostility is a tradition that teaches what a קול ב"ש (“Heavenly Voice”) called out: ואלו דברי אלהים חיים הן והלכה כב"ש.²⁶¹ The Yerushalmi relates this teaching without inquiring into its reason,²⁶² but the Bavli explains it as follows: מפני שנוחין ועלובין היו ושונין דבריהן ודברי ב"ש ולא עוד אלא שמקדימין דברי ב"ש לדבריהן.²⁶³ Graciousness and humility even towards the fiercest rivals are thereby promulgated as praiseworthy. Simultaneously, these character traits are promoted as a means towards earning God’s favor and academic supremacy. In a similar vein, and perhaps as a result of his own above noted suffering under the *Yeshivah*’s combative ethos, Resh Laqish suggests that God listens to two scholars who are pleasant to each other in legal debate (הנוחין זה לזה בהלכה)²⁶⁴ and hears two scholars who listen to each other in legal debate (המקשיבים זה לזה בהלכה).²⁶⁵ The teaching preceding these appeals further encourages mutual consideration, connecting it to hierarchical ascent: שני תלמידי חכמים המחדדין זה לזה שני תלמידי חכמים המחדדין זה לזה, ולא עוד אלא שעולין לגדולה, and בהלכה הקב"ה מצליח להם.²⁶⁶ Conversely, scholars were warned of failing to show honor to their colleagues as in the story of R. Akiva’s 12,000 students who are said to have all died at once because they failed to treat each other honorably.²⁶⁷ As with the dilemma between excellence in Torah scholarship and familial well-being, the sages strove to balance the competing demands of competitive intellectual sharpness and the virtues of modesty, humility, and compassion.

One means towards addressing this tension is the talmudic concept of אונאת דברים (*Ona’at Devarim*, “verbal injury”), which warns against causing

260 Rubenstein, op. cit., p. 66.

261 bEr 13b: These and these are the words of the living God, and the *Halakhah* is according to the House of Hillel.

262 yBer 1,2 3b [Venice and Krotoshin Editions].
[Piotrkow Edition: yBer 1,4 9a.]

263 bEr loc. cit.: Because they [the House of Hillel] were gracious and modest, and they taught their own words as well as those of the House of Shammai. And not just that, but they would precede their own words with those of the House of Shammai.

264 bShab 63.

265 Ibid.

266 Ibid.: Two Torah scholars that sharpen each other in legal [debate], the Holy One blessed be He will make them successful ... And not just that, but He will make them rise to greatness.

267 bYev 62b.

shame, especially in public.²⁶⁸ Several traditions point to the gravity of this concept: verbal wronging is more severe than monetary wronging; shaming a person in public is like spilling his blood; possibly committing adultery or burning in a fiery furnace are to be preferred to publicly embarrassing someone; and those who cause someone shame in public have no share in the World to Come.²⁶⁹ In the context of the *Yeshivah* specifically, many traditions warn rabbis not to shame each other.²⁷⁰ These dramatic teachings can be interpreted as an effort to counter the injurious effects of the combative *Yeshivah* culture by promoting mutual consideration.²⁷¹ Both a concern for familial and collegial well-being balance and temper fervent rabbinic ambition.

Yeshivah Culture Element 3: Elitism

As discussed above, the rabbis of the Babylonian *Yeshivot* perceived Torah study as life's single most important activity. Consequentially, they perceived themselves as the world's elite, and even that of the next world. For instance, on an occasion when the Heavenly Academy and God disagreed about a matter of purity, Rabbah b. Nachmani came in to rule on the matter, stating: **אני יהיד בנגעים**

268 See also p. 118.

269 bBM 58b-59a, cf. mAv 3,15.

270 For instance, when R. Kahana offers objections which R. Yochanan cannot answer in the narrative presented above, the latter mistakenly thinks the former is laughing at him. Consequently, R. Yochanan feels embarrassed and R. Kahana therefore dies as a punishment, only to be revived when R. Yochanan realizes that what he saw was in fact not a laugh but R. Kahana's split lip. (bBQ 117a.) Likewise, R. Achilai is harmed when he raises objections that might potentially shame Rava during his lectures (bPes 110a).

271 Two narratives express the sages' dilemma between rigorous dialectics and mutual consideration especially well. In the famous incident of the Oven of Akhnai (תנור של עכנאי), bBM 59a-b), the rabbis argue with R. Eli'ezer regarding the purity of a particular oven, rejecting his opinion so harshly that they "coiled round his words like a snake wrapping itself around its prey." The sages even reject miraculous interventions that confirm R. Eli'ezer's view, and insist that the *Halakha* follows their majority opinion. They then excommunicate him and burn the items he declared to be pure. This humiliation and degradation causes R. Eli'ezer to weep, and his suffering then brings divine retribution upon the sages and the world. As the *Sugya* concludes, Rabban Gamliel the Nasi is struck dead due to the verbal wronging and the subsequent suffering of R. Eli'ezer. The second story relates how Rabban Gamliel invites seven sages to intercalate the year, whereupon eight appear. When Rabban Gamliel says that he who came without an invitation should leave, Shmuel the Little says that he came without permission because he has to learn the practical law, whereupon Gamliel allows him to stay. A subsequent Stammaitic addendum states that Shmuel had in fact been invited, but he acted in this manner to avoid shaming one of his colleagues (bSan 11a). These two stories thereby relate both the ferocious ambition with which Torah study is to be pursued while stressing consideration for the honor and feelings of fellow scholars.

אני יחיד באהלות.²⁷² The *Yeshivah* is thereby portrayed as having a matching institution in heaven (מתיבתא), God is perceived as a heavenly Torah scholar, and an earthly Torah scholar is described as so wise that he can instruct God.

In a similar display of rabbinic elitism, God cannot overrule the majority opinion of the sages in the famous narrative about the Oven of Akhnai referred to in the previous section. When a “Heavenly Voice” (בת קול) asks them: מה לכם אצל לא בשמים?²⁷³ R. Yehoshua arises and cites the biblical verse: היא.²⁷⁴ The sages thereby present themselves as outsmarting God Himself, or at least as being able to overpower God’s omnipotence based on powers they believe He has bestowed upon them. The Talmud makes this remarkable implication explicit, by teaching that when R. Natan asked Elijah the Prophet what God was doing when He had been overruled, Elijah responded: קא הייך ואמר נצחוני בני נצחוני בני.²⁷⁵ It might be hard to find a group with a more elitist self-image than one that both believes in God and in its own ability to guide or even defeat Him.

This same self-image is expressed in a striking narrative describing that when Moses went up to God, he found Him embellishing letters with crowns, as they are found in Torah scrolls. When Moses asks: רבש"ע מי מעכב על ירך?²⁷⁶ God responds that the crowns are needed for R. Akiva, who will use them to derive many laws. Moses requests to see this man, whereupon he finds himself at the back of the eight rows in R. Akiva’s class: ולא היה יודע מה הן אומרים תשש כחו.²⁷⁷ Shortly thereafter, a student inquires what the source of a teaching is, to which R. Akiva responds: הלכה למשה מסיני.²⁷⁸ Moses was comforted, but upon returning to God asks: רבנו של עולם יש לך אדם כזה ואתה נותן תורה ע"י.²⁷⁹ God silences Moses, saying that this is how He has decided matters. This remarkable story narrates how God in effect serves the sages, by preparing the written Torah for the purpose of their oral exposition, and how Moses, the great prophet and teacher of the written Law, sits in the row of the study house for the least capable students and cannot comprehend what is being taught. The story even intimates that R. Akiva may be superior to Moses and that both were ordained directly by God. It might not come as a

272 bBM 86a: I am unique [i.e., pre-eminent] in the laws of leprosy and tents.

273 bBM 59b: What do you have against R. Eli’ezer, given that the *Halakhah* is according to him?

274 Ibid., Dtn 30,12: She [the Torah] is not in the Heavens.

As the *Sugya* continues to explain, this statement is invoked to mean that since the Torah has already been given at Mt. Sinai, no attention is paid to Heavenly Voices, because the Torah itself states that a majority rule is to be followed (Ex 23,2).

275 Ibid.: He laughed [joyously] and said, “My sons have defeated Me, my sons have defeated Me.”

276 bMen 29b: Master of the Universe, who is holding back Your hand?

277 Ibid.: And he didn’t know [i.e., understand] what they were saying, [whereupon] he lost his strength.

278 Ibid.: It’s a law of Moses from Sinai.

279 Ibid.: Master of the Universe, You have a man like this and You give the Torah through me?

surprise that a (sub)culture which perceives itself as being the greatest in the most divine activity would be particularly welcoming towards those of noble lineage entering their ranks²⁸⁰ and would look down upon those on the outside of their in-group.²⁸¹ Such selection and identification mechanisms further fostered a *Yeshivah* culture of elitism.

In conclusion, all of the proposed cultural elements of the *Yeshivot* are reflected by a famous passage in which Rabban Gamliel is deposed as the head of the academy.²⁸² The narrative begins with R. Joshua responding to a student that the evening prayer (תפלה ערבית) is optional (רשות). The student then asks the same question to Rabban Gamliel in the *Yeshivah* who responds that the prayer is obligatory (חובה). When the student asks why R. Joshua teaches the opposite, Rabban Gamliel tells him to wait until the shield-bearers (בעלי תריסין)²⁸³ join them in the house of study. He then asks if anyone disputes the obligatory nature of the evening prayer, whereupon the Gemarah reports that R. Joshua replies “no.” When R. Gamliel confronts him with the contrary opinion reported by the student, R. Joshua asks how he can deny that he had said it, implying that he would prefer to, whereupon R. Gamliel remains sitting while he continues expounding the law, leaving R. Joshua standing. This reflects the hierarchical nature of the *Yeshivah*, because the reported discourse is clearly not between two scholars on eye-level. However, the considerate and non-hierarchical cultural elements then come to the fore, as all the people present (כל העם) demand that R. Gamliel stop insulting R. Joshua and subsequently depose him as *Nasi*.²⁸⁴ The

280 Lineage (יהוד) was of great importance for the Babylonian sages, as evinced by the large share of *Kohanim* (“Jewish priests”) and those of other “noble” descent in the learned elite of Babylonia (Rubenstein, pp. 87ff.). Also, the position of *Nasi* became a dynasty in the hands of Hillel’s descendants, briefly interrupted by R. Ela’zar b. Azariah, who was also chosen partly due to his lineage as a descendant of Ezra (bBer 27b).

281 Paradoxically in light of their later elitism, the Pharisees began as a protest movement of the common people (during the Second Temple period) against the priestly and royal oligarchy. (Rivkin, Ellis, *A Hidden Revolution: The Pharisees’ Search for the Kingdom Within*, New York, NY, 1978). But as the rabbis came to power, the etymological meaning of their name, “set apart” (פָּרוּשׁ), increasingly developed into an elitist self-understanding relative to all outside their circle. This becomes evident through rabbinic contempt directed at the so-called הארץ עַם הארץ (lit. “people of the land”), a derisive label for Jews considered by the rabbis to be uneducated or slacking in ritual observance (bBer 47b), towards whom separation and even mistreatment was encouraged (see, for instance, bPes 49a-b, bShab 63a, bBB 8a). However, as noted above, the Gemarah relates as a favorite saying of the rabbis of Yavne an egalitarian tradition portraying the rabbis and the people of the land as equal. (bBer 17a.)

282 bBer 27b.

283 A term for the great scholars, reflecting the martial elements in the culture of the *Yeshivah*.

284 The fact that R. Gamliel listens to the will of “the people,” both by stopping his insults and by allowing himself to be deposed, reflect a democratic cultural stream alongside the hierarchical one.

search for a successor reflects the elitist component of the *Yeshivah* culture, for R. Akiva is rejected because he lacks ancestral merit (דלית ליה זכות אבות),²⁸⁵ and R. Ela'zar b. Azaryah is proposed because of his wisdom, wealth, and noble lineage as a descendant of Ezra (דהוא חכם והוא עשיר והוא עשירי לעזרא). Finally, the consideration and ambition expected of the *Yeshivah*'s members become apparent when R. El'azar b. Azaryah first consults his family, asking his wife whether he should accept the position offered to him, yet then chooses to disregard her warnings that he might also be deposed with the proverb: לשתמש אינש יומא דדא לשתמש אינש יומא דדא. בכסא דמוקרא ולמחר ליחבר.²⁸⁶ She then questions how he could hold such a position without even having any white hair, being only eighteen years old, whereupon a miracle occurs, and he is glorified with eighteen rows of white on his beard. Whether this supernatural intervention occurred out of consideration for his wife's concerns or as an omen that his hierarchical ascent was divinely ordained, it is clear that R. Ela'zar b. Azaryah was driven by the strong ambition to drink from the precious cup that he had been offered.

2.2.3. *Implications for the Management of Corporate Culture*

The preceding discussion provides us with two sets of inputs: a talmudic work ethic and the culture of the Babylonian Torah academies (*Yeshivot*). Unsurprisingly, the two have a common fabric. Both encourage diligence, balance, and contributions to general welfare, albeit in different manners. The sources analyzed to develop the talmudic work ethic praise productivity and condemn idleness: they urge a balance between work and other spiritual endeavors,²⁸⁷ particularly Torah study; and they encourage pursuing occupations and working in such a manner that the general welfare is promoted, while discouraging means of earning a livelihood that do not contribute to societal development. Similarly, the academic culture of the Babylonian *Yeshivot* demands ambitious hard work by requiring its members to balance their ascent up the academic hierarchy with the promotion of familial and collegial flourishing and by benefiting society through training and developing rabbis who fulfill the important roles of communal leaders, judges, scholars, teachers, and moral role-models.

285 The Gemarah reports that the people were afraid of R. Gamliel cursing a successor without ancestral merit.

286 bBer 28a: A man should use a precious cup [of honor] for one day even if it will break the day thereafter.

287 Because both the written and oral Torah declare productivity a commandment, work itself also becomes a spiritual pursuit rather than a merely expedient profane activity.

Applying the *Tzad haShave* (“common element”) between the talmudic work ethic and the *Yeshivah* culture might be more fruitful to inform the ethics of an executive charged with crafting, shaping, and reinforcing the culture of his corporation than applying each on their own—for the work ethic of talmudic sages lacks an institutional frame, and the *Yeshivah* culture did not develop in a for-profit institution. Individually, both elements therefore require more abstraction in order to be soundly applied to business organizations than combined, where they might provide a feasible and sustainable basis to inform and inspire an organizational culture that bases itself on the following three elements: productivity, balance, and societal development. This implies fostering a corporate culture that motivates and enables its members to a) value their work,²⁸⁸ b) meet their responsibilities outside the workplace,²⁸⁹ and c) contribute to social goals.²⁹⁰ These elements combined can provide a powerful and highly relevant foundation upon which to base the unifying, identifying, and aligning functions of a corporate culture.

Yet as useful as the commonalities between the talmudic work ethic and the *Yeshivah* culture may be for our purposes, their specificities can provide insights as well. The belief that one’s occupation is the most noble and important activity, the competitive ambition to achieve hierarchical ascent, the complete dedication and drive for excellence, the martial attitude, and the elitist self-perception displayed by the sages of the Babylonian *Yeshivot* might make them less sympathetic to some. But imbuing organizational members with these drives and beliefs can contribute to productivity, motivation, recruiting, retention, and hence performance. In fact, corporations such as the financial services firm Goldman Sachs already seem to institutionalize cultural elements similar to those of the *Yeshivah*: its Chairman and CEO Lloyd Blankfein stated in an interview that his

288 One central institutional means to achieve this is a so-called “vitality curve,” by which organizational members are graded according to their performance, thereby providing incentives for productivity. Better yet, and more difficult to implement, is the fostering of intrinsic motivation, for example, by developing an organizational culture people want to be a member of and contribute to.

289 Especially towards themselves and their families, for instance by encouraging sabbatical and parenting leaves. More flexible work schedules, such as those permitting additional paid time off for a pay cut, can also enable organizational members to balance their work with other interests. McKinsey has recently introduced such a flexible program with its “Personal Time” model.

290 This might occur through the business itself (e.g., a pharmaceutical company contributing to health, or a music company which, like the talmudic jesters destined for heaven, brings joy to the world.) Or it may occur through ancillary activities that enable organizational members to contribute to society, such as corporate volunteering programs in soup kitchens and schools. The idea of combining business and social goals has been formalized by Michael Porter with the concept of “shared value” (Porter, Michael E./Kramer, Mark R., *Creating Shared Value*, in: *Harvard Business Review*, Cambridge, MA, Jan.-Feb. 2011).

company is “doing God’s work,”²⁹¹ its bankers are driven to professional excellence and to sacrifices of personal and family life with 80-100 hour work weeks, its 360°-feedback mechanisms increase the pressure to do what it takes to outperform colleagues and get promoted, its competitive environment puts a premium on an aggressive pursuit of the best solutions and intellectual sharpness, its client projects demand the mutual consideration essential for successful teamwork, and its organizational members are encouraged to view themselves as capitalism’s elite.²⁹² Given the success of Goldman Sachs, studying the *Yeshivah* culture might help other corporations as well. However, in light of the popular backlash against both institutions,²⁹³ the specific principles of the talmudic work ethic might be necessary to make the *Yeshivah* culture more sustainable in a corporate context.²⁹⁴ This implies specifically being dedicated to one’s work, but simultaneously striving to make it as “clean and easy” as possible, i.e., not allowing work to colonize one’s entire life. Also, the perceived importance of one’s own occupation must be strengthened and balanced with a concrete and observable contribution to societal development.

Based on the preceding discussion, the most promising approach to inform corporate culture might be to foster both the particular elements of the talmudic work ethic as well as those of the *Yeshivah* culture and then to ensure that the culture remains balanced between their respective components. Illustration 7 shows how this can be pictured: the diligence, balance, and societal development of the talmudic work ethic and the ambition, consideration, and elitism of the *Yeshivah* are the cultural poles between which a dialectical *Spannungsfeld* is struck—diligence must be blended with consideration, elitism should be tempered by balance, and ambition ought to be matched with societal development.²⁹⁵

291 Interview with John Arlidge of The Sunday Times, London, November 8th, 2009.

292 Elements such as the 430,700 USD average pay (Goldman Sachs 2010 annual report), the frequent media coverage referring to Goldman Sachs as the elite or elitist, the bank’s alumni network reaching the highest levels of the international private and public sector, and its recruiting policy which aims at hiring only the best and brightest from Ivy League or corresponding international institutions all contribute to an elitist culture.

293 As evinced by the alienation of the majority of Jews from rabbinic Judaism and the emergence of counter-movements to the *Yeshivah* such as Chassidism, and the wide-spread critique and contempt for Goldman Sachs, ranging from sources as divergent as its own staff (<http://www.nytimes.com/2012/03/14/opinion/why-i-am-leaving-goldman-sachs.html?pagewanted=all>), the German government, and Rolling Stone Magazine. The bank recently instituted a Business Standards Committee to review its ethics.

294 Practically, this means first instituting the common thread between the talmudic work ethic and the *Yeshivah* culture, then developing the *Yeshivah*-specific elements, which are in turn balanced by the unique components of the work ethic.

295 See illustration 7 in appendix.

The Paradox of the Distinctive yet Indivisible Culture

Executives and employees face a dilemma when developing, shaping, and reinforcing their corporate culture. On the one hand, a distinct and distinctive culture fosters a strong sense of shared identification between organizational members and thereby contributes to teamwork and dedication. Yet when its culture becomes too distinct, a corporation risks alienation from its stakeholders and society. The underlying tension of this cultural dilemma is addressed in the Jewish tradition.

The Hebrew word for culture, *תרבות* (*Tarbut*), appears only in one biblical verse: *וַהֲבִיחַ קַמְיָתָם, תַּחַת אֲבֹתֵיכֶם--תִּרְבוּת, אֲנָשִׁים חַטָּאִים*.²⁹⁶ Moses castigates the Israelite tribes of Reuben and Gad, who put their tribal economic interests before the collective ones of the nation by requesting to settle in territories on the east side of the Jordan River as opposed to ones in the Promised Land in order to contain their large holdings of cattle. The negative connotation of the word *תרבות* is continued in its relation to *תרביית*, the biblical term for forbidden interest payments.²⁹⁷ Inherent in both words is a critique of an emerging breed, in the one case of a separate sub-culture, in the other of money. Thereby, just as financial inbreeding is biblically condemned, a culture is discouraged from disconnecting itself from wider society. At the same time, of course, the biblical and talmudic traditions value the development of a particularistic Israelite/Jewish culture and its separation from surrounding influences, alongside their universalistic worldview affirming the unity and equality of all mankind. Reflecting the former tendency, Mar Shmuel's father forbids Jews from entering into business partnerships with heathens because doing so might cause the latter to swear by their idols when taking an oath regarding business disputes.²⁹⁸ These teachings reflect the fundamental dilemma of corporate culture: integration vs. separation. Striking a balance between these two poles implies instituting a distinctive and distinct culture that is simultaneously indivisible from broader societal concerns and interests.

296 Num 32,14: And behold, here you stand, under your forefathers—a breed, sinful men.

297 See for example Lev 25,36.

298 bSan 63b. The rabbinic concern that business relationships can lead to assimilation with “non-Jewish” cultures might also be reflected in the fact that the Tractate dealing most with idolatry (*Avodah Zarah*) is in the same order *Neziqin* as the three *Bavas*.

3 Ethics Taxonomy Dimension 2: Regulation and Compliance

3.1 Issue 3: Fraud and Corruption

3.1.1. *Deceitful and Abusive Gain's Potential to Pain*

For managers, few ethical issues can be both as lucrative and damaging as fraud and corruption. By deceiving their stakeholders about product quality, accounting statements, insurance claims, etc., managers can dramatically improve a corporation's performance, at least in the shorter term. And they can abuse their official position by accepting bribes for personal gain, while by paying them they might also generate business that would otherwise have gone to a competitor who is willing to grease palms. Yet a dilemma results from the fact that by engaging in fraud and corruption, managers risk jail time and hefty fines as well as severe negative consequences for their corporation, the defrauded, and the market as a whole.²⁹⁹

The essential element of fraud is potentially disadvantageous misrepresentation,³⁰⁰ while corruption is constituted by giving or receiving benefits intended to influence decision-making.³⁰¹ Numerous high-profile corporate scandals exemplify the boom-and-bust dialectic resulting from fraud and corruption's fundamental dilemma between illegal gain and forsaken income. At the telecommuni-

299 Besides being the focus of criminal laws such as the Foreign Corrupt Practices Act, fraud and corruption are combated by NGOs such as Transparency International. Legislative and public pressure thereby increases the risks both to managers and corporations of engaging in fraudulent and corrupt business practices, which damage the market as a whole through a decrease in investment and increased transaction costs caused, for instance, by regulatory pressures and a climate of decreased trust. For studies on the nature and costs of corporate fraud and corruption, see Rezaee, Zabihollah, Causes, Consequences, and Deterrence of Financial Statement Fraud, in: *Critical Perspectives on Accounting*, Vol. 16, Issue 3, April 2005, pp. 277-298; Comer, Michael J., *Corporate Fraud*, Burlington, VT, 1998/2004; Luo, Yadong, An Organizational Perspective of Corruption, in: *Management and Organization Review*, Vol. 1, Issue 1, March 2005, pp. 119-154; Argandoña, Antonio, Corruption: The Corporate Perspective, in: *Business Ethics: A European Review*, Vol. 10, Issue 2, April 2001, pp. 163-175.

300 Snyman, C. R., *Criminal Law*, London, 2002, p. 520.

301 *Ibid.*, p. 376.

cations giant WorldCom a declining stock price and pressure from banks led CEO Bernie Ebbers and several of his subordinates to overstate the company's financial performance by at least 9bn USD.³⁰² While this accounting fraud decreased financial pressure for a few years, it brought the entire company to its knees when it filed for bankruptcy protection in 2002 and put those responsible for fraud behind bars for up to a quarter of a century. And Siemens, Europe's largest engineering firm, institutionalized an elaborate mechanism through which it paid about 805m USD in bribes to foreign officials in order to win contracts.³⁰³ This practice might have enabled participating in markets where what in the West would be considered bribery is a *conditio sine qua non* of doing business.³⁰⁴ But its support of corruption came at a costly price. Besides the severe reputational harm it suffered, the German company had to pay fines, legal expenses, and back-taxes totaling nearly 3bn EUR and fought several of its most successful managers in court, including its Chairman and former CEO Heinrich von Pierer.³⁰⁵ And the scandal that led to the shutdown of Rupert Murdoch's tabloid *News of the World* shows the dramatic consequences both of obtaining information fraudulently and by means of bribes.³⁰⁶

Corporate scandals such as these can lead to a significant decrease in trust towards managers and corporations and even towards entire industries and capi-

302 Beresford, Dennis R., et al., Report of Investigation by the Special Investigative Committee of the Board of Directors of WorldCom, Inc., 2003, p. 1.

303 The Siemens Scandal: Bavarian Baksheesh, in: *The Economist*, London, Dec. 18th 2008, <http://www.economist.com/node/12800474>.

304 For a study of the intercultural complexities and challenges of doing business in a country that has in many ways a different conception of what constitutes corruption, see: Steidlmeier, Paul, Gift Giving, Bribery and Corruption: Ethical Management of Business Relationships in China, in: *Journal of Business Ethics*, Vol. 20, No. 2, pp. 121-132. Corruption in developing-world countries has become a particularly relevant topic in recent times through incidences such as the corruption inquiry of China's railway minister following a train crash that killed 39 people; as well as through the widespread success of the anti-corruption campaign in India led by Anna Hazare. See: Moore, Malcolm, Chinese Rail Crash Scandal: Official Steals \$2.8 billion, in: *The Telegraph*, Aug. 1st, 2011; Wong, Edward, China's Railway Minister Loses Post in Corruption Inquiry, in: *The New York Times*, February 12th, 2011; for a profile of Anna Hazare and his movement, see: Burke, Jason, Anna Hazare: the Divisive Face of a New India, in: *The Guardian*, August 21st, 2011.

305 Siemens-Skandal: Ex-Vorstände sollen haften, in: *Manager Magazin*, Hamburg, Dec. 12th 2008, <http://www.manager-magazin.de/unternehmen/karriere/0,2828,596077,00.html>.

306 The tabloid committed fraud by basing its journalism on information obtained by hacking into telephone communications of politicians, celebrities, the royal family, relatives of deceased British soldiers and terror victims. The scandal involves bribery charges as well, with reporters from the tabloid allegedly paying police officers and others for providing privileged and confidential information. The tabloid may have also committed fraud by misrepresenting these bribery payments in its accounting statements. See: Carney, Damian, Fear and Loathing: Media Accountability after the Phone-Hacking Affair, in: *The Phone Hacking Scandal: Journalism on Trial*, 2012.

talism as a whole.³⁰⁷ Fraudulent and corrupt corporate conduct thereby tarnishes the image of business per se, threatening its societal acceptance and hence its license to operate. Deception and abuse in the name of profit can thus delegitimize the pursuit of profit itself. Against this background, the following analysis will discuss the pressing question of what constitutes illegal deceit and bribery from a talmudic perspective. An inquiry mostly *ex negative* will then also yield insights into what the talmudic sages considered legitimate business practices.

3.1.2. *Ensuring the Outside Corresponds to the Inside*

The Jewish business ethics literature has studied extensively talmudic concepts germane to fraud and corruption.³⁰⁸ Yet precisely due to the depth and breadth of

307 For example, 80% of respondents in a national U.S. survey stated that accounting scandals such as the one at Enron drag down trust in corporate executives (cited in DuBrin, Andrew J., *Essentials of Management*, Florence, 2008, p. 85). A further survey shows that the Enron and the dot-com bust as well as the following global financial crisis lead to a dramatic decrease of up to 20 percentage points in respondents who “trust business to do what is right.” The same survey shows that in the wake of this financial crisis, the share of respondents who trust the banking industry “to do what is right” decreased by up to 39 percentage points. (Edelman Trust Barometer Executive Summary, 2010, p. 8.) The crises of the last decade have also led to a decrease in favorable opinion of capitalism (see for instance, BBC World Service Poll, *Wide Dissatisfaction with Capitalism*, London, November 9th 2009, and Allensbacher Archiv, *ifD-Umfragen*). While the main factors that caused the dot-com bubble and the Great Recession were at the time not considered fraudulent or corrupt according to U.S. and European law, some of the business practices that enabled the crises (e.g., share recommendations from investment banks with conflicts of interest, subprime loans for unsuitable, and uninformed debtors) are considered fraudulent and corrupt from a Torah perspective (as discussed in Friedman, Hershey H./Friedman, Linda W., *The Financial Meltdown of 2008: The Perspective of Jewish Law*, New York, NY, 2009).

308 See particularly the seminal works by Tamari and Levine, which deal with a multitude of concepts from Jewish tradition relating to both fraud and corruption: Tamari, Meir, *Al Chet: Sins in the Marketplace*, Northvale, NJ, 1996; *The Challenge of Wealth: In the Marketplace*, Southfield, MI, 1991; *With All Your Possessions*, Jerusalem/Northvale, NJ, 1998; Levine, Aaron, *Moral Issues of the Marketplace in Jewish Law*, Brooklyn, NY; *Case Studies in Jewish Business Ethics*, Newark, NJ, 1999. See also the following papers studying individual concepts from Jewish traditions relating to fraud and corruption: Friedman, Hershey H., *Geneivat Da’at: The Prohibition Against Deception in Today’s World*, in: *JLaw*, 2005, <http://www.jlaw.com/Articles/geneivatdaat.html>; *Placing a Stumbling Block Before the Blind: An In-Depth Analysis*, in: *JLaw*, 2002, <http://www.jlaw.com/Articles/placingstumbling.html>; Spitz, Zvi, *Geneivas Da’as: Misleading Others*, in: *Advanced Business Halakhah—Torah.org*, 1997/2002, <http://torah.org/advanced/business-halacha/5757/vol2no30.html>; Warhaftig, Itamar, *Consumer Protection: Price Fraud*, in: *Crossroads: Halacha and the Modern World*; in: *JLaw*, http://www.jlaw.com/Articles/price_fraud.html. On bribery, see the eponymous entry in the *Jewish Encyclopedia*, <http://www.jewishencyclopedia.com/view.jsp?artid=1463&letter=B>, and the following paper: Fogel, Joshua/Friedman, Hershey H., *Conflict of Interest and the Talmud*, in: *Journal of Business Ethics*, Vol. 78, No. 1-2, 2007, pp. 237-246.

this work and because of the differing findings and emphases within it, the extraction of a synthesized, unified, and holistic view on what, from a talmudic perspective, constitutes fraud and corruption is both challenging and likely to be fruitful. Furthermore, none of the existing English-language Jewish business ethics works present the source texts in their original Hebrew and Aramaic, through which semantical precision and textual insights are lost in translation. This section attempts to fill in these two gaps.

The Talmud is honest about why there is a need to teach a relative wealth of principles relating to fraud and corruption: the temptation to commit them is quite large. R. Yehudah teaches in the name of Rav that the majority of people are guilty of theft: אמר רב יהודה אמר רב רוב בגזל ומיעוט בעריית והכל בלשון הרע.³⁰⁹ R. Shlomo Yitzchaki (*Rashi*) comments on this pessimistic perspective that most people find ways to legitimize profiting at the expense of others in their business dealings.³¹⁰ This urge to rationalize is particularly strong when there is a financial incentive to engage in fraud and corruption, and the Talmud consequently institutes a number of concepts to address them both. Based on an extensive review of the primary and secondary literature, the following lists the most prominent of these concepts: price fraud (אונאה) and profiteering (הפקעת שיערים), deception of the eye (גניבת עין), deception of the mind (גניבת דעת), exploitation of information asymmetries (לפני עיור), and abuse of public responsibility for personal gain—particularly through bribery (שוחד). These concepts will be analyzed now in turn.

Price Fraud

The central source regarding the talmudic conception of price fraud is chapter four of Tractate Bava Metzi'a.³¹¹ The chapter's third Mishnah introduces the concept of אונאה (*Ona'ah*) which in this context means price fraud, and has its

309 bBB 165a: Said R. Yehudah in the name of Rav, “The majority [commits] theft, and a minority [commits] sexual immorality, and all [commit] *Lashon haRa*’ [evil speech].”

Cf. R. Amram’s saying in the name of Rav, teaching that there are three transgressions everyone falls prey to daily: sinful thought, speculation on the results of prayer, and *Lashon haRa*’. The Gemarah proceeds to specify that “the dust of [i.e., implicit] *Lashon haRa*” is meant here (bBB 164b-165a).

310 *Rashi*’s commentary on bBB 165a, s.v. רוב בגזל. Perhaps this is why R. Yehudah also teaches that those who wish to be pious should follow the laws of Neziqin, i.e., the Tractate in which most business laws are taught: אמר רב יהודה האי מאן דבעי למהוי חסידא לקיים מילי דנזיקין רבא אמר מילי most business laws are taught: דאבות ואמרי לה מילי דברכות (bBQ 30a.)

311 I am indebted to R. Kuperwasser and his Jerusalem *Chabura* (“study group”), where I had the privilege of studying this chapter intensively during the summer of 2006.

scriptural source in the following verse: --קָנָה מִיַּד עֲמִיתָךְ, אוֹ קָנָה מִיַּד עֲמִיתָךְ--: ³¹² Already inherent in the etymology of *Ona'ah* is its critique.

According to the majority opinion, *Ona'ah* is constituted by overcharging or underpaying, specifically by one sixth versus the merchandise's fair price: האונאה ארבעה כסף מעשרים וארבעה כסף לסלע שתות למקח עד מתי מותר להחזיר עד כדי שיראה לתגר או לקרובו הורה רבי טרפון בלוד האונאה שמונה כסף מעשרים וארבע כסף לסלע שלישי למקח ושמחו תגרי לוד אמר להם כל היום מותר לחזור אמרו לו יניח לנו רבי טרפון במקומינו וחזרו לדברי חכמים.³¹³ This fascinating Mishnah shows that talmudic norms are discursive, resulting from differing opinions rather than being set in stone and ordained from a central authority. Implicit in its rulings is that goods have an intrinsic value made explicit by the prohibition to deviate from this value beyond a certain extent. Conversely, a producer surplus of up to (but not including) 17 percent, or according to R. Tarfon about 33 percent, is deemed justified, thereby providing a clear legitimatization of profit.³¹⁴ Such a legitimatization of for-profit enterprise is also provided on an earlier folio of the same tractate, where R. Papa rhetorically asks how one can call someone who buys and sells at the same price a merchant: זבון וזבין תגרא איקרי Profit is thereby a *raison d'être* of business.³¹⁵

Whereas the chapter's first Mishnah warns against renegeing on a deal, its second one permits customers to revoke a sale until merchandise can be shown to a merchant or relative in order to assess whether its price was fair, after which a sale stands even when price fraud is given. R. Tarfon disagrees with the *Tanna Kamma* (the anonymous sage's opinion first cited in the Mishnah), ruling that fraud is constituted by a third of the purchase price, hence legitimizing nearly

312 Lev 25,14: And when you sell merchandise to your people, or purchase from the hand of your people—you shall not wrong one another, a man his brother” as interpreted in bBM 58b.

313 mBM 4,2: *Ona'ah* is constituted by four silver [coins] out of twenty-four silver [coins], which is a *Sela* [the name of a certain coin, equal in value to twenty-four silver coins], [thus] a sixth of the transaction value. Until when is it permitted to return [an acquired item]? Until the time it takes to show [the purchase] to a merchant or a relative. R. Tarfon ruled in Lod that *Ona'ah* is constituted by eight silver [coins] out of twenty-four silver [coins], which is a *Sela*, [thus] a third of the transaction value. To which the merchants of Lod rejoiced. [But, R. Tarfon] said to them, “It is permitted to return [an acquired item] for an entire day.” [Whereupon] they said to him, “May R. Tarfon let us rest in our place [i.e., the status quo]” and they returned to the words of the sages.

314 Given that mBM 4,3 extends the prohibition of *Ona'ah* to underpayment as well, the same limits apply to legitimate bargains from the perspective of buyers.

315 bBM 40b: [Someone who] buys and sells [at the same price, i.e., without a profit] —do you call him a merchant?!

Cf. bMen 77a, where Shmuel rhetorically asks: דיאנה הוא דלא לימטייה רוחא לא בעי זבן וזבין תגרא (“... and does he [the merchant] not need to earn a profit? Do you call someone who buys and sells [at the same price] a merchant?!”)

double the profitability levels. By recording how the merchants of Lod at first rejoiced (due to the promise of higher profits) yet then rejected this ruling (due to the likelihood of more sales being returned), the Mishnah implicitly teaches that what constitutes fraud is a matter of opinion, and simultaneously condones merchants to choose regulations which best further their commercial interests. This discursive approach is continued in the subsequent Gemarah, which features disagreements about how the legal profit limit is calculated, how and up to what point in time both buyers and sellers can claim price fraud, what the laws are regarding overcharging and underpaying at below and above the level of one-sixth, and how to deal with cases in which the laws on price fraud are fraudulently invoked.³¹⁶

The proceeding Mishnah codifies up to what point of erosion a coin may be exchanged at its face value.³¹⁷ Similar to the one-sixth limit on just pricing, a coin is subject to *Ona'ah* if one-sixth or more of its metal content has eroded. Because of money's value-storing capability, this norm relates to just weights and measures, a concept already found in the Bible,³¹⁸ and taken very seriously by the Talmud, as reflected for instance in the teaching that the punishment for cheating in measures is even more severe than that for sexual immorality.³¹⁹ The central principle underlying the talmudic view of fraud is hence a concern for commutative justice. A commercial transaction is thereby just when all parties to the exchange receive a value equal or nearly equal relative to that which they give, or at least to that which they expect to receive in return. Otherwise, a transaction may constitute *Mekach Ta'ut*, an invalid deal because at least one of its exchanging parties is not aware of all relevant facts to assess its true value.³²⁰

Besides commutative justice, a further essential element of the talmudic perspective on fraud is consent: as long as the exchanging parties are aware of the fact that they are paying more or receiving less than they give in return or that a transaction is exempt from *Ona'ah*, a transaction is not fraudulent, because no misrepresentation has taken place. Consequently, the rabbis legitimize overcharging or underpaying above one-sixth with their numerous exceptions to *Ona'ah*, exempting

316 bBM 40b. 49a-51a.

317 mBM 4,4.

318 Lev 19,36; Dtn 25,15; Prov 11,1.

319 bYev 21a.

320 See for instance bGit 14a. The concept of *Mekach Ta'ut* is also particularly germane to the principle of *Lifnei Iver* discussed below.

certain transaction items,³²¹ forms,³²² and parties³²³ from the laws of just pricing. The Talmud thus leaves us with a dialectical approach to pricing, simultaneously critiquing an excessive delta between price and value, legitimizing *Ona'ah* for certain types of transactions and precisely regulating acceptable profit levels.³²⁴

Profiteering

While the last exception to price fraud noted above (the sale of life-saving items) seems to exempt profiteering from the biblical prohibition of *Ona'ah*, the Talmud contains a number of *halakhic* enactments and homiletic warnings against profiting in essential items beyond the one-sixth level, even if the transaction parties are aware of an item's true value and are willing to pay a premium for it.³²⁵ For instance, the following Baraita strongly condemns the hoarding of necessities and profiteering and conversely praises actions that lower market prices of essential products:³²⁶

321 mBM 4,9 excludes servants, documents, plots of land and consecrated property from *Ona'ah* (this Mishnah's majority opinion rejects R. Yehudah's view that Torah scrolls, animals, and pearls are exempt as well); bBM 58b also excludes items on which survival depends (e.g., horses, swords, and shields during war times).

322 As noted, bBM 51a exempts those trading faithfully from the laws of *Ona'ah*, while bBM 51b introduces a verbal formula to effect exemption (האומר להבירו על מנת שאין לך עלי אונאה אין לו עליו) (אונאה).

Cf. tBM 3,22 as discussed in section 2.1.2 of this thesis regarding faithful trading (נותר הנושא) (באמורה).

323 mBM 4,4 (R. Yehudah's minority opinion) and bBM 51a exempt professional dealers/speculators from claiming *Ona'ah*, because they are experts and would not unknowingly or unintentionally sell an item below its fair price; the latter source also rules that those buying from private parties (as opposed to from professional dealers) cannot claim *Ona'ah*; and based on bBM 108a and bQid 42b, Maimonides rules that transactions involving agents erring in price determination may always be revoked (Mishneh Torah, Sefer Kinyan, Hilkhot Mekhirah, 13,9).

324 This dialectic was the basis of a talk I gave titled *Dialektik der Ona'ah: Kritisierung, Legitimierung und Regulierung von Preisübervorteilung im Talmud*, held at an interdisciplinary workshop at the Hochschule für Jüdische Studien Heidelberg that was led and organized by Ronen Reichman in conjunction with the Cluster of Excellence Kulturelle Grundlagen von Integration at the University of Konstanz, titled: *Marktregulierung im talmudischen Recht: Das Verbot der Preisübervorteilung (Ona'ah) aus rechtshistorischer und wirtschaftsethischer Perspektive*, April 30th, 2012. One discussion point in this workshop was the possibility that *Ona'ah* as the oldest-known regulation of price fraud might have influenced the Roman *Laesio enormis*, which establishes just price ratios for land transactions.

325 For examples of *Hafka'at She'arim* being invoked in *halakhic* practice, see for instance the following responsa: שו"ת מנחת יצחק חלק ט and שו"ת משנה הלכות תוכן העניינים חלק יז - חושן משפט. סימן קרב. See also Menachem Elon's entry on the principle in the Encyclopedia Judaica, http://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0008_0_08134.html.

326 bBB 90b.

Our rabbis taught: [Those who] hoard fruit and lend money on interest and reduce [i.e., falsify] measures and profiteers	תנו רבנן אוצרי פירות ומלוי ברבית ומקטיני איפה ומפקיעי שערים
About them, scripture says, When will the new moon be gone, that we may sell grain? And the Shabbat, that we may set forth corn? Making the <i>Ephah</i> small and the <i>Sheqel</i> great and falsifying the balances of deceit. ³²⁷	עליהן הכתוב אומר לאמר מתי יעבור החדש ונשבירה שבר והשבת ונפתחה בר להקטין איפה ולהגדיל שקל ולעות מאזני מרמה
And [about them,] it is also written, YHWH has sworn by the pride of Jacob, I will never [lit. for eternity] forget any of their deeds.	וכתיב נשבע ה' בגאון יעקב אם אשכח לנצח כל מעשיהם
Who can be classified as a fruit hoarder? said R. Yochanan, Shabtai the fruit hoarder, for instance. ³²⁸	'אוצרי פירות כגון מאן אמר ר' יוחנן כגון שבתי אצר פירות
The father of Samuel b. Abba used to sell fruit during the early market prices [i.e., right after the harvest] at the early price.	אבוה דשמואל מזבין להו לפירי בתרעא חרפא חרפא
Samuel his son retained the fruit and sold it during the later [higher] market prices at the early [lower] price.	שמואל בריה משהי לפירי ומזבין להו בתרעא אפלא חרפא חרפא שלחו מתם
The actions of the father were better than those of the son [i.e., the father prevented prices from rising in the first place].	טבא דאבא מדברא
What is the reason? Prices that are eased remain eased.	מ"ט תרעא דרווח רווח

This *Sugya* is a stark warning to profiteers, putting them on an equal footing with usurers, fraudsters, and hoarders. And it simultaneously functions as a homily to practices that keep prices affordable, particularly those of essential goods such as fruit. This praise and condemnation is achieved through scriptural citations and through contrasts between the cases of the “evil fruit hoarder” and the righteous

327 Am 8,5.

328 Cf. bYo 82b, which features the narrative of a pregnant woman being punished for eating on Yom Kippur with giving birth to the evil Shabtai “the fruit hoarder.”

sages. The term *hafka'at she'arim* means profiteering from prices,³²⁹ and by condemning this practice the sages consequently seem to urge business activity that profits from fulfilling human needs, rather than from exploiting price movements. Might this be considered a condemnation of trading that adds no value except to traders themselves, or that even causes societal damage? So great was the anxiety of the rabbis regarding the effect of profiteers and hoarders on the market that, according to the Talmud, the ninth blessing of the *Amidah*-prayer, which requests blessing for the earth and its produce, was instituted to seek protection against “bandits who prey on the poor” by artificially increasing prices.³³⁰

The rabbinic stance towards profiteering also provides a good case study of the talmudic approach to economic regulation: instead of central planning, desired social outcomes are achieved by means of market mechanisms. For instance, when the obligation of women to offer various sacrifices after childbirth increased the price of sacrificial doves to a golden *Dinar*, Shimon b. Gamliel the Elder declared: לא אליו הלילה עד שיהיה בדינרין.³³¹ He thereupon entered the *Beit Din* (rabbinic court) and taught that a woman who had given birth to five children must only offer one pair of sacrificial dove instead of five, whereupon the Talmud reports: עמדו קנין ביום ההוא ברבעתים.³³² Instead of fixing prices directly to decrease the financial burden of ritual laws on the populace, the rituals are adapted in such a way that the market as a mediating mechanism arrives at the desired price. Similarly, the sages declared that fasts may not be instituted on a Thursday, for as a result people would have to acquire food for two large meals on that day (for Shabbat, in addition to the breaking of the fast).³³³ This increased demand would then be conducive to merchants suddenly raising market prices. And on the same folio as our above *Sugya*, profiteering is also condemned for “bringing a curse” upon market prices in times of famine (מפני שמכניס מארה) (בשערים).³³⁴ Thus, while the Talmud permits and legitimizes profiting on the microeconomic scale of individual transactions up until the rate beyond which *Ona'ah* is constituted, it simultaneously attempts to circumvent profiteering from macroeconomic market movements caused by phenomenon affecting the public as a whole, such as ritual proscriptions, droughts, and agricultural seasons.

329 Sha'ar (שער, singular of *She'arim*) means both gate and price, in modern Hebrew as well. Combined with the verb profiteer (להפקיע), the expression “להפקיע את השער” thus means to profiteer from prices.

330 bMeg 17b.

331 mKer 1,4: I will not sleep tonight until it [the price] will be a [silver] *Dinar*.

332 Ibid.: The acquisition [the pair of doves] stood [i.e., cost] on that day at a quarter [of a silver *Dinar*].

333 bTaan 10a, 15b.

334 bBB 90b: Because it enters [i.e., brings] a curse upon the market prices.

Deception of the Eye and Mind

The last two Mishnayot of Bava Metzi'a's fourth chapter turn from fraudulent pricing to deceptive sales and marketing practices. These teachings are now presented in turn.

Produce [lit. fruits] may not be mixed with (other) produce, even new with new, and it goes without saying, new with old.	אין מערבין פירות בפירות, אפילו חדשים בחדשים, ואין צריך לומר חדשים בישנים;
In truth, with wine it is permitted to mix strong with mild, because this improves it.	באמת, ביין התירו לערב קשה ברך, מפני שהוא משביחו.
The lees [sediment of the wine] may not be mixed into the wine, but the lees may be given to him [to the customer, by the vendor].	אין מערבין שמרי יין ביין, אבל נותן לו את שמריו.
He who dilutes his wine with water—is not to sell it in the store, unless he makes it known [that the wine is diluted]; and [it may not be sold] to a merchant [at wholesale], even if he makes it known [that the wine is diluted, because the latter acquires it only to cheat others therewith.	מי שנתערב מים ביינו--לא ימכרנו בחנות, אלא אם כן הודיע; ולא לתגר, אף על פי שהוא מודיעו, שאינו אלא לרמות בו את אחרים.
[In] a place where it is the custom to adulterate wine with water, it may be adulterated.	מקום שנהגו להטיל מים ביין, יטילו
[Purchasing] from five granaries and putting [the grain] into one storehouse [and purchasing] from five presses and putting [the wine] into one cask [is permitted], but only if the intention is not to mix [the goods, pretending they are all from the same, superior source].	מה' גרנות ונותן לתוך מגורה אחת מה' גיתות ונותן לתוך פיתום אחד ובלבד שלא יהא מתכוין לערב ³³⁵

The essential message of this Mishnah is that a customer may not be deceived about the product he is being offered. Different batches of produce and wine may not be mixed but not because there is something intrinsically wrong with combining them rather because of the resulting intransparency of product quality.

This is supported by the norm that mixing is permitted if it definitely leads to quality improvements, if it is publicized, or if it is the local custom to do so. In these three cases, customers are not cheated, for they then either receive a better product than expected or consent to purchasing a mixture of lesser quality. Customers should thus be clear about what they are purchasing, and sellers may consequently not offer or even be given products that might cloud this clarity.

The following and final Mishnah of our fourth chapter contains three controversies between individual sages and the majority opinion regarding permissible sales practices, yet its *Seifa* (“ending”) comes to what seems to be a unanimous conclusion:

A	R. Yehudah says, “A shopkeeper may not distribute parched corn or nuts to children, because he [thereby] accustoms them to come to him.”	רבי יהודה אומר לא יחלק החנוני קליות ואגוזין לתינוקות מפני שהוא מרגילן לבא אצלו
B	And the sages permit this.	וחכמים מתירין
C	Nor may he reduce the price.	ולא יפחות את השער
D	And the sages say, “[Those who cause prices to be decreased] are remembered for the good.”	וחכ"א זכור לטוב
E	One may not sift pounded beans, according to Abba Saul.	לא יבור את הגריסין דברי אבא שאול
F	But the sages permit this. Yet they admit that one may not sift out [the refuse] from the top of the bin, for this [practice] is nothing but a deception [lit. theft] of the eye.	וחכמים מתירין ומודים שלא יבור מעל פי מגורה שאינו אלא כגונב את העין
G	Men, cattle, and utensils may not be painted.	אין מפרכסין לא את האדם ולא את הבהמה ולא את הכלים ³³⁶

The first and second *Machloket* (A-B, C-D) features R. Yehudah and the sages disagreeing over the permissibility of free give-aways as sales promotions. Whereas the former forbids shopkeepers to induce children to buy from them with little snacks, and prohibits them from decreasing their prices, i.e., offering “sales”, the latter permit both and even teach that the merchant lowering prices

does a good deed.³³⁷ Note that even when the Talmud rejects a minority view, the fact that this view is nonetheless transmitted is meant to teach something as well. In this case, the Mishnah is perhaps relating the validity of both the pro-business and pro-consumer perspective. R. Yehudah seems to tend towards the former, because his rulings limit competitive pressures and thus keep profitability higher,³³⁸ whereas those of the sages foster practices that increase consumer utility and surplus.³³⁹ The majority's encouragement of price decreases *ex negativo* reflects its critique of hoarding and profiteering as well, for these practices in effect increase prices.

The Mishnah's third *Machloket* (E-F) and concluding ruling (G) deal with the appearance of merchandise. According to Abba Saul's minority opinion, the refuse of beans may not be removed. *Rashi* explains this prohibition with the calculation that such a practice increases the price of the beans through their improved appearance by far more than the removal of the refuse is worth.³⁴⁰ Abba Saul thus seems concerned with the commutative issue of consumers paying a premium on a product for a service that is worth less than this increase. While the sages permit this premium, they forbid charging it when only the top layer in a bin of beans has its refuse removed. Luring consumers with merchandise's beautiful appearance is hence, according to the majority opinion, prohibited if only a part of the goods possess this appearance. The same principle seems to underlie the ruling in G, for painting servants, cattle, and utensils (to make them appear younger, healthier, and newer, respectively)³⁴¹ deceives potential acquirers about their actual value. Particularly interesting in the ensuing Gemarah is its concluding narrative. R. Papa b. Shmuel asks a servant whom he has just acquired to fetch him some water to drink, whereupon the servant washes his colored beard, presents the rabbi with its original whiteness, and exclaims: "Look, I am older than your father."³⁴² Respect for the elderly would hence prohibit R. Papa b. Shmuel from giving orders to this servant. All of these teachings urge coherence between the outward appearance of a product and its inner qualities.

337 The subsequent Gemarah (bBM 60b) explains that such merchants are remembered for the good because: משום דקא מרווח לתרעא ("because it widens [i.e., eases] the market"), in effect endorsing competition that keeps prices affordable.

338 Free give-aways and price wars can lead to a decrease in revenues, higher costs and hence to a decrease in profitability.

339 Free give-aways increase consumer utility, lower prices increase consumer surplus, i.e., the difference between the maximum price a consumer is willing to pay and the price he actually must pay.

340 *Rashi*, loc. cit., s.v. לא יבור את הגריסין.

341 See the ensuing Gemarah, bBM 60b.

342 Ibid.

By labeling one of the fraudulent practices it prohibits as “theft of the eye,” the Mishnah connects fraud with theft. Likewise, the talmudic concept of גניבת דעה (*Geneivat Da’at*) calls false goodwill “theft of the mind.” As Aaron Levine points out, “[goodwill] is the lubricant of harmonious human relations ... The goodwill an individual’s actions produce is, however, sometimes unwarranted because it is produced by a false impression.”³⁴³ Creating such a false impression is considered fraud because it is a form of misrepresentation that can evoke the desire to reciprocate for something that was in fact never given, thereby violating the principle of commutative justice. For instance, the Gemarah discusses the question of whether a non-Jewish butcher may be given a piece of meat from which the גיד הנשה (sciatic nerve) was not removed.³⁴⁴ One of the two reasons provided for the prohibition of this transaction is the unfounded impression of the butcher that he had been honored by having been given meat with the sciatic nerve removed.³⁴⁵ The butcher’s resulting desire to reciprocate this perceived honor would then be unjustified. As *Rashi* comments, a reciprocating gesture by the butcher receiving the meat would then be a טובה הנם (“free favor”) for the butcher who gave it to him.³⁴⁶ Obtaining such an undeserved advantage would be a case of *Geneivat Da’at*, according to the Gemarah which then continues to list various prohibitions resulting from this concept. This list includes the prohibition to repeatedly invite someone for dinner knowing that the invitation will not be accepted and to fill a partially empty wine bottle with water and give it to a mourner as the latter will assume that it was a full bottle of wine.³⁴⁷ These rulings essentially develop an ethics of impression management.

The deceit involved in *Geneivat Da’at* is criticized strongly by the Tosefta which teaches that there are seven types of thieves. The worst is the one who “steals the mind”: שבעה גנבין הן הראשון שבכולן גונב דעת הבריות.³⁴⁸ Fraud is thereby again connected to theft. The Tosefta continues by explicating what it considers to be practices that constitute mental theft; e.g., overwhelming someone with gifts knowing that the person will not accept them, falsifying measures, padding the scales, and diluting oil with vinegar.³⁴⁹

While the principle of *Geneivat Da’at* clearly prohibits deception, the Talmud features the following interesting narrative that dialectically qualifies this prohib-

343 Levine, Aaron, *Moral Issues of the Marketplace in Jewish Law*, 2005, New York, NY, p. 3.

344 The removal of this nerve is a ritual requirement of *Kashrut* laws, based on Gen. 32,25-33.

345 bChul 94a.

346 *Rashi* loc. cit., s.v. משום דגונב דעתו.

347 bChul loc. cit.

348 tBQ 7,3.

349 Ibid.

The Talmud further extends the principle of *Lifnei Iver* to include leading someone to sin. Thus, those borrowing money on interest cause their lenders to violate the prohibition of usury, and lending money without witnesses present can tempt debtors to deny having received a loan.³⁵⁴ And when Yehudah haNasi wanted to sell his white mules because of their destructive propensities, R. Pinchas b. Yair warns him that doing so constitutes a violation of *Lifnei Iver*, because the mules are likely to cause damage for which their prospective owner will be liable.³⁵⁵ Again, the underlying imperative here is to avoid doing onto others what is not in or even against their own interest.

Corruption

Because those “placing a stumbling block before the blind” induce those with lesser information to act in a manner contrary to their own self-interest, their actions constitute harmful misrepresentation and hence fraud. Yet the principle of *Lifnei Iver* also relates to this chapter’s second subject matter—corruption. As Asher Meir correctly points out, the illegality of bribery³⁵⁶ implies that engaging in it violates the prohibition of *Lifnei Iver*, since the giver of a bribe leads its recipient to corruption and vice versa, first of all by engaging in bribery itself and secondly by inducing decisions that might be harmful to the official’s employer and shareholders, thereby causing the violation of employee and fiduciary duties.³⁵⁷ One of the parties engaging in bribery needn’t be less informed (“blinder”) about its illegality than the other for it to constitute *Lifnei Iver*, as the talmudic prohibitions of handing a glass of wine to a *Nazir*,³⁵⁸ or of a father hitting a grown-up son³⁵⁹ exemplify.

Besides its versatile concept of *Lifnei Iver*, the Talmud institutes many norms and communicates a breadth of beliefs specifically targeted at corruption. Particu-

354 bBM 75b.

355 bChul 7b.

356 Even when bribery is not prohibited by law in certain countries, corporations listed on western stock exchanges are forbidden to engage in it abroad following regulations such as the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act.

357 Meir, Asher, *The Jewish Ethicist*, Jerusalem, 2005, p. 39.

358 bPes 22b: Since the Nazirite vow includes abstinence from alcohol, handing a *Nazir* a glass of wine may lead him to drink from it and hence to sin, therefore constituting *Lifnei Iver*, although the *Nazir* is of course aware of the fact that he may not drink the wine.

359 bMQ 17a: The son may be tempted to strike back, thereby committing the sin of hitting his father. The father would then be guilty of *Lifnei Iver*, even though it is safe to assume that his son knew that striking his father is forbidden.

larly, the talmudic accountability mechanisms instituted in the *Beit Hamiqdash* (Judaism's Holy Temple in Jerusalem) convey a sense of the importance assigned to the prevention of even the suspicion arising that any temple officials abuse their positions for private gain.³⁶⁰ For instance, the Mishnah teaches that treasurers withdrew coins before each of the three pilgrimages under tight controls, with funds being assigned to the respective festival in separate, specifically designated chests, and with those handling these funds not being allowed to wear anything that might conceal coins, such as cuffs on their clothing, shoes, and even *tefillin* (phylacteries).³⁶¹ The Mishnah then states that these measures are instituted out of a concern that the treasurers might become poor (whereupon people could perceive their poverty as a punishment for embezzlement) or rich (whereupon people would suspect the wealth to have been appropriated illegally from temple funds). Even the suspicion of corruption is to be avoided, according to the Mishnah, a view which it supports with two biblical verses demanding uprightness and integrity.³⁶²

A subsequent Mishnah in Tractate Sheqalim also notes that communal fiduciary duties were always assigned to at least two people, sharing responsibility and increasing control: אין פוחתין משלושה גזברין, משבעה אמרכולין. ואין עושין שררה על הציבור בממון, פחות משניים--הוץ מכן אחייה שעל חולי מעיים, ואלעזר שעל הפרכות: שאותם קיבלו הציבור עליהן.³⁶³ The two upright individuals who were permitted to fulfill their communal obligations by themselves due to their outstanding reputation are thus the exception that confirms the rule of a system of checks and balances instituted by multiple people being assigned to the same responsibility. Further examples of this extraordinary concern to avoid even the temptation or suspicion of corruption are the mechanism with which the treasury chamber was opened

360 Fonfeder, Robert/Holtzman, Mark P., et al., Internal Controls in the Talmud: the Jerusalem Temple, in: Accounting Historians Journal, Birmingham, 2003, Vol. 30, no. 1, pp. 73-94. While the approach of this paper is fruitful by connecting the issues of accounting fraud and financial corruption to talmudic traditions surrounding the *Beit Hamiqdash*, the work is unfortunately marred by inaccuracies such as citation and translation errors.

361 mSheq 3,2: בשלש קופות של שלש שלש סאין תורמין את הלשכה וכתוב עליהן אל"ף בי"ת גימ"ל רבי ישמעאל: ואומר יונת כתוב עליהן אלפ"א בית"א גמ"א אין התורם נכנס לא בפרגוד חפות ולא במנעל ולא בסנדל ולא בתפילין ולא בקמיע שמא יעני ויאמרו מעון הלשכה העני או שמא יעשיר ויאמר מתרומת הלשכה העשיר שאדם צריך לצאת ידי הבריות כדרך שהוא צריך לצאת ידי המקום שנאמר והייתם נקיים מה' ומישראל ואומר ומצא חן ושכל טוב בעיני אלהים ואדם

362 Num 32,22 (and you shall be clean before YHWH...) and Prov 3,4 (And thus you will find grace and good favor—in the eyes of God and man); וקיימתם נקיים לפני ה' ונקיים לפני אלהים ונקיים לפני אדם

363 mSheq 5,2: There are no less than three treasurers, and seven *Amaracim* [administrators]. And no authority is given over the public [i.e., community] in financial matters, to less than two [people]—except for Ben Achiyah who was responsible for the [libations] given to the ill, and Ele'azar who [was responsible] for the *Parochet* [the Temple's curtain separating the Holy of Holies from the main hall]: for they won the [confidence] of the public.

and closed, involving seals and checks from four different senior parties,³⁶⁴ and the sales process of the *Nesachim* (libation offerings) which separated the person responsible for handling the money from the person handing out the offerings, put a date on each acquired ticket to avoid fraud, and made the responsible parties personally liable for any accounting shortfalls.³⁶⁵

These stringencies of the temple operations are perhaps surprising, as one could argue that particularly holy institutions are not as prone to corruption and hence require less control. Instead, the Talmud places a higher level of control on the more holy: “piety may have compelled fiduciaries to accept stronger rather than weaker controls over their actions. The tendency may be to trust the religious person, on the presumption that a G-d-fearing person will not steal. To the contrary, the Talmud teaches that tight internal controls protect the integrity and reputation of the pious and of the institutions for which they are responsible.”³⁶⁶ This approach is already evident in the accounting of the מִשְׁכָּן (*Mishkan*, “Tabernacle”), about which both the Bible and Midrash recount how Moses as treasurer requested others to audit the accounts with him.³⁶⁷ A different or additional reason for the stringencies of the temple’s fiduciaries may be that people might be inclined to mistrust those in power, and since the Talmud teaches that suspecting an innocent person of wrongdoing leads to the punishment of a physical affliction,³⁶⁸ the intention of tight controls may also be to avoid such unfounded mistrust from arising.

Besides the temple’s fiduciaries, its suppliers attempted to avoid all suspicion of corruption by submitting themselves to stringencies as well. In order not to give the impression that they misappropriated temple property for personal consumption, the Garmu family never used the same light-colored flour at home with which they also baked the Temple Showbread (*Lechem haPanim*), for which the Talmud praises them.³⁶⁹ Similarly, the female members of the Avitnas family, who prepared the temple’s incense, would never wear any perfume again in order to avoid the suspicion they misappropriated temple property for private gain.³⁷⁰

Besides such voluntary stringencies of temple suppliers, the Talmud codifies legal obligations for charity collectors to the same effect. If they have excess coins or food but no poor recipients to distribute them to, they may not change

364 mSheq 5,3 and the ensuing Gemarah. The senior parties involved were the king, high priest, controller, and trustee.

365 mSheq 5,4.

366 Fonfeder, Robert, et al., op. cit., p. 80.

367 Ex 38,21; ExR 51,1.

368 bYo 19b.

369 ySheq 5,1 48d [Venice and Krotoshin Editions].
[Piotrkow Edition: ySheq 5,1 22a].

370 Ibid.

the coins with their own money or sell themselves the food, in order to prevent any suspicion of corruption and to maintain a reputation of integrity.³⁷¹ In a similar measure, the Talmud prohibits a *Shomer* (“guardian”) from selling foodstuff under his guard to himself when it is going foul (according to a minority opinion even from selling it at all) but should rather sell it to others, supervised by the court, in order to avoid the suspicion that he personally benefited unjustly from his position by selling to himself at an unduly low price.³⁷² The importance of mutual checks and balances as well as a separation of power to avoid all suspicion of misconduct is also reflected by the norms that charity collectors must remain together at all times while on duty and that if one of them finds money in the street he may not put it in his purse but should rather place it into the charity box (out of which he can then take it upon returning home), again in order to avoid the suspicion of charity misappropriation.³⁷³ What all of the above teachings seem to do is construct a fence around corruption.³⁷⁴ By avoiding even the possibility or suspicion of corrupt behavior from arising, misconduct itself might be circumvented more effectively than if it were to be targeted directly.

Bribery

Similar to how the temple fiduciaries, charity collectors, and bailers are forbidden to abuse their position for private gain, the Talmud prohibits judges from accepting bribes. The biblical bases for this prohibition are the following two verses: i) *לֹא-תִשָּׂא, וְשֹׁחַד, לֹא תִקַּח: כִּי הַשֹּׁחַד יְעוֹר פְּקֻחִים, וְיִסְלֹף דְּבָרֵי צְדִיקִים* and ii) *לֹא-תִשָּׂא, לֹא תִפְיֹר פְּנִים; וְלֹא-תִקַּח שֹׁחַד--כִּי הַשֹּׁחַד יְעוֹר עֵינֵי הַקְּמִים, וְיִסְלֹף דְּבָרֵי צְדִיקִים*.³⁷⁶ Despite its terse form, the Gemarah deals with the issue of bribery at length, particularly in Tractate Ketubot.

371 bPes 13a.

372 bBM 38a.

373 bBB 8b.

374 Cf. the opening Mishnah in Tractate Avot, which urges the establishment of a fence around the Torah. This is one legitimation of rabbinic law, which is thereby perceived as a fence protecting the biblical commandments.

375 Ex 23:8: And a bribe, you shall not take; because a bribe blinds the seeing and perverts the words of the righteous.

376 Dtn 16:19: Do not pervert judgment, and do not recognize faces; and do not take a bribe because the bribe blinds the eyes of the wise and perverts the words of the righteous.

Note the similarity between the call for an impartial verdict (do not recognize faces) and the ideal of “blind” justice, as symbolized by the blindfolded *Justitia*.

A stark homiletic warning of bribery is taught in the following *Sugya* citing the above two biblical verses:

A	Said R. Abbahu, “Come and see how blind are the eyes of those who accept a bribe.	אמר רבי אבהו בא וראה כמה סמויות עיניהן של מקבלי שוחד
B	A man who has an eye disease gives money to a doctor, and it is uncertain whether he will or will not be cured.	אדם חש בעיניו נותן ממון לרופא ספק מתרפא ספק אינו מתרפא
C	Yet they [those accepting bribes] take the equivalence of a <i>Perutah</i> [the coin with the least value] and blind their eyes [therewith], as it is said: ‘Because a bribe blinds the seeing.’ ³⁷⁷	והן נוטלין שוה פרוטה ומסמין עיניהן שנאמר כי השוחד יעור פקחים
D	The rabbis taught [in a Baraita], “For a bribe blinds the eyes of the wise.” ³⁷⁸ All the more so those of the foolish.	תנו רבנן כי השוחד יעור עיני חכמים קל וחומר לטפשי
E	“And perverts the words of the righteous.” ³⁷⁹ How much more so are those of the wicked.	ויסלף דברי צדיקים קל וחומר לרשעים
F	But are fools and the wicked capable of acting as judges [lit. sons of law]?	טפשים ורשעים בני דינא נינהו מידי
G	Rather, this is what is meant [by] “For a bribe blinds the eyes of the wise.”	אלא הכי קאמר כי השוחד יעור עיני חכמים
H	Even a great sage who accepts a bribe will not pass from the earth without a dullness of heart.	אפילו חכם גדול ולוקח שוחד אינו נפטר מן העולם בלא סמיות הלב
I	“And perverts the words of the righteous.” ³⁸⁰	ויסלף דברי צדיקים
J	Even a completely righteous person who takes bribes will not pass from the world without a confusion of mind. ³⁸¹	אפילו צדיק גמור ולוקח שוחד אינו נפטר מן העולם בלא טירוף דעת

377 Ex 23,8.

378 Dtn 16,19.

379 Ex 23,8; Dtn 16,19.

380 Ibid.

381 bKet 105a-b. Cf. mPea 8,9.

This *Sugya* is a stark warning that even the most righteous and wisest of people will be negatively influenced by accepting bribes (D-J) and that this influence is certain to occur (A-C). Both perception (G) and speech (I) are thereby marred by bribery which in turn, according to the Baraita, leads to emotional (H) and intellectual (J) deterioration.

Prior to this passage, the Gemarah teaches that when Karna acted as a judge, he received payment from both litigants before informing them of his judgment.³⁸² This practice is then questioned in light of the biblical prohibition against accepting bribes. The answer that the verse in Exodus only prohibits receiving a gift from one of the litigants since this might pervert judgment in his favor is rejected by the Gemarah on the basis of the argument that since the deuteronomical prohibition of bribery already forbids rendering an unjust verdict, the prohibition in Exodus applies even to cases where a just verdict will be rendered for a bribe (מה ת"ל אם) ללמד שלא לזכות את החייב ושלא לחייב את הזכאי הרי כבר נאמר לא תטה משפט אלא אפי' לזכות תקה (את הזכאי ולחייב את החייב אמרה תורה ושוחד לא תקה).³⁸³ The fascinating reasoning declares bribery to be intrinsically rather than just instrumentally wrong through its obstruction of justice.

An alternative justification offered for Karna's practice of being paid for rendering a verdict is that he in fact did not receive a bribe from one of the litigants, but rather a fee for his judicial services from both.³⁸⁴ This *Terutz* is confronted with a further *kashya*, based on a tradition that renders legal decisions from someone who takes a fee for acting as a judge null and void.³⁸⁵ The Gemarah suggests that this tradition applies only to fees for pronouncing judgment, whereas Karna accepted payment only under three conditions: i) to compensate for the opportunity cost of not working in order to act as a judge, ii) both litigants paid an equal fee, and iii) the payment was made before judgment was rendered. The forsaken income in the case of Karna was the fee which he would have been paid for providing smelling tests at a wine store. Similarly, when a lawsuit was brought before R. Huna, he told the litigants to provide a laborer for his agricultural work during his adjudication.³⁸⁶ While a fee may therefore be charged by a judge as compensation for his loss of income or productivity, behavior specifically intended to

382 bKet 105a.

383 Ibid.

384 Ibid.

385 bQid 58b; bBekho 29a.

386 bKet, loc. cit.

increase fees for the judicial process is criticized by the Gemarah based on the case of the sons of Samuel the Prophet who accepted bribes and attempted to increase payment for their judicial staff.³⁸⁷

On the next folio, Rava offers a beautiful interpretation of why it is forbidden to take a bribe even to render a just verdict: כיון דקביל ליה שוחדא מיניה איקרברא ליה דעתיה לגביה והוי כגופיה ואין אדם רואה חובה לעצמו מאי שוחד שהוא חד.³⁸⁸ A bribe thereby predisposes the judge towards his donor. The recipient of a bribe identifies with the one who bribed him. Consequently, bribery might make a trial obsolete due to the resulting bias, since it is through an objective judicial process that a just verdict can be rendered.

Three striking narratives describe the efficacy of bribes in practice. Rabban Gamliel II and his sister Imma Shalom wanted to test a judge who had a reputation for not accepting bribes by giving him gifts and asking him to rule on an inheritance case. After Imma Shalom had given the judge a candlestick, he ruled the case in her favor, based on a certain verse. But when Rabban Gamliel gave him a Lybian donkey as a gift, he rendered the verdict in his favor, based on a different verse. Thereupon Imma Shalom reminded him of her gift by exclaiming, “Let your light shine forth like a lamp,” whereupon her brother reminded the judge of his own gift: “A donkey came and knocked the lamp over!”³⁸⁹ The power of bribery is also described by a story of R. Yochanan, who when informed that the Persians had come to Babylon fell to the ground in despair, but when he was thereupon told that they accept bribes, he recovered and sat down again.³⁹⁰ Particularly interesting about this latter narrative is that one of the greatest talmudic sages is assuaged by the efficacy of bribery. This could indicate that the Talmud may not consider “greasing palms” intrinsically wrong in certain extra-judicial contexts.

Perhaps the best portrayal of a bribe’s psychological impact is a story of R. Ishma’el b. Yossi, whose tenant brought him a basket of fruit every Friday. On one occasion, the tenant wanted to bring the basket on a Thursday because he had a lawsuit on Friday, but R. Ishma’el did not accept the gift and simultaneously disqualified himself from acting as his tenant’s judge, asking other Rabbis to adjudicate the case instead. During the court proceedings, R. Ishma’el caught himself thinking of how his tenant could plead in order to win the case, where-

387 bShab 56a; based on I Sam 8,3.

388 bKet 105b: Since when he accepts a bribe from him his mind is drawn close to him and he becomes like him, and man does not see himself in the wrong—what does *Shokhad* (“bribe”) mean? *She-hu khad* (“that they are one”).

389 bShab 116a-b.

390 bYev 63b.

upon he exclaimed to himself: תיפה נפשם של מקבלי שוחד ומה אני שלא נטלתי ואם נטלתי. ³⁹¹ Just having been offered on a different day what he would have received anyway already created a bias in R. Ishma'el.

Such biases and the resulting lack of a judge's impartiality are homiletically warned of throughout the *Sugya* on bribery in *Ketubot*. R. Dimi relates that R. Nachman haKohen expounded a proverbial verse (מֶלֶךְ--בְּמִשְׁפָּט, יַעֲמִיד אֲרָץ; וְאִישׁ) ³⁹² to mean that a judge who is autonomous like a king establishes the land, whereas if he acts like a priest out to collect his dues, he overthrows it. ³⁹³ This call for independence of those rendering judgment is reinforced by Rabbah b. Shilah, who teaches that any judge in the habit of borrowing items from others while not lending himself is unfit to pronounce judgment. ³⁹⁴ A similar demand of impartiality is pronounced by Rav Papa: לא לידון איניש דינא למאן; דרחים ליה ולא למאן דסני ליה דרחים ליה לא חזי ליה חובה דסני ליה לא חזי ליה זכותא. ³⁹⁵

The talmudic sages had such a strong desire to ensure this impartiality when adjudicating that they disqualified themselves from acting as a judge even after receiving a "verbal bribe" (שוחד דברים). ³⁹⁶ The Gemarah argues that since Ex 23,8 prohibits not just the taking of monetary bribes, but gifts in general, those of words are also forbidden as they incline a judge towards favoritism. To portray the concept of verbal bribery, the case of Shmuel (Samuel b. Abba) crossing a river on a ferry is presented. When a man comes and offers his hand to help him disembark, Shmuel asks him what his business is (מאי עבידיך), to which the man responds that he has a lawsuit in town, whereupon Shmuel disqualifies himself from acting as a judge for him (פסילנא לך לדינא). ³⁹⁷ Bribery thereby needn't involve any financial gifts but can, according to the Talmud, be constituted by the provision of any favor. Consequently, Amemar II disqualified himself from acting as a judge for a man who removed a bird that had landed on his head and Mar Ukba did the same when the saliva he had spit out was covered by a man. ³⁹⁸

391 bKet 105b: Damned are the souls of those who accept bribes! What if I who hasn't taken it, and even if I had taken it, it would have been what was mine anyway, am like this, how much more so for those who accept bribes!

392 Prov 29,4: The king with justice upholds the land; but a man of tithes overthrows it.

393 bKet 105b.

394 Ibid.

395 bKet 105a: A man is not to judge those for whom he has mercy or those whom he hates, for towards those he feels mercy towards he sees no guilt, and towards those he hates he sees no merit.

396 The Talmud extends a series of other concepts to verbal acts as well, such as in the case of *Ona'at Devarim* (*Ona'at Devarim*, "verbal fraud/wronging" related to the concept of *Ona'ah* discussed above) and רבית דברים ("verbal interest").

397 bKet 105b.

398 Ibid.

Also, Abba Arikha declined to act as judge in the trial of an inn-keeper with whom he regularly lodged,³⁹⁹ and judges were to recuse themselves from adjudicating cases if they were from a town in which one of the litigants had made charitable donations to the poor.⁴⁰⁰ Even the impression of favoritism should be avoided, as taught by Rav, who disqualified himself as a judge for a litigant who thought Rav would recognize him, even though he did not, and by R. Kahana, who warned the same litigant of creating an impression that he is being favored.⁴⁰¹

The talmudic concern with a judge's impartiality most likely has its biblical basis in the obligation of Dtn 16,19 to render an impersonal judgment (לֹא תִכִּיר פָּנִים). The practical application of this aspiration is described in a story of R. Nachman, who accepted a case referred to him by R. Annan after the latter had disqualified himself from judging a man who had brought him a gift. R. Nachman assumed that the litigant was a relative of R. Annan's and therefore showed him great honor in court. When the other litigant noticed this great honor, he was speechless and could hence no longer plead his case.⁴⁰² Impartiality thereby ensures or at least promotes a fair trial. These ideals of refusing bribes and thereby avoiding favoritism can already be found in a biblical homiletic verse invoking *imitatio dei*: --יְהוָה אֱלֹהֵינוּ-- כִּי הוּא אֱלֹהֵי הָאֱלֹהִים, וְאֵדְנֵי הָאֲדֹנָיִם: הָאֵל הַגָּדֹל הַגִּבּוֹר, וְהַנּוֹרָא, אֲשֶׁר לֹא-יִשָּׂא פָּנִים, וְלֹא יִקַּח שֹׁחַד.⁴⁰³ Nonetheless, the only *halakhic* prohibitions regarding bribery are those forbidding judges from *taking* a bribe. Official positions besides those in the judiciary are not mentioned explicitly, neither is a direct prohibition to *give* a bribe codified, although this might be forbidden indirectly through the maxims of *Lifnei Iver* and *Dina deMalkhuta Dina* (*Dina deMalkhuta Dina*, "the law of the land is binding law").⁴⁰⁴

Overall, the central point of the traditions regarding *Shochad* is that receiving gifts influences judgment. This message is also strikingly conveyed in a story featuring the dream-interpreter Bar Chedaya, who gives horrendous predictions when he isn't paid for his services and promises many blessings when he is.⁴⁰⁵ Furthermore, the Talmud also institutes a number of enactments to avoid official positions being instrumentalized for private gain, even where no gifts or favors

399 bSan 7b.

400 bBB 43a.

401 bSan 7b-8a.

402 bKet 106a; cf. bShevu 30b and *Rashi's* comment to Dtn 16,19.

403 Dtn 10,17: For YHWH is your God, He is the God of gods, the Master of masters. The God that is great and mighty, and awesome, Who does not recognize faces [i.e., Who is impartial and objective], and does not accept bribes.

404 See pp. 175-180 for a discussion of this latter maxim. These two principles prohibit bribery if a country's laws prohibit it or if a bribe could lead its recipient to violate some of his duties, such as those towards his employer.

405 bBer 56a.

exchange hands. The central mechanism to achieve this aim is preventing conflicts of interest *a priori*. In particular, the Talmud teaches a number of instances in which parties considered to be נוגע בדבר (*Nogea' beDavar*, lit. “touching the matter,” i.e., concerned parties) are preemptively excluded from a decision-making process.⁴⁰⁶ For instance, neither the king nor the high priest were allowed to join the court that determines the calendar’s intercalations, because a leap-year affected the former’s cost of maintaining his army, and because the insertion of a further month would cause the latter discomfort when performing the following year’s *Yom Kippur*-ritual in a colder climate.⁴⁰⁷ Also, an examiner of firstborn cattle may only be paid once for each particular animal to determine whether its blemishes are permanent or temporary—because otherwise he might be suspected of declaring blemishes to be temporary in order to extract further fees for future examinations.⁴⁰⁸

The talmudic perspective on both fraud and corruption might be analogously encapsulated by the ordinance of Rabban Gamliel II, who as *Rosh Yeshivah* in Yavne decreed: כל תלמיד שאין תוכו כברו לא יכנס לבית המדרש.⁴⁰⁹ This same demand for congruence between appearance and reality underlies all talmudic principles relating to fraud and corruption. Whether discussing verbal agreements, price fraud, profiteering, sales and marketing, misrepresentation and deceit, bribery, or conflicts of interest, the Talmud demands honesty, transparency, and integrity. However, Rabban Gamliel worried that his ordinance might have been too harsh when hundreds of additional students came to study after it was repealed by his successor. Likewise, the Talmud provides a certain amount of leeway for renegeing on agreements, extracting a profit, self-deception, and gift-giving when the alternative might cause more harm than good. In its typical dialectic manner, the talmudic perspective on fraud and corruption thus simultaneously defines and qualifies its high standards of honesty and integrity.

3.1.3. *Implications for Managing Corporate Fraud and Corruption Risk*

The economy provides fertile ground for fraud and corruption, and it is therefore no surprise that the talmudic sages instituted a number of important concepts that aim to promote marketing honesty and occupational integrity. This section will

406 Fogel, Joshua/Friedman, Hershey H., Conflict of Interest and the Talmud, in: *Journal of Business Ethics*, vol. 78, no. 1-2, 2008, pp. 237-246.

407 bSan 18b.

408 bBekho 29a.

409 bBer 28a: Every student who does not have an inside like his outside may not enter into the house of study.

now extract management implications from the following key concepts analyzed above: i) price fraud (אונאה) and profiteering (הפקעת שערית); ii) deception of the eye (גניבת עין); iii) deception of the mind (גניבת דעת); iv) exploitation of information asymmetries (לפני עיור); and v) abuse of public responsibility for personal gain. The following practical extraction of implications is supported by the direct applicability of these five concepts to corporate practice where the battle against them must be fought daily as well as by their relevance to contemporary management which must continuously and decisively deal with the timeless temptations and risks of fraud and corruption.

Regarding i) According to talmudic *Halakhah*, a price differential of one-sixth versus a good's "true value" is considered price fraud.⁴¹⁰ Consequently, the general principle is that a producer or consumer surplus of nearly seventeen percent is justified. However, it becomes evident from the differing opinion of R. Tarfon that this one-sixth -level is fluid, and one should hence avoid applying it categorically to contemporary circumstances. Nonetheless, let us assume that there is a level up to which profit margins are legitimate and that this level is seventeen percent. A sale is valid below the one-sixth level, and the overcharged or underpaid party has no legitimate claims of restitution; the sale is valid at the one-sixth level, but the differential must be refunded when claimed within a certain time-frame; and the sale is void above the one-sixth level.⁴¹¹ Given that only very few industries can hope for an operating profit margin of or above seventeen percent, the current profitability levels of corporations in general seem justified from a talmudic perspective.⁴¹² This is an important finding, especially in context of the increasing criticism towards corporate profits since the recent global financial crisis and the ensuing "Great Recession."⁴¹³

410 It is a *Machloket* between Rav and Shmuel whether the price differential is calculated only relative to the exchanged item's value, or relative to the value of the transaction as well (bBM 49a-b).

411 bBM 50b.

412 Of the 47 largest industries, only oil/gas extraction, insurance, beverage manufacturing, and publishing achieved a net profit above 17% in 2009. The unweighted average net profit margin was 8.86%. (Analysis based on <http://research.financial-projections.com/IndustryStats-Net Profit, April 1, 2011>). Because *Ona'ah* is calculated based on market prices, it seems methodologically valid to apply this concept to operating profit, given that this metric measures the financial surplus a business generates over and above the market prices of its inputs.

413 Although the main sources of this critique, e.g., leftist intellectuals and anti-globalization activists, are unlikely to be assuaged by talmudic teachings (in many cases the contrary is probably more likely to be true), managers and legislators might benefit from an additional perspective that legitimizes their organization's profit-motive and -levels. Conversely, corporations with operating profit levels above 17% might want to consider granting a larger surplus to their customers, increasing their wage levels, etc. And even organizations that as a whole remain within the legitimate pricing boundaries of the Talmud ought to assess profit margins of individual products and services to determine whether "pockets" of *Ona'ah* might exist therein.

The two fundamental principles of just pricing according to the Talmud are commutative justice and consent: first of all, the parties involved in a transaction must receive a fair deal, based on given market prices and true value. Secondly, if the deal deviates from market prices by one-sixth or above, the transaction parties must be aware of this deviation and consent to it. Based on this second principle, the Talmud institutes numerous exceptions to price fraud, as discussed above. A central implication of these exemptions might be that by increasing the transparency of their corporation's commercial transactions, managers can extract an additional surplus over and above otherwise permissible margins. For instance, the fashion company Van Laack publicized the cost structure of its shirts, aiming to justify their relatively high price with the greater value of their materials rather than with a mere branding premium. This might be a case of trading faithfully and hence being exempted from the stringencies of *Ona'ah*, thereby enabling the legitimate charging of higher prices.⁴¹⁴ Furthermore, because corporate managers are generally agents of shareholders, transactions in which a corporation is underpaid might be legitimately revoked, an exception that does not apply when only principals do business with each other.⁴¹⁵

The flipside of the Talmud's exceptions to price fraud are its stringencies. For necessities such as flours and fruits, but also for any item the purchase of which is compulsory,⁴¹⁶ not just overcharging is forbidden but any action aimed at increasing prices is harshly condemned while conversely initiatives inducing price decreases are praised. The 2000 California electricity crisis in which traders at Enron and other power companies created an artificial shortage that pushed up energy prices exponentially after governmental price caps had been removed⁴¹⁷ is a prime case of the market behavior criticized by the talmudic sages. Particularly when it comes to basic goods that are demanded on a large scale, suppliers should ensure they keep market prices affordable, rather than exasperating them. In order to assess whether his corporation is affected by these stringencies, a manager might determine whether any of his corporation's businesses sell essential or compulsory items. In case they do, a strategy to comply with the Talmud might be

414 Based on bBM 51a, an exception to *Ona'ah* codified by Maimonides as follows: הנושא והנותן באמונה אין לו עליו אוניה כיצד הפין זה בכך וכך לקחתיו כך וכך אני משתכר בו אין לו עליו הוניה (Mishneh Torah, Sefer Kinyan, Hilkhot Mekhira, 13,5).

415 Mishneh Torah, loc. cit., 13,9, based on bBM 108a and bQid 42b.

416 As taught by the Talmud regarding items needed for ritual observances.

417 Egan, Timothy, Tapes Show Enron Arranged Plant Shutdown, in: The New York Times, February 4th 2005, <http://www.nytimes.com/2005/02/04/national/04energy.html?ex=1107666000&en=01449ebf62df572e&ei=5070>; Tapes: Enron Plotted to Shut Down Power Plant, February 3rd 2005, in: CNN, http://articles.cnn.com/2005-02-03/us/enron.tapes_1_grandma-millie-bankrupt-energy-trader-enron-employee?s=PM:US.

differential pricing: a dairy company could offer its staple products below average market prices, whereas it charges a premium for an enhanced version of the same goods. For instance, the Israeli dairy corporation Tnuva used to sell a basic version of many products (e.g., milk, cottage cheese) at a price fixed by the government, while offering varieties of the product (e.g., milk with added vitamins, cottage cheese with olives) for a significantly higher price.⁴¹⁸ The fundamental principle here is that basic necessities should remain affordable for the wider public.

Regarding ii) While one mishnaic opinion forbids providing sales incentives, the majority view is that providing rewards or decreasing prices to attract customers is not just permissible but also praiseworthy. As the ubiquitous sales seasons and incentive programs show, the key implication of this talmudic teaching is already common corporate practice. However, driving sales must not be allowed to come at the cost of honesty. Consequently, the Talmud forbids deceptive marketing practices that misrepresent product quality. The fundamental talmudic principle of marketing honesty might therefore be that while customers can and should be induced towards buying a product with ancillary benefits, the product itself may not be altered in a deceptive manner. In practice, this might imply that a menswear retailer, for instance, may offer “two-for-one” sales and hand out free cufflinks for its customers while being prohibited from selling a suit as Italian when it is in fact made in Indonesia. The concept of visual theft can also be applied to marketing honesty in branding, demanding that an image communicated in advertising correspond to the actual benefits of a product or service.⁴¹⁹

Regarding iii) Just as the Talmud conceptualizes dishonest marketing practices as visual theft,⁴²⁰ it views the creation of false goodwill through intentional misrepresentation as mental theft.⁴²¹ Therefore, actions of party A that invoke an unfounded desire to reciprocate in party B are condemned, because the resulting benefit is a stolen advantage for A.⁴²² Impressions must hence be managed ethically. In practice, this might imply that when an employer is legally obligated to provide certain employment benefits, he may not portray these to his staff as

418 The deregulation of the second Netanyahu government has since abolished many of these price caps, a measure which has sent the prices of basic goods such as cottage cheese soaring. The resulting public outrage and social protest/boycott movement in Israel shows what a highly sensitive management responsibility pricing is, particularly regarding essential, compulsory items such as dairy products and housing.

419 See chapter 8 on marketing and branding honesty.

420 גניבת עין literally means “theft of the eye.”

421 גניבת דעת literally means “theft of the mind.”

422 Note that the Talmud therefore implicitly encourages reciprocity, in effect demanding that favors and other benefits be returned. For an exposition of the principle of reciprocity in the Talmud, see pp. 323-326.

voluntary gestures, thereby creating a false sense of gratitude and endearment. However, the Talmud does not require a wrong impression to be prevented or rectified when the resulting goodwill is based on unreasonable assumptions. For instance, when charging business meals to a corporate expense account is common practice, a manager need not necessarily intervene when his client showers him with gratitude after assuming he has been invited to dinner on expense of the manager's personal budget.

Regarding iv) The talmudic prohibitions of misleading others based on the biblical injunction of *Lifnei Iver* are most relevant in a corporate setting for situations that involve information asymmetries. Because in most cases a manager possesses privileged knowledge and information relative to his customers, employees, suppliers, etc., he can lead them to act in a manner conducive to his corporation's interests but potentially harmful to their own. The Talmud forbids exploiting such asymmetrical relationships when doing so is not in the best interest of the party led to action. For instance, a bank selling unsuitable mortgages or investment products to uninformed customers can be perceived as causing "the blind to stumble."⁴²³ On the other hand, when institutional investors such as pension funds invest in loss-making products, the bank that advised them is most likely not liable according to the Talmud, given that the transacting parties are on a more equal informational footing.⁴²⁴ In fact, these two perspectives were at play when the Securities and Exchange Commission (SEC) indicted Goldman Sachs in 2010 for the sale of a specific collateralized debt obligation (CDO). The SEC argued that the financial services firm misled and defrauded this CDO's investors by not disclosing that it had short-sold the very same product that it had advised them to buy,⁴²⁵ whereas Goldman defended itself by stating that its "very sophisticated investors" had sufficient information about the risks involved in the CDO it had sold them.⁴²⁶ Regardless of who was right in this case, both seem to support the talmudic principle that leading those with inferior information to harm is unethical. This principle can of course also be applied to the investor-manager relationship, demanding that management which has more accurate knowledge of what happens within a corporation than the shareholders counter this information asymmetry with transparency, communication, and honesty.⁴²⁷

423 To borrow the biblical wording of Lev 19,14.

424 Assuming that the advising bank provided full disclosure of investment risks.

425 SEC, SEC Charges Goldman Sachs with Fraud in Structuring and Marketing of CDO Tied to Subprime Mortgages, 2010, <http://www.sec.gov/news/press/2010/2010-59.htm>.

426 The Goldman Defense Documents, <http://ftalphaville.ft.com/blog/2010/04/19/206316/the-goldman-defence-documents/>.

427 Cf. chapter 4.1 on investor relations and communications.

Regarding v) The Talmud warns those in official positions from abusing their office for private gain and even requires them to avoid all suspicion that they might be doing so. Whether temple fiduciaries or suppliers, judges or kings, they are all subject to additional stringencies in order to avoid a corruption of or bias in their decision-making. Given the economic size and social impact of corporations, and consequently the scope of managerial decisions, it seems warranted to deduce implications from the stringencies of public positions in the Talmud to contemporary corporate managers.⁴²⁸ Similar to the temple, a corporation would thereby be required to institute strict internal controls and accountability mechanisms. For example, instead of centralizing responsibility in the position of the CEO and trusting him to “do the right thing,” far-reaching and fundamental decisions should be reached after problem-solving sessions with the management board, to then be validated by the board of directors. According to the Talmud, hierarchical superiority does not legitimize blind trust—even Moses asked his accounting in the Tabernacle to be audited. Likewise, in order to avoid all suspicion of corruption, corporate officers might learn from the Avitnas and Garmu families, two temple suppliers who abstained from using their products for private use. For instance, a manager might avoid assigning corporate resources to support his son with a presentation for school and invest his own time, money, and effort to help. Also, just as the Talmud forbids a bailer from selling a bailment to himself, a manager can refrain from selling corporate assets to family members or friends to avoid the suspicion that he did so at an unduly low price. But the most effective talmudic strategy to deal with conflicts of interests is to avoid them *a priori*. Managers should thereby extract themselves from making decisions in cases where personal interests might overshadow and outweigh those of the corporation.

The stringencies which talmudic rabbis submitted to by absolving themselves from acting as a judge for a litigant who offered them anything remotely resembling a favor might also contain lessons for corporate managers. First of all, not just actual bribes but any type of benefit received from a party clouds judgment and may therefore lead to biased decisions in favor of that party. As an executive, a central function of management is decision-making, and it is hence of the utmost importance that this function is fulfilled in the best interest of the corporation rather than that of the manager (when a dichotomy exists between the two). As a result, in order to counter any bias in their decision-making, managers should avoid or at least be aware of receiving any benefits from interested parties. For instance, if a manager must fire one of two subordinates, the membership to a golf club from the

428 In fact, most corporations are called “public companies” by being listed on the stock exchange, which in a certain sense makes their managers public officials.

less capable one should not influence his judgment. Naturally, corporate contracts are to be awarded to the most efficient and effective proposals, and not to those whose main advantage is the promise of some personal benefit to the decision-maker in the procurement process. Also, the biblical and talmudic injunction of rendering an impartial verdict might imply for managers that they avoid favoritism and treat all employees equally based on merit rather than on personal likes and dislikes.

Dialectically, the talmudic warnings against *taking* bribes teach the effectiveness of *giving* them. This power was exemplified in practice by the case of Anil Kumar, a former McKinsey Director who accepted payments from the hedge fund manager Raj Rajaratnam to provide him with market information. Once he had received the money, he began to share confidential information with Rajaratnam, thereby violating his confidentiality agreement with his clients and McKinsey to support illegal insider trading, because “I felt I owed him something given how much he paid me.”⁴²⁹ This statement shows how gifts can influence judgment, even of the wealthy and accomplished and at the risk of jail-time, job loss, and public disgrace. As R. Ishma’el b. Yossi’s above insights and narratives teach, bribing a person is a prime means towards receiving something in return, even if it is not in the latter’s own self-interest. While the Talmud prohibits bribery when it is illegal in a specific country,⁴³⁰ there are no specific injunctions against giving bribes.⁴³¹ An obvious implication for managers is the potency of giving others incentives to influence attitudes and induce desired behavior. As a result, corporations could leverage the power of reciprocity by asking their managers to actively seek ways in which they can bestow unexpected (legal) gifts and favors on their stakeholders.

In conclusion, the talmudic perspective on fraud and corruption urges managers to be indivisible on a number of dimensions. A separation between the price of an item and its actual cost is a legitimate means of profit generation as long as this separation remains within commutative limits. Likewise, the divergence between what a product or service really offers and what its marketing promises may not be excessive, neither may that between impression and reality. What a transaction party expects from a deal should be indivisible from what he is actually receiving. Furthermore, a separation in information privileges may not be exploited at the un-

429 Anil Kumar, in his statement as a government witness in the insider trading case against the Galleon hedge fund, <http://www.businessinsider.com/anil-kumar-on-the-witness-stand-raj-made-me-use-my-sick-childs-housekeeper-to-hide-the-money-he-made-me-take-2011-3>.

430 Due to the principle of *Dina deMalkhuta Dina*, and potentially *Lifnei Iver* as well, if a bribe leads its recipient to make decisions harmful to his employer or shareholders.

431 The story of R. Yochanan on bYev 63b mentioned in the previous section shows that giving bribes was not unheard of for talmudic sages. *Lifnei Iver* also only indirectly prohibits giving bribes when it is illegal or leads others to neglect their obligations.

duly expense of others, but their interests should rather be perceived as indivisible from one's own. Refraining from putting personal interests ahead of the corporation, and thus dividing the two from each other, demands high standards of integrity when dealing with gifts and courtesies that can function as bribes. Conversely, offering such gifts and courtesies to others is an effective means of becoming united with them, which may not, however, be leveraged at the cost of separation from the law and ethics of the land. Due to the cross-functional relevance of the talmudic concepts relating to fraud and corruption,⁴³² a corporation can only adhere to them when its entire organization becomes indivisible from high standards of integrity and honesty.

3.2 Issue 4: Whistle-Blowing

3.2.1. *Dissenting to Causes of Harm and Preventing Harm Caused by Dissent*

Similar to a sports referee blowing his whistle after a foul, a corporate whistle-blower intervenes when observing something he considers to be misconduct. Both referees and corporate whistle-blowers fulfill an invaluable function, in theory at least, by enabling fair play in sports and business, respectively. Yet the ethical complexity of corporate whistle-blowing lies where the sports analogy breaks down: unlike a referee, a whistle-blower is not an impartial observer responsible for the game as a whole, but in most cases a member of an organization and team whose success he is obligated to contribute to. In this role, the whistle-blower's actions can result in the corporate parallel to an own goal by disrupting and potentially damaging the side he is supposed to be playing for.

The fundamental whistle-blowing dilemma results from the desire to prevent, stop, or punish misconduct on the one hand and the fear of causing harm by doing so. This fear is not unfounded, because the disclosure of misconduct might not only cause potentially severe negative consequences for the individuals perpetrating it but can also harm both the whistle-blower himself and the organization he is blowing the whistle on. The revelations of Julian Assange, Edward Snowden, and Chelsea (formerly Bradley) Manning are cases in point. In the corporate realm, Matthew Lee, an accounting executive at Lehman Brothers, raised concerns of unethical accounting at the financial services firm almost half a year before its collapse and

432 For instance, the concepts of *Ona'ah*, *Lifnei Iver*, and *Geneivat Da'at* are applicable to corporate strategy, operations, finance, marketing, human resources, and other corporate functions.

subsequently lost his job.⁴³³ And the mere prospect that the hard-disk of a banking executive obtained by the whistle-blowing website WikiLeaks might contain incriminating information about Bank of America led to a three percent drop in the financial institution's share price.⁴³⁴ The personal and corporate costs of whistle-blowing are also exemplified by the case of the night guard Christoph Meili, who exposed the destruction of documents relating to orphaned assets of Jewish customers at the Union Bank of Switzerland (UBS). His pursuit of justice led to a judicial investigation against him for violating Swiss banking secrecy laws, forced him to seek political asylum in the USA upon receiving death threats, led to a reputational disaster for UBS, and a court settlement costing the bank 1.25 bn USD.⁴³⁵

These cases also show that irrespective of whether a whistle-blower raises his concerns within the corporation or makes them public by informing the media or authorities, the dialectic of his position is that he is likely to cause damage by doing the right thing and by pursuing a good cause. On a personal level, becoming a whistle-blower may lead to job loss, intimidation, depression, and many other painful consequences.⁴³⁶ The ethical dilemma resulting from this causality is whether a witness of wrongdoing is obligated to protest against it, even if in doing so he might harm himself. On the corporate level, the dilemma results from the question whether the potential damage inflicted on a business and its members when executive officers or employees protest misconduct violates the whistle-blowers' organizational obligations.⁴³⁷ The questions we hence pose to the Talmud are: does a witness of corporate misconduct have an obligation to dissent? If so, how is this obligation to be fulfilled? And at what cost?

433 Corkery, Michael, *Lehman Whistle-Blower's Fate: Fired*, in: *The Wall Street Journal*, New York, NY, March 15th 2010, http://online.wsj.com/article/SB10001424052748704588404575124134271085018.html?mod=WSJ_hps_MIDDLESecondNews. For the letter in which Lee raised his concerns to Lehman's senior management, see: <http://dealbook.nytimes.com/2010/03/19/the-letter-by-lehman-whistle-blower-matthew-lee/>.

434 Schwartz, Nelson D., *Facing Threat from WikiLeaks, Bank Plays Defense*, in: *The New York Times*, New York, NY, January 2nd 2011, <http://www.nytimes.com/2011/01/03/business/03wikileaks-bank.html>. Share price development information from Google Finance.

435 Eizenstat, Stuart, *Imperfect Justice*, New York, NY, 2003, p. 94ff.

436 The public celebration of whistle-blowers as heroes or their subsequent careers as authors and corporate speakers, such as in the case of the Enron, WorldCom, and FBI whistle-blowers named "Time Person of the Year" in 2002, reflect the respect evoked by those who are willing to sacrifice their own well-being to protest against misconduct.

437 This fundamental dilemma has been studied in the business ethics literature for decades, see for instance Vinten, Gerald, *Whistle-blowing: Subversion or Corporate Citizenship?* London, 1994; *Whistle-blowing: Corporate Help or Hindrance?*, in: *Management Decision*, 1993; Kurz, H.I./Westin, A.F., *Whistle Blowing: Loyalty and Dissent in the Corporation*, New York, NY, 1981. While in theory anyone with privileged information can become a whistle-blower, the vast majority of cases involve organizational insiders who hence have obligations towards the company in question.

From the ensuing discussion in the Gemarah, it appears as if “כל מי שאפשר” (“everyone who is able to protest”) refers to those in positions of authority and hence with the power to stop misconduct.⁴⁴¹ Punishment is brought upon elders because they did not forbid the princes, a judge, and his superiors who are responsible for heeding the tears of those coming before them, and the מדת הדין (“Attribute of Justice”) argues with God that the righteous of Jerusalem be punished because despite their power, they did not protest the sins of the wicked.⁴⁴² As in the parallel to the seizure of a pledge, these sources suggest that those who fail to make use of their ability to protest become co-responsible and hence liable for the wrongdoing they witness. This implies that preventing or ending misconduct if one has the authority to do so is an obligation.

The Obligation to Rebuke

Does the Talmud hence reserve an obligation to dissent for people in a higher hierarchical position than those they ought to protest against? A *Sugya* dealing with the norms of תוכחה (*Tokhachah*, rebuke) seems to indicate otherwise with the following verse: לֹא-תִשְׁנֵא אֶת-אֶחִיךָ, בְּלִבְבְּךָ; הוֹכַחְתָּ תוֹכִיחֵהוּ אֶת-עַמִּיתְךָ, וְלֹא-תִשָּׂא עָלָיו חָטָא.⁴⁴³ Note that this biblical source already contains the talmudic principle discussed above that those failing to protest wrongdoing commit a sin themselves, albeit without limiting liability to those “מי שאפשר למחות” (“who are able to protest”). Accordingly, Rava interprets the verse to mean that the obligation to dissent transcends hierarchy, authority, and ability. Responding to the question whether the verse’s double use of the word “rebuke” implies that one should admonish someone not just once but twice, he responds that “הוֹכַחְתָּ” implies “rebuking even a hundred times,” whereas “תוֹכִיחֵהוּ” teaches that the master must rebuke the disciple.⁴⁴⁴ From the verse’s combined terms (הוֹכַחְתָּ תוֹכִיחֵהוּ), Rava interprets that rebuke ought to be given “מכל מקום,”⁴⁴⁵ i.e., under all circumstances, even from disciple to master.⁴⁴⁶

441 This is probably why the Soncino Edition translates the term as “whoever can forbid.”

442 bShab 55a.

443 Lev 19,17: You shall not hate your brother in your heart; you shall surely rebuke him and not carry sin because of him.

444 bBM 31a.

445 Ibid.: Lit. “from every place.”

446 Sifra Qedoshim 4,8 ed. (Weiss fol. 89a) interprets the combined terms to mean that rebuke ought to be given multiple times (i.e., the *Halakhah* Rava deduces from הוֹכַחְתָּ).

The responsibility for protesting wrongdoing and the warning against turning a blind eye irrespective of one's social position is emphasized by a *Sugya* that debates the reasons for Jerusalem's destruction. One of the opinions is: לא חרבה ירושלים אלא בשביל שלא הוכיחו זה את זה ... ישראל שבאותו הדור כבשו פניהם בקרקע ולא הוכיחו זה את זה.⁴⁴⁷ According to this tradition, hiding from the obligation to rebuke and thereby pretending not to see misconduct, makes the community as a whole liable, leading to collective punishment. While the two preceding sources seem to imply that nothing limits the responsibility of *Tokhachah*, another tradition suggests that the efficacy of rebuke ought to be taken into account: רבי אילעא משום ר' אלעזר בר' שמעון כשם שמצוה על אדם לומר דבר הנשמע כך מצוה על אדם שלא לומר דבר שאינו נשמע.⁴⁴⁸ R. Abba thereupon supports this deduction, stating that it is a duty (חובה) not to say something that will not be heard, based on the proverbial saying: אל-תוכח לץ, פן-ישנאך; הוכח לחכם, ויאהבך.⁴⁴⁹

This factor of rebuke's potential efficacy might be what the phrase “ כל מי “ referred to, making whether rebuke ought to be given more contingent on the person to be protested against than on the potential protester.⁴⁵⁰ This reasoning is woven into the ensuing dialogue from the Gemarah discussed above between God and the Attribute of Justice about why some in Jerusalem are punished, whereas others are spared: אמרה מדת הדין לפני הקב"ה רבש"ע מה נשתנו אלו מאלו אמר לה הללו צדיקים גמורים והללו רשעים גמורים אמרה לפני רבש"ע היה בידם למחות ולא מיחו אמר לה גלוי וידוע לפני שאם מיחו בהם לא יקבלו רבש"ע אם לפניך גלוי להם.⁴⁵¹ The Attribute of Justice objects to this by saying:

447 bShab 119b: Jerusalem was only destroyed because [its inhabitants] did not rebuke one another ... [The members of] Israel in that generation sheepishly hid their faces in the earth and did not rebuke one another.

448 bYev 65b: R. Ile'ah stated in the name of R. Ela'zar son of R. Shimon: Just as it is a duty for man to speak something that will be heard, so too it is a commandment for man not to speak something that will not be heard.

Rashi (ibid., s.v. (לומר דבר הנשמע) interprets this tradition as an obligation to refrain from rebuke if it will not be heeded.

449 Prov 9:8: Do not rebuke a scorner, lest he will hate you; rebuke the wise person, and he will love you.

450 The reason then why the ensuing Gemarah emphasizes that those in positions of authority ought to give rebuke is not that the obligation to protest is contingent on their position but rather on the protest's expected efficacy, which increases when the rebuke comes from a superior hierarchical position.

451 bShab 55a: Said the Attribute of Justice before the Holy One blessed be He, “Master of the Universe, what differentiates these from those?” Said He to her, “These are completely righteous, whereas those are completely wicked.” Said she before Him, “Master of the Universe, it was in their hands to protest and they did not protest!” Said He to her, “It was revealed and known before Me that if they had protested against them, their words would not have been accepted.”

מי גלוי.⁴⁵² Underlying this fascinating exchange is the theoretical assumption that punishment for failing to protest wrongdoing is not justified when protesting would have had no impact. Conversely, the obligation to dissent translates into a liability for failing to dissent when protest would have been effective. In practice, however, this *Sugya* indicates, knowledge of rebuke's future efficacy is revealed only to God. Hence, although they ought to reflect upon how rebuke might have an impact, mortals are not provided with a license for inaction in the face of misconduct, even when they believe that the chances of affecting change are very low. This finding is also supported by the teaching immediately preceding the dialogue between God and the Attribute of Justice, which relates that when R. Zeira urges R. Shimon to reprove the Exilarch's officials, the latter worries that they will not accept rebuke from him, to which R. Zeira responds: אע"ג דלא מר מקבלי לוכחיהו מר.⁴⁵³ This advice and the ensuing Gemarah imply that similarly to how the Attribute of Justice has the courageous audacity to protest God's planned punishment of the wicked in Jerusalem, a witness of misconduct should pursue justice by objecting to wrongdoing even when it is committed by seemingly infallible authorities.

Based on the preceding discussion, it seems reasonable to conclude that the Talmud answers the question of whether a witness of wrongdoing has an obligation to dissent in the affirmative.⁴⁵⁴ However, fulfilling this obligation can run counter to a series of other talmudic norms and values, given the potentially damaging consequences of doing so, particularly with respect to a) the perpetrator of misconduct, b) the corporation within which misconduct occurs, and c) the whistle-blower exposing the misconduct.

452 Ibid.: Master of the Universe, if it was revealed before You, was it revealed to them?

453 Ibid.: Even though they will not accept [the rebuke], master should [nonetheless] rebuke them. R. Zeira justifies his advice with Ezek 9,4, the verse which differentiates between the righteous and wicked of Jerusalem that gives rise to the above dialogue between God and the Attribute of Justice.

454 For further studies on the concept of *Tokhachah* and its implications, see Zank, Michael, The Ethics of Rebuke, in: The Journal of the Society for Textual Reasoning, Vol. 4, No. 1, November 2005, (available online http://etext.lib.virginia.edu/journals/tr/volume4/TR_04_01_e02.html); Zvi, Zohar, Between Love and Enmity: Three Traditional Modes of Understanding the Commandment of Tokheha (Rebuke)—and their Socio-Religious Implications, in: Fishbane, Simcha/Schoenfeld, Stuart, Essays in the Social Scientific Study of Judaism and Jewish Society, Montreal, 1990, pp. 105-121. See also Pava, Moses L., The Art of Moral Criticism: Rebuke in the Jewish Tradition, in: Levine, Aaron (ed.), The Oxford Handbook of Judaism and Economics, Oxford, 2010, pp. 295-306.

a) Guarding the Culprit

Besides an interest in rebuke's efficacy, R. Abba's deduction based on Prov 9,⁴⁵⁵ can be read as an appeal to prevent damage to the parties involved in rebuke. For this aphorism is also a warning not to lead another person into sin and thereby harming him, as well as oneself. This might already be alluded to by the verse immediately following the scriptural source for rebuke: לֹא-תִקַּח לְאִתְּךָ אֶת-בְּנֵי עַמֶּךָ, וְנִאְדָּבְתָה לְרַעְדָה כְּמוֹדָה.⁴⁵⁶ Perhaps because giving rebuke involves the serious risk of causing resentment in the person being rebuked, the Torah immediately warns not to harbor hateful feelings, on the contrary, to love instead. Protesting against misconduct can consequently harm both the recipient and the giver of rebuke.⁴⁵⁷ Someone subjected to rebuke might resent and hence not be able to love the person rebuking him, which might in turn make the person giving rebuke guilty of transgressing לפני עיור (*Lifnei Iver*, placing a stumbling block before the blind, i.e., leading someone to sin).⁴⁵⁸ Therefore, protesting misconduct ought to be done in a manner that minimizes the likelihood of animosity arising.⁴⁵⁹

Furthermore, causing embarrassment to the recipient of rebuke is considered a sin as well.⁴⁶⁰ In his comments on Lev 19,17, *Rashi* draws on a Midrash which teaches that even though the Torah instructs reproving someone when necessary, rebuke ought to be relayed in private and in a manner that does not embarrass its recipient.⁴⁶¹ This *halakhic* injunction to rebuke a person in private seems to pre-

455 See p. 115, fn. 449.

456 Lev 19,18: You shall not take vengeance, nor bear a grudge against the children of your people, and love your fellow like yourself.

457 From a talmudic perspective, sin leads to punishment, and hence harm—see for instance the Mishnah and the ensuing Gemarah on bShab 31b, which establish a causality between three sins and death. Furthermore, the Talmud teaches a multiplier effect of sin, see for instance bQid 46b, which teaches that the world hangs in perfect balance between an equal amount of merit and sin, and every individual performing a good deed or sin tips the balance of the entire world in the respective direction, hence causing universal benefit or damage. Therefore, leading others to sin is perceived as causing damage to all parties involved, and even to the entire world.

458 For a discussion of *Lifnei Iver*, see pp. 94f.

459 The talmudic traditions rebuking Yehoshua b. Perachya for his method of rebuking Yeshu (according to the scholarly consensus most likely Jesus) of Nazareth provide a guide on how to prevent reproach from causing such animosity: let the left hand push away but the right hand always invite back. (bSan 107b. Cf. the parallel tradition in bSot 47a.)

460 bAr 16b.

461 *Rashi*, Lev 19,17, s.v. וְלֹא-תִשָּׂא עֲלֵיךָ חַטָּאת. This comment is based on Sifra Qedoshim 4,8 (ed. Weiss fol. 89a), which teaches that Lev 19,17 warns of bearing sin on behalf of others because rebuke should not be given in a manner that embarrasses its recipient. Cf. Maimonides, *Mishneh Torah*, *Sefer Mada*, *Hilkhot De'ot* 6,8-9, which teaches that in cases where rebuke is unlikely to have a positive impact it should be avoided lest it has a negative one, such as causing embarrassment or hatred.

clude public protest against individual wrongdoing. Furthermore, the more homiletic teachings regarding the talmudic principle of *אונאת דברים* (*Ona'at Devarim*, verbal injury) warn about the severity of causing shame, especially in public.⁴⁶² Whether words constitute *Ona'at Devarim* does not just depend on their effect, but on the motives behind their expression as well. The Gemarah deduces this from the scriptural verse it offers as the source for the prohibition of verbal injury:⁴⁶³ Lev 25,17 ends with a reference to God,⁴⁶⁴ because only He and the speaker know the motivations of words. Rebuke ought to hence be given with pure intentions and not out of malice or in a manner that prevents its recipient from suffering a loss of face or reputational harm.

Despite its protection of those at whom rebuke is directed, the Talmud does not condone passivity towards wrongdoing, even if the alternative is an intervention that harms a perpetrator. The following Mishnah teaches that in certain cases, someone must be prevented from doing harm even at the cost of his life: ...ואלו הן שמצילין אותן בנפשן הרודף אחר חבירו להרגו ואחר הזכר ואחר הנערה המאורסה...⁴⁶⁵ Note the Mishnah's concern for both victim and perpetrator, expressed through its describing of the killing of someone to prevent them from committing severe crimes as "saving them." In asking for the source of the first of the Mishnah's teachings, the ensuing Gemarah offers a section of a verse from the same chapter in Leviticus that formulates the obligation to rebuke discussed above: לא-תלך רכיל...⁴⁶⁶ The Gemarah questions this scriptural proof, since it has already been used as the source to answer a Sifra: מניין לרואה...⁴⁶⁷ The Gemarah then suggests that Lev 19,16 (לא תעמד) is in fact the scriptural source of the Mishnah, while that of the Baraita is Dtn 22,2, which teaches the obligation to

462 See pp. 73f for a brief description of this concept.

463 bBM 58b.

464 And you shall not wrong, a man his fellow people, and you shall fear your God, because I am YHWH, your God.

465 mSan 8,9: And these are to be saved [from sinning] even at the cost of their souls: he who pursues after his fellow to kill him, and after a boy, and after a betrothed girl ...

The Mishnah continues that he who pursues after an animal, or desecrates the Shabbat, or engages in idolatry may not be saved at the cost of his life. The boy, girl, and animal are being pursued to be raped. These same *halakhot* are codified in Sifra Qedoshim 4,8 (ed. Weiss fol. 89a).

466 Lev 19,16: You shall not walk as a talebearer amongst your people; do not stand over [i.e., idly by] the blood of your fellow; I am YHWH.

467 bSan 73a: From where do we know that someone who sees his friend drowning in a river, or attacked by wild beasts, or approached by robbers is bound to save him?

This question is based on Sifra Qedoshim 4,8 (ed. Weiss fol. 89a).

b) Guarding the Corporation

Given the negative impact the exposure of misconduct can have on a corporation's performance, could whistle-blowing violate the talmudic obligations of executives towards their shareholders, and of employees towards their employers? The Talmud institutes a number of norms protecting principals and employers from being harmed by those who safeguard their assets or work for them. For instance, a Mishnah teaches that a bailee is responsible for damage he causes to the bailee's property while on the job.⁴⁷³ And the Gemarah records that a principal must not bear a loss caused by his agent, because he can argue "I appointed you to benefit and not to harm me" (לתקוני שדרתיך ולא לעוותי).⁴⁷⁴ Regarding employees, the Talmud codifies a principle that a laborer's "hand is like the hand of his employer" (שאני פועל דידו כיד בעל הבית).⁴⁷⁵ Hence, just as an employer would not willfully harm himself, an employee by extension should not harm him either. Furthermore, a number of traditions, both *halakhic* and homiletic, stress that employees not waste the time which employers pay them for,⁴⁷⁶ further emphasizing the responsibility of workers to add rather than destroy value.

These traditions can be read as clear exhortations to corporate officers and employees not to cause harm to those on whose behalf they are working. Does this imply a prohibition to intervene against misconduct when doing so might damage the corporation? Perhaps it does not, because the responsibility to further the interests of a superior or shareholder might be overridden by the talmudic maxim that rhetorically asks: "the words of the Master and the words of the disciple, who do you listen to?" (דברי הרב ודברי תלמיד דברי מי שומעים?). In his discussion of whistle-blowing, Aaron Levine invokes this talmudic principle which "conveys that God's law not to engage in wrongdoing supersedes an employer's instruction that is contrary to that law."⁴⁷⁷ The following talmudic appearances of this principle clearly teach that when a person acts on behalf of someone else, for instance by

473 mBM 6,6.

474 bBM 108a, bQid 42b.

475 bBM 10a.

476 bBer 16a; bQid 33a; bTaan 23a. See the discussion on the talmudic call for employee diligence on pp. 266-270.

477 Levine, Aaron, *Moral Issues of the Marketplace in Jewish Law*, New York, NY, 2005, p. 427. Levine's discussion (pp. 423-482) seems to be the only study of whistle-blowing in the Jewish business ethics literature. Of relevance as well is a column written by Asher Meir on "tattling," in: *The Jewish Ethicist. Everyday Ethics for Business and Life*, Jerusalem, 2005, pp. 263-267, and the noted entry by Moses Pava in the *Oxford Handbook of Judaism and Economics*: Pava, Moses, *The Art of Moral Criticism: Rebuke in the Jewish Tradition and Beyond*, in: Levine, Aaron (ed.), *The Oxford Handbook of Judaism and Economics*, Oxford, 2010, pp. 295-306.

following the latter's orders, he is still responsible for the consequences of his actions: on bQid 42b, the Gemarah questions a Mishnah that exempts someone from liability who gives his agent a fire that subsequently causes property damage. Responding to the *Kashya* that the agent of a person is considered like the person himself (שלוהו של אדם כמותו), the Gemarah counters that this case is different: דאין שלייה לדבר עבירה.⁴⁷⁸ The reason why the agent cannot claim innocence because he was simply following orders, the Gemarah argues, is the above 'דברי הרב'-principle: instead of obeying his principal's illegal orders, the agent should have adhered to the *halakhic* prohibition of causing damage through fire, and is hence liable. The responsibility to "just follow orders" or to "simply act in the interest of the corporation" is hence no excuse to exempt oneself from the duty to protest against misconduct. Nonetheless, the duty not to harm employers and principals are "words of the Master" as well, as evinced by the talmudic traditions at the opening of this section. The potential whistle-blower must hence navigate the excruciating dilemma arising from the tension between the obligation to benefit the company he works for and the responsibility to do something that might damage it. What is certain however is that an agent or employee need not and may not follow illegal or unethical orders—the "words of the Master" in this case clearly override those of His disciples. Although obligations towards principal or employer are "words of the Master" as well, the agent or employee must and may therefore only fulfill them in a context that does not violate other *halakhic* injunctions, such as the duty to intervene when witnessing wrongdoing, and to refrain from committing it oneself.

c) Guarding the Self

Should a whistle-blower put his own job and well-being at risk to help others? The Bible categorically condemns endangering oneself: רק השמר לך ושמר נפשך מאד.⁴⁷⁹ The words "only" (רק) and "a lot" (מאד) here provide an unequivocal emphasis to a verse that would have already been a clear legitimatization of self-preservation. The Talmud contains calls to guard oneself as well. As noted above, Hillel famously asks in Tractate Avot: הוא היה אומר, אם אין אני לי, מי לי; וכשאני לעצמי, מה הוא? In typical dialectical manner, this Mishnah encourages both the pursuit of self-interest and a connection to a greater good.⁴⁸⁰

478 Because there is no agent for an act of transgression.

479 Dtn 4,9: Only protect yourself, and protect your soul a lot.

480 mAv 2,14: If I am not for myself, who is for me? Yet when I am [only] for myself, what am I? And if not now, when?

This tension manifests itself in two types of dilemmas presented by the Talmud: what responsibility does a witness of a life in danger of being lost have, and what responsibility does a witness of property in danger of being damaged have? In the former case, the extreme scenario is where saving another's life endangers one's own. According to the Yerushalmi, potential rescuers must put their own life at risk to save someone from certain death.⁴⁸¹ Yet the Bavli seems to reach a different conclusion, relating a moral dilemma recorded in the Sifra⁴⁸² in which two people are travelling far from civilization and have enough water to sustain only one of the two. Expounding the ending of Lev 25,36,⁴⁸³ Ben Patura first suggests that both should drink and die rather than watch the death of a friend: מוטב שישתו שניהם וימותו ואל יראה אחד מהם במיתתו של חברו.⁴⁸⁴ After this, however, he seems to accept R. Akiva's contrary opinion,⁴⁸⁵ which interprets the verse's "וְחַי אַחִיךָ עִמָּךְ" ("that your brother may live with you") to mean that "חייך" "קודמים לחיי חבריך".⁴⁸⁶ The norms of פיקוח נפש (saving a life, *Pikuach Nefesh*) appear to support this conclusion. While the Talmud clearly teaches that one must transgress any prohibition to save a life, it excludes idolatry, sexual immorality and murder from this injunction.⁴⁸⁷ The last exception seems to preclude taking one's own life to save that of another, given the similarity between homicide and suicide, in a case where it is certain that only one of two people can survive. The belief underlying these difficult teachings might be the equality of human life, which the Talmud formulates as a rhetorical question: מאי חזית דדמא דידך סומק טפי? Conversely, one cannot know whether another's life is worth more than one's own, and hence should not commit suicide to save someone else. Consequently, there appears to be an obligation to risk one's own life to avoid the certain death of another, as taught by the Yerushalmi tradition above as well. This obligation to potentially incur harm for the benefit of another is supported by a *Machloket* which teaches that the obligation to rebuke must be fulfilled up until the point where it leads to personal injury.⁴⁸⁹ Since a correct

481 yTer 8,4 46b [Venice and Krotoshin Editions].
[Piotrkow Edition: yTer 8,4 47a.]

482 Sifra Behar 5,3 (ed. Weiss fol. 109b).

483 אל-תקח מאתו נֶשֶׁךְ וְתַרְבִּית, וְרֵאתָ מֵאֲלֵהֶיךָ; וְחַי אַחִיךָ, עִמָּךְ. Do not take from him interest or increase, rather fear your God that your brother may live with you.

484 bBM 62a: It is better that both drink and die than that one of them should see the death of his friend.

485 Implied by the Gemarah's עד שבא ר' עקיבא (until R. Akiva came).

486 Ibid.: Your life takes precedence over the life of your friend.

487 bYo 82a.

488 bPes 25b: Why do you see your blood as redder? Perhaps his blood is redder.

489 bAr 16b, whereby the obligation to rebuke is binding up to the point at which one is struck, cursed or scorned by the person being rebuked, but not beyond that point.

assessment of when a risky rescue attempt becomes suicidal mostly requires superhuman prescience, it is unlikely that there is a clear obligation to endanger one's own life to save another. However, the continuation of the *Sugya* following mSan 8,9 discussed above teaches that one is bound to take the trouble of hiring men to save someone from danger.⁴⁹⁰ Hence, while the duty to rescue others must not necessarily be fulfilled at the cost of one's own life, a financial expense to do so should be incurred if necessary. This can be understood to include the cost of sacrificing one's job.

If the misconduct a potential whistle-blower witnesses does not threaten someone's life but does cause some other form of material damage, the question arises whether one has a duty to risk one's own financial position to prevent or end non-lethal harm from occurring,⁴⁹¹ given that whistle-blowing may result in unemployment, lawsuits and other severe monetary costs for the whistle-blower himself. On the one hand, there are clear talmudic injunctions against risking one's own property for someone else's. Commenting on the Mishnah that allows someone to ignore a lost object in certain cases, the Gemarah suggests that one such case is: שלו מרובה משל חבירו.⁴⁹² This is inferred from an interpretation which expounds the following section of a verse as an exhortation to prevent oneself from slipping into poverty: אֶפְסֹ, כִּי לֹא יִהְיֶה-בְּךָ אֶבְיֹן.⁴⁹³ Based on this interpretation, the Gemarah teaches: שלך קודם לשל כל אדם.⁴⁹⁴ However, when this dictum is repeated by R. Yehudah in the name of Rav a few folios further on, it is followed by a warning that people who habitually prioritize the safeguarding of their own property versus that of others in order to prevent falling into poverty will eventually suffer the fate they are trying to avoid: כל המקיים בעצמו כך סוף בא לידי כך.⁴⁹⁵ R. Yehudah's warning immediately follows a Mishnah which states: אבדתו ואבדת אבדתי רבו קודם ... אביו אבדתו קודמת אבדתו ואבדת רבו שלו קודם.⁴⁹⁶ Hence, it appears that *halakhically* there is no obligation to sacrifice one's own property for that of another, while homiletically the rabbis aimed at preventing the corruption of character such a stance can cause. This dialectical approach is also implicit in the following

490 bSan 73a.

491 Since the Talmud leans towards not requiring someone to risk his own life to save someone else's, *Kal vaChomer* (by means of an a fortiori inference) one mustn't risk one's own life to save someone else's property. Hence, the question remains whether one must risk one's own property to save that of another.

492 bBM 30a: His is more valuable than that of his friend.

493 Dtn 15,4: However, that there may be no destitute amongst you.

494 bBM 30a-b: Yours take precedence over that of anyone.

495 Op. cit. 33a: All who uphold themselves in this manner in the end will come to it [destitution].

496 mBM 2,12: If his own lost item and the lost item of his father, his own takes precedence. His own lost item and the lost item of his teacher, his own takes precedence ...

famous Mishnah of Tractate Avot: האומר שלי שלי, ושליך שליך--זו מידה בינונית; ויש אומרין, זו מידת סדום. שלי שליך, ושליך שלי--עם הארץ. שלי שליך, ושליך שליך--רשע חסידי. שליך שלי, ושלי שלי--רשע. The average character trait towards property, i.e., minding one's own business, is hence condoned but criticized.⁴⁹⁷ Therefore, while the Talmud is unequivocal in its respect towards an individual's physical safety and economic interests, it nonetheless urges solidarity with his fellow human beings, and demands incurring financial and in some cases even physical sacrifices to protect or save others from harm.

In light of its imperative to protest and intervene against wrongdoing, the Talmud's protection of perpetrator, employer, and whistle-blower can be viewed as tempering forces in its overall position that demands the witness of misconduct to help. Essentially, the synthesized talmudic ethics of whistle-blowing might be summarized as follows: step forward, speak up, protest wrongdoing, help the victims, but do so in a manner that minimizes additional harm—to yourself, your company and the person you are rebuking. This requires weighing and reflecting on possible actions and their potential consequences, rather than relying on 'ready-made' recipes. In any case, the talmudic dictum of דינא דמלכותא דינא (*Dina deMalkhuta Dina*, "the law of the land is [binding] law")⁴⁹⁹ requires a potential whistle-blower to report his knowledge of planned or committed offenses, if the country in which he lives institutes a legal obligation to do so.⁵⁰⁰

497 mAv 5,9: There are four character types in people: He who says "What's mine is mine, and what's yours is yours," this is the average type. And some say that this is the type of Sodom. "What's mine is yours, and what's yours is mine," people of the land [the uneducated type]; "What's mine is yours, and what's yours is yours," pious; "Yours is mine, and mine is mine," wicked.

498 The negative connotation of Sodomite character traits is exemplified by the talmudic principle of כופין על מדת סדום (restraining a person regarding the traits of Sodom), which is invoked to justify coercing a person to benefit someone if it does not adversely affect himself. See for instance bBB 12b. For studies of this concept, see Tamari, Meir, *The Challenge of Wealth*, pp. 137-142; Lichtenstein, Aharon, *Does Judaism Recognize an Ethic Independent of Halakhah?*, in: *Leaves of Faith: The World of Jewish Learning*, New York, NY/Jerusalem, 2004, pp. 44-47; Kirschenbaum, Aaron, *Equity in Jewish Law: Halakhic Perspectives in Law. Formalism and Flexibility in Jewish Civil Law*, New York, NY/Jerusalem, 1991, pp. 196ff.

499 The law of the kingdom is [binding] law. See bBQ 113a-b; bBB 55a; bGit 10b. This maxim of Shmuel in effect integrates the civil, criminal and public law from the countries of the Jewish diaspora into *Halakhah*, thus making the abidance to secular law a religious obligation. For further scholarship into this maxim, see Shilo, Shmuel, *דינא דמלכותא דינא*, Jerusalem, 1995; Graff, Gil, *Separation of Church and State: Dina de-Malchuta Dina in Jewish Law, 1750 – 1848*, Tuscaloosa, AL, 1985. See also pp. 175-180 of this thesis.

500 For instance, §138 of Germany's Criminal Code (*Strafgesetzbuch*) requires someone with knowledge of certain planned or committed offenses to report these to the authorities.

And even if there is no such legal obligation, the concept of לפנים משורת הדין (Lifnim meShurat haDin, going beyond the letter of the law)⁵⁰¹ might be invoked to help end wrongdoing even if not required to do so by law.

Guarding the Tongue

Having resolved to become a whistle-blower, a person should take the intricate laws and beliefs of הרע לשון (*Lashon haRa'*, lit. "evil tongue") into account.⁵⁰² This concept is one of the Torah's three prohibited types of speech about a third party. The second type is מוציא שם רע (*Motzi Shem Ra'*, lit. "releasing an evil name"), which consists of outright slander and defamation, i.e., spreading disparaging falsehoods promoting a negative reputation.⁵⁰³ Thirdly, רכילות (*Rekhilut*, gossip) relays true but not necessarily deprecating information, in contrast to *Lashon haRa'*, which refers to disseminating information that is both true and disparaging.⁵⁰⁴

Whistle-blowing therefore seems to best fall under the concept of *Lashon haRa'*, because its purpose is the disclosure of actual misconduct, which in turn might damage those responsible for it. For the sages, everyone falls prey to at least some form of *Lashon haRa'*: אמר רב יהודה אמר רב רוב בגזל ומיעוט בעריות והכל בלשון. אמר רב יהודה אמר רב רוב בלשון הרע סלקא דעתך אלא אבק לשון הרע.⁵⁰⁵ This inevitability becomes particularly important given the harmful consequences the sages attributed to the 'evil tongue'.

501 See for instance bBQ 99a-b, 100a; bBM 24b, 30b, 83a. For further scholarship into this concept, see Kirschenbaum, Aaron, op. cit., pp. 109-136; Lichtenstein, Aharon, op. cit., pp. 33-56; Diamond, James A., Talmudic Jurisprudence, Equity, and the Concept of *Lifnim Meshurat Hadin*, in: Osgoode Hall Law Journal, Vol. 17, No. 616, 1979. Also see pp. 308f.

502 For further reading on the ethics of speech in Judaism, see Falk, Erika, Jewish Laws of Speech: Toward Multicultural Rhetoric, in: Howard Journal of Communications, Vol. 10, Issue 1, 1999, pp. 15-28. For a comparative study of private facts tort (laws regarding public disclosure of embarrassing private facts) in Jewish and U.S. law, see: Mischel, Elie, Thou Shalt Not Go about as a Talebearer among Thy People: Jewish Law and the Private Facts Tort, in: Cardozo Arts & Entertainment Law Journal, 2006, pp. 811-841. An authoritative rabbinic work on *Lashon haRa'* is R. Yisrael Meir Kagan's Chafetz Chayim (first published in 1873).

503 bKet 46a.

504 Maimonides, Mishneh Torah, Sefer Madda, Hilkhote De'ot, 7,1-6.

505 bBB 165a: R. Yehudah said in the name of Rav: "The majority [of people transgresses the prohibition of] theft, [and] the minority [of people transgresses the prohibition of] sexual immorality, [while] all [people transgress the prohibition of] *Lashon haRa'*." Can you really assume this to be the case for *Lashon haRa'*?! [What is meant is] rather that [all people fall prey to] the dust of *Lashon haRa'*."

Cf. bBB 164a-165b, where R. Amram says in the name of Rav that no one escapes transgressing the dust of *Lashon haRa'* for even a single day.

might be considered what the Talmud refers to as a חסיד שוטה (*Chasid Shoteh*, foolish pietist), i.e., someone who refrains from helping others due to religious stringencies.⁵¹³ To support this second reading of Lev 19,16, there are sources that loosen the prohibition of *Lashon haRa'* to prevent further harm. Commenting on this same verse, the Sifra establishes that if a witness is in a position to offer testimony on behalf of a litigant but refuses to do so, the witness transgresses the prohibition of standing idly by the blood of one's neighbor.⁵¹⁴ Accordingly, Gedaliah b. Achikam is held responsible for deaths he could have prevented had he heeded a warning he received instead of piously refusing to accept *Lashon haRa'*.⁵¹⁵ In a similar vein, the Gemarah continues with the statement by Rava that although one should not believe slander, one ought to nevertheless take note of it.⁵¹⁶

Hence, it appears that the Talmud permits both relaying as well as listening to incriminating information about a third party for the purpose of avoiding harm that cannot be prevented otherwise. Based on the classic exposition of *Lashon haRa'* by R. Yisrael Meir Kagan (Chafetz Chayim), Asher Meir establishes five criteria for disclosing someone's misconduct:⁵¹⁷ i) Accuracy, it is forbidden to exaggerate or embellish; ii) Benefit, revealing the information must be the only way to obtain some constructive benefit; iii) Certainty, the information must be reliable; iv) Desire, your reason for telling must be constructive, not vindictive; v) Equity, revealing the information must not cause undeserved harm. With these conditions fulfilled, the transgression of *Lashon haRa'* is considered a lesser evil than the harm it might prevent.

In conclusion, R. Tarfon teaches the important point in a Baraita that the obligation of all to rebuke translates into a responsibility of each to exhibit impeccable behavior: אם יש בדור הזה שמקבל תוכחה אם אמר לו טול קיסם מבין עיניך אמר לו טול קורה מבין עיניך.⁵¹⁸ One's own integrity thereby gives the credibility to demand high ethical standards of others. As Resh Laqish formulates it: “[First] adorn yourself [with justice], and then adorn others [with it as well].”⁵¹⁹

513 bSo 21b. The Gemarah's example of a foolish pietist is a man who refuses to save a drowning woman out of a concern not to gaze at and touch her.

514 Sifra Qedoshim 4,8 (ed. Weiss fol. 89a).

515 bNid 61a.

516 Ibid.

517 Meir, Asher, op. cit., pp. 263f.

518 bAr 16b: Is there in this generation someone who can accept rebuke? If you say to him, “Take the splinter from between your eyes,” he will say, “Take the wood beam from between your eyes!” In Sifra Qedoshim 4,9 (ed. Weiss fol. 89a), R. Tarfon asks if there is “anyone in this generation who can give rebuke,” whereas R. Ela'zar b. Azaryah asks if there is “anyone in this generation who can accept rebuke.” Cf. the parallel tradition in bBB 15b, and a similar teaching in Matthew 7,3.

519 קשט עצמך ואחר כך קשט אחרים. bBM 107b, based on Zep 2,1.

3.2.3. *Implications for Corporate Whistle-Blowing*

Both in the Talmud and in corporations, the intricacies of the whistle-blowing dilemma are a severe test for the person facing it. Because the dynamic of this challenge has remained mostly unchanged across time and context, applying the previous talmudic analyses to corporate practice requires little abstraction. It goes without saying but is nonetheless worth noting that the opportunities and risks of whistle-blowing are a primary concern for all levels of management. This makes the talmudic perspective on dealing with whistle-blowing dilemmas all the more relevant. To recapitulate its synthesis, one should step forward, speak up, protest wrongdoing, and help victims, but in a manner that minimizes additional harm to oneself, one's company, and the person one is rebuking. This perspective necessarily gives rise to a dialectical tension between the obligation to stop harm and the duty not to cause it. In terms more applicable to the cost-benefit logic of corporate practice, the dilemma of whistle-blowing ought to be mastered by achieving the most positive outcome for victims, the whistle-blower, the corporation, and the person who might be targeted in the complaint, while minimizing additional harm and damage that might occur by doing so. Potential whistle-blowers are urged to make whistle-blowing's benefits outweigh its costs, and management can institutionalize structures and processes to help them master this challenge.⁵²⁰

In corporate practice, the talmudic duty to protest wrongdoing might translate into the formulation of a requirement that all organizational stakeholders raise their concerns when confronted with a situation they perceive as questionable. For instance, McKinsey institutes an "obligation to dissent" as one of its core values, requiring its staff members, irrespective of tenure, to speak up when they believe something is wrong.⁵²¹ In a corporate culture that values constructive criticism, everyone becomes responsible for protesting misconduct. However, those in positions of authority have an even stronger obligation to dissent, because the power of their hierarchical position implies the responsibility to use it wisely.⁵²² Therefore, a corporation might conduct compliance training and coaching for its top and middle management, making them aware that they are expected to lead by example and that they should not condone any misconduct

520 Illustration 8 visualizes the talmudic perspective on whistle-blowing dilemmas.

521 From my own experience, this obligation is taught at training programs, communicated via various internal media and reinforced by encouraging any concerns or disagreements to be raised.

522 As indicated by the examples for the obligation to protest on bShab 54b-55a.

amongst their subordinates and peers. To use the Talmud's analogy, managers are like a pledge that can be seized when a debtor defaults, responsible for what goes wrong under their wake when they fail to address a problem.

Nonetheless, every organizational member, irrespective of hierarchical level, is responsible to protest wrongdoing. The talmudic way of doing this initially is personal rebuke, i.e., giving someone who might be doing something wrong direct feedback. This stage is an opportunity for parties to communicate and "work it out" informally. This may mean that a subordinate must reprove his superior,⁵²³ which may be difficult in practice, especially in organizations with a hierarchical culture. In a case where the witness of wrongdoing has reason to assume that his rebuke would be ineffective,⁵²⁴ he is absolved of the obligation to reprove the perpetrator directly and personally, and may even be forbidden to do so.⁵²⁵

In such a case, the potential whistle-blower should avoid speaking with third parties about his concerns, and should definitely not immediately disclose them to the public (given the talmudic warnings to avoid unnecessary harm to oneself, one's employer, and the person possibly committing a wrong). Nonetheless, remaining inactive is not an option given the commandments to save others from being harmed.⁵²⁶ A way out of this impasse might be to institutionalize corporate structures such as an ombuds(wo)man or whistle-blowing hotlines. These confidential solutions enable the fulfillment of the obligation to protest wrongdoing, while simultaneously mitigating the harm this protest may cause.⁵²⁷ When speaking with the ombudsperson or leaving a message on a hotline, it is important to first discuss one's concerns without naming the person causing them. The initial conversation should create a "potential space" of reflection, in which the ombud supports potential whistle-blowers in navigating the dialectical complexity of the dilemma at hand. Given the prohibition of relaying potentially damaging information about someone to another person, a perpetrator may be named if and only if five criteria are met.⁵²⁸ The ombudsperson or ethics officer is then responsible to investigate the complaint and to initiate appropriate conse-

523 Because a disciple must rebuke his master, according to bBM 31a.

524 Perhaps because an executive in question is known to disregard criticism.

525 Based on bYev 65b.

526 Lev 19,16; Dtn 22,2; mSan 8,9; bSan 73a.

527 The Securities and Exchange Commission recently updated its rules encouraging corporate whistle-blowing by promising whistle-blowers a 10-30 percent share of fines over 1m USD resulting from tip-offs even when they raise their concerns only internally, as opposed to going to the commission directly. This is seen as an encouragement for potential whistle-blowers to make use of their corporation's internal procedures. See Give a Little Whistle, in: *The Economist*, London, May 28th 2011.

528 As listed on p. 127.

quences. When misconduct continues despite this internal process, the obligation not to stand idly by the suffering of others would require blowing the whistle to the authorities, and perhaps even the media or other independent parties in countries where official structures are dysfunctional.

The talmudic ethics of whistle-blowing hence urge management to act indivisibly. Rather than compartmentalizing between personal ideals and corporate misconduct by looking the other way when faced with wrongdoing, managers should demonstrate that they are indivisible from the concerns of those being harmed. This requires an awareness of mutual responsibility, realizing that one is accountable for others' misconduct and hence indivisible from them. Conversely, this indivisibility demands respect for and direct engagement with the person that might be doing something wrong while at the same time bearing one's own interests and those of the corporation in mind. Most importantly, maintaining personal and professional integrity is a manager's best guarantee that the whistle will not have to be blown against him, and such integrity enables the development of credibility to demand the adherence to high ethical standards from others.

4 Ethics Taxonomy Dimension 3: Governance

4.1 Issue 5: Investor Relations

4.1.1. *The Dependency and Separation between Managers and Investors*

The relationship between investors and managers of corporations is marked by mutual dependency: corporate management requires capital to fund operations, and corporate investment requires management to generate returns. Yet while this dependency is inherent in the nature of business, whose central factors of production are capital and labor,⁵²⁹ its particular manifestation in the corporate form is a relatively new phenomenon. As Chandler notes in his seminal study, until the middle of the nineteenth century companies were led and controlled by their owners, even as salaried employees began to take on certain administrative and supervisory responsibilities.⁵³⁰ But when dozens or even hundreds of individual businesses were integrated into corporations owned in some cases by hundreds of thousands of shareholders, employed managers increasingly began to take over the traditional roles of owners, i.e., coordinating, planning, and

529 Economic theory has traditionally established three traditional factors of production—labor, land, and capital (see for instance the following standard economics text book: Mankiw, Nicholas Gregory, *Principles of Economics*, 6th ed., Mason, OH, 2009, pp. 375-396. Suggestions have been put forward arguing that there are further factors of production as well. For instance, management can be considered as a fourth factor that combines and allocates the three traditional ones to pursue a given objective (Coase points out this and other options for a fourth factor in his groundbreaking paper: Coase, Ronald H., *The Nature of the Firm*, in: *Economica*, New Series, Vol. 4, Issue 16, London, November 1937, p. 388). The nature of the capital factor has also become more complex, extending beyond the classic financial form to include Bourdieuan concepts such as social capital as well.

530 Chandler describes the historical evolution of the management role as moving from the “personal enterprise” stage, in which businesses are primarily managed by their owner(s), to “entrepreneurial enterprise,” where strategic decisions are still made by owners but the daily business is led and run by hired managers, and then evolving to “managerial enterprise,” which is marked by the separation of ownership and managerial control characteristic of modern corporations. See; Chandler, Jr., Alfred D., *The Visible Hand. The Managerial Revolution in American Business*, Cambridge, MA, 1977, pp. 35ff.

directing the individual business units as well as the corporation as a whole.⁵³¹ Thereby, the much-studied separation between ownership and control of business corporations emerged, and it is this dichotomy that has made the investor-manager relationship a key issue of both the business ethics field in general and the corporate governance discourse in particular.⁵³²

This dichotomy was already criticized by Adam Smith, who noted that “[the] directors of such [joint-stock; nk] companies ...⁵³³ being the managers rather of other people’s money than of their own ... cannot well be expected that they should watch over it with the same anxious vigilance with which the partners in a private coparnery⁵³⁴ frequently watch over their own ... Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of

531 One reason for the early success of the corporate form was its ability to fund large-scale ventures such as railroad networks and silver mines, which were beyond the financing capacities of traditional partnerships. (Bowman, Scott, *The Modern Corporation and American Thought*, Law, Power and Ideology, University Park, PA, 1996, p. 41.) Corporations were able to pool unprecedented numbers of investors because the limited liability statute, through which investors risked no more than the loss of their equity or debt value, made investments in corporations attractive for the middle classes. (Bakan, Joel, *The Corporation*, London, 2005, p. 11ff.) But because these investors could generally not run the corporations they owned, a large number of salaried managers were needed to do so (according to Marvin Bower, systematic management is essential for the long-term success of businesses with 300 employees or more, as stated in: *The Will to Manage. Corporate Success through Programmed Management*, New York, NY, 1966, p. 5). This structural demand transformed management into a semi-profession. Today still, management can be considered a semi-profession because it lacks one of the five characteristics of the traditional professions, namely an official and exclusive certification mechanism (although business schools have to a certain extent addressed this lack). The other four characteristics are full-time employment, specialized training facilities, professional associations, and ethics codes. See Perks, R.W., *Accounting and Society*, London, 1993, p. 2.

532 The separation between ownership and control also leads to a dichotomy between capital and labor because the owners of corporations typically invest capital but no labor into the corporation, whereas corporate managers generally provide their labor but invest none of their personal capital. Attempts are being made to address this separation through executive compensation policies that have turned managers into owners through stock option plans. Yet stock options are only exercised for an immediate profit and hence pose no downside-risk for their recipients. And these options have generally merely incentivized the increase of market valuations. Management geared at maximizing shareholder-value might in fact run counter to the behavior of traditional owner-entrepreneurs, who were interested in the sustainable health and viability of their businesses rather than or in addition to short-term returns. As the current McKinsey global managing director Dominic Barton notes, “CEOs and other executives should be paid to act like owners ... but stock-option based compensation schemes have largely incentivized the wrong behavior,” because, as Barton finds, short-dated options can lead to a focus on meeting quarterly earnings estimates, and long-dated ones can reward managers for simply following industry or macroeconomic trends. (Barton, *Capitalism for the Long Term*, in: *Harvard Business Review*, March 2011, Cambridge, M.A., p. 9.)

533 A precursor of the modern business corporation.

534 A traditional partnership in which a business is managed by its owners.

such a company.”⁵³⁵ Berle and Means also perceived potential conflicts of interests between shareholders and managers, finding that “the interests of control are different from and often radically opposed to those of ownership.”⁵³⁶ Additionally, ownership interests themselves have been shifting as well, given that contemporary shareholders typically own but a minute fraction of a corporation, are concerned first and foremost with price movements and dividends, and often pursue only very short-term financial interests.⁵³⁷ Foreseeing the implications of these developments, Schumpeter criticized the “evaporation of the substance of property” with which he described the paradoxical phenomenon that “the modern corporation, although the product of the capitalist process, socializes the bourgeois mind,” because no party feels responsible for the collectively owned corporation the way the traditional entrepreneur did for his property.⁵³⁸ In New Institutional Economics, the conflicts of interests arising through the contemporary relationship between corporate ownership and management are studied under the heading of the “Principal-Agent-Problem,” according to which managers (agents) exploit their information asymmetries towards shareholders and bondholders (principals) for their personal benefit.⁵³⁹

As a result of these characteristics in the corporate investor-manager relationship, its mutual dependency has fostered mistrust and resentment. Cases of corporate scandals such as those at Enron, WorldCom, Parmalat, and Olympus have shown how management can abuse its power and authority to deceive the financial markets and harm their participants. Consequently, investors have grown more wary of corporate managers and have strengthened demands for corporate transparency and accountability, as reflected by the Sarbanes-Oxley Act of

535 Smith, *WoN*, p. 506. Smith hence foresaw, for instance, the excessive risk-taking and the resulting boom-and-bust cycle of Wall Street after its investment banks went public and began to trade with outside money in addition to that of their partners.

536 Berle/Means, *op. cit.*, p. 113. For instance, owners typically want to maximize their return on investment, whereas managers want to secure their jobs and derive as much income and prestige as possible from it. Baumol’s theory of sales revenue maximization suggests that management’s interest is to maximize sales after achieving the minimum return with which their shareholders are satisfied, because executive compensation tends to be linked to a firm’s size rather than its profits (as evinced by the pay differential between the top management of DAX and MDAX companies), and this size is directly related to the status that management enjoys in an industry and society. Baumol, William J./Blinder, Alan S., *Economics: Principles and Policy*, Mason, OH, 2008, p. 246f.

537 According to one estimate, roughly seventy percent of all U.S. equity trading is now done by “hyper-speed” traders, some of whom hold stocks for only a few seconds, quoted in: Barton, Dominic, *op. cit.*, p. 5.

538 Schumpeter, Joseph A., *Capitalism, Socialism, Democracy*, New York, NY, 1942, p. 156.

539 See for instance Pratt, John W./Zeckhauser, Richard J. (eds.), *Principals and Agents: The Structure of Business*, Boston, MA, 1985/1991.

2002⁵⁴⁰ and the billions of dollars corporations pay out in shareholder lawsuits.⁵⁴¹ Simultaneously, calls to decrease the incessant pressure on management resulting from the quarterly earnings expectations are growing louder.⁵⁴² Similar to how a growing divorce rate boosts demand for prenuptial agreements and marriage litigation, the rising tension between capital and (managerial) labor has increased precautions, complaints, and retaliatory measures in the investor-manager relationship. Amidst this dynamic, corporate managers are confronted with questions such as what the nature and quality of their investor relations are, what responsibilities and rights they have towards the finance community, and how to navigate a financial relationship of mutual dependency strained by pressure and mistrust. What can the Talmud teach regarding these questions?

4.1.2. *The Emergence and Nature of Talmudic Investor Relations*

The Jewish business ethics literature has given the investor-management relationship some attention. For instance, Broyde and Resnicoff authored a detailed study on the implications of corporate ownership from a *halakhic* perspective,⁵⁴³ Asher Meir devotes a few paragraphs to the *halakhic* status of the corporate manager in a paper contrasting fiduciary and social responsibility,⁵⁴⁴ and he has also given a *Shiur* on the *Halakhot* of investing in the stock market, which was subsequently published online.⁵⁴⁵ Yet no contribution to the literature has so far studied the implications for corporate managers of a talmudic concept perhaps

540 Also known as the Public Company Accounting Reform and Investor Protection Act, a regulatory attempt to restore investor confidence in corporate governance and reporting.

541 In the decade between 1996-2005, U.S. corporations paid more than "\$15bn in settlements for securities-related class action lawsuits, and billions more fighting lawsuits that never made it to settlement." Cossette, Jeff, IR Papers: Serve Bad News Fast, in: Inside Investor Relations, May 11th 2011, <http://www.insideinvestorrelations.com/articles/18191/ir-papers-serve-bad-news-fast/>.

542 See for instance Dominic Barton's call to "fight the tyranny of short-termism" (op. cit., 4). This investor "tyranny" may have in fact played a part in corporate accounting scandals such as those mentioned above by inducing management to do whatever it takes to beat or at least meet expectations.

543 Broyde, Michael J./Resnicoff, Steven H., Jewish Law and Modern Business Structures: The Corporate Paradigm, in: The Wayne Law Review, Fall 1997, 43 Wayne L. Rev. 1685, 1998, republished online in Jewish Law, <http://www.jlaw.com/Articles/corporations.html>.

544 Meir, Asher, Value Conflicts in Jewish Business Ethics: Social Versus Fiduciary Responsibility, in: Jewish Law, 1996, <http://www.jlaw.com/Articles/fiduciary.html>.

545 Meir, Asher, Corporate Democracy and the Investor: Halakhot of Investing in the Stock Market, in: Yeshivaht Har Etzion Virtual Beit Midrash, <http://www.vbm-torah.org/archive/halak59/15stock1.doc> (first installment), 1995.

most fruitful as a framework for the investor-management-relationship: The עִסְקָא (*Iska*, lit. “investment”).⁵⁴⁶ In the following section, this construct and its genesis are analyzed in depth.⁵⁴⁷

Biblical and Mishnaic Investor Relations

The *Iska* developed as a synthesis between the conflicting demands of the biblical-mishnaic ideal of debtor protection and the pragmatic need for commercial investments in the Babylonian diaspora. Whereas most of the contemporary corporate governance discourse centers on the question of how to protect capital investors, the biblical and mishnaic traditions focus on the protection of capital recipients. Accordingly, the Bible instituted a ban on interest payments,⁵⁴⁸ a series of norms to prevent debtor harassment,⁵⁴⁹ and the debt-relief mechanism of the Sabbatical Year (*Shmitah*, שְׁמִיטָה).⁵⁵⁰ The Mishnah then continued and strengthened these traditions by declaring the extension of interest-free loans a positive commandment,⁵⁵¹ extending the interest prohibition from charitable emergency loans to commercial investments as well,⁵⁵² affirming yet limiting a

546 Aaron Levine has written two pages applying the *Iska* to a study of the social responsibility of managers in limited partnerships, single proprietorships, or closely held corporations, but does not study the *Iska's* application to the investor-manager relationship in public corporations. See Levine, Aaron, *Case Studies in Jewish Business Ethics*, New York, NY, 2000, p. 355. There are of course numerous papers written on the *Heter Iska*, the *halakhic* heir of the *Iska*, but these do not focus on the talmudic traditions of its foundation but rather on its later *halakhic* development in the codes and responsa, nor do they draw implications from the *Heter Iska* for corporate management.

547 The following section is partly based on a chapter from my unpublished seminar paper titled: דינא דמלכותא דינא, עִסְקָא גְּיִבְתָּ דְּעָתָה: Samuel bar Abbas Integrationsplan für die Juden Babyloniens, written in March 2010 for Ronen Reichman's seminar “Die politische Dimension im Denken und Wirken der Rabbinen” at the Hochschule für Jüdische Studien Heidelberg.

548 Ex 22,24; Lev 25,35-38; Dtn 23,20-21. Besides these *halakhic* norms, the Tanach also features homiletical critiques of interest extraction: I Sam 22,2; 2 Kings 4,1, Jes 50,1; Ps 37,21-26; 109,11; 112,5; Prov 10,17; 22,7.

549 Ex 22,24; Dtn 24,6; 24,10; 24,12; 24,17.

550 Dtn 15,1-6; Nech 10,32.

551 *Rashi* notes in his comment to Ex 22,24 (s.v. אָז נִקְרָא תַלְוָה אֶת עַמִּי) that this is one of only three biblical verses in which the temporal אָז (when) is interpreted by the sages as an unconditional imperative.

552 As Hillel Gamoran points out, “business or commercial loans were not explicitly banned in the Torah because they were not considered there ... Out of sixteen Biblical passages dealing with loans ... not a single one deals with a business loan. In thirteen of the sixteen passages it is clear that the loan was intended purely for the relief of poverty. In the three remaining cases it is impossible to tell from the verse whether or not the loan was meant to help the poor.” In: *Jewish Law in Transition. How Economic Forces Overcome the Prohibition against Lending on Interest*,

creditor's ability to recover his debt from an insolvent debtor,⁵⁵³ and requiring a shared risk distribution between the investors and managers of an entrepreneurial venture in addition to a separate compensation fee for managerial labor.⁵⁵⁴

These biblical and mishnaic approaches to investor relations form a synthesis between aspirational economic ideals and empirical economic circumstances. Both the Bible and the Mishnah aspire to the vision of an economy based on self-reliance, as expressed by Micah's prophecy regarding the end of days (מִצְדִּיקֵי יָמָיו): "וְיָשְׁבוּ, אִישׁ תַּחַת גִּפְנוֹ וְתַחַת תְּאֵנָתוֹ--וְאֵין מִחְרִיד" (הַיָּמִים): "Within this ideal, all people live peacefully on their own (agricultural) property, which nourishes and sustains them. In such a utopia, nobody is dependent on the financial resources of others. This autonomous ideal is professed by the Mishnah as well. As Neusner notes, "the social foundation of the economy of the Mishnah ... rested on the household,"⁵⁵⁶ which "aimed at ... self-sufficiency of production, consumption, and exchange."⁵⁵⁷ In this community of autonomous households, there was no need for commercial investments.⁵⁵⁸ Therefore, someone demanding a loan in the

Cincinnati, OH, 2008, p. 10. But basing itself on the hermeneutical rule that no verse may deviate from its *Pshat* (literal meaning, bShab 63a; bYev 11b, 24a.), the Tannaim used the omission of the specification in Dtn 23,20-21 that the interest prohibition applies only to poor debtors as a justification to extend the interest ban from emergency loans to commercial loans as well. (Klingenberg, Eberhard, Das israelitische Zinsverbot in Tora, Mischnah und Talmud, in: Abhandlungen der Geistes- und Sozialwissenschaftlichen Klasse der Akademie der Wissenschaften und der Literatur, Mainz, 1977, p. 32.) This extension occurred in the context of a severe mishnaic tightening of the interest prohibition, which led to a differentiation between biblical interest (רִבִּית קְצוּצָה, fixed interest), where the contracting parties agree upon a fixed interest level in their loan agreement, and various forms of rabbinic interest (אֶבֶק רִבִּית, lit. the dust of interest) addressing perceived loopholes in the biblical interest prohibition (רִבִּית מוֹקֶדֶת, interest paid before a transaction; רִבִּית מְאוּחֶרֶת, interest paid after a transaction without having been fixed; רִבִּית דְּבָרִים, interest through trade-based price movements; and רִבִּית דְּבָרִים, "interest of beneficial words"). Besides introducing these new classes of forbidden interest, the mishnaic strengthening of the interest prohibition took place along three dimensions: all acts that could be construed as a reciprocating gesture for the extension of a loan were forbidden (mBM 5,2; 5,10; tBM 6,17). Secondly, the transgression of the interest prohibition was extended from the creditor receiving interest to the debtor paying it as well as to all those witnessing and facilitating the deal (mBM 5,12). Thirdly, transactions that resembled the interest-bearing qualities of the traditional loan were forbidden a priori (mBM 5,2; 5,5-7).

553 mBB 10,8.

554 tBM 4,16; mBM 5,4.

555 Mic 4,4: And they will sit, [each] man under his vine and under his fig-tree—and they will not be afraid.

556 Neusner, Jacob, *The Economics of the Mishnah*, Chicago, IL, 1990, p. 52.

557 Op. cit., p. 65.

558 The majority of the population in ancient Israel and Judah, and later Palestine, possessed land and lived off its produce (Klingenberg, Eberhard, op. cit., p. 87). There was hence not a significant demand for commercial investments, which is why the extension of the interest prohibition to commercial loans did not carry crippling economic consequences.

ancient Israelite or later Palestinian economy was assumed to do so only in an emergency, for consumptive purposes such as purchasing food for his family.⁵⁵⁹ Aiding such a person with credit was consequently to be done for charitable rather than profitable reasons.

As noted, biblical and mishnaic perspectives on investor relations reflect the economic circumstances in which they developed. The mostly pastoral and agricultural economy of the Israelites simply had little demand for commercial loans, unlike its Babylonian neighbor for instance, and the Bible was hence most probably the only ancient legal code that could afford to institute a categorical interest prohibition.⁵⁶⁰ The tannaitic strengthening of this prohibition also reflected an economic environment in which commerce began to gradually usurp the agricultural and productive foundation of the economy. To stem this tide, the Mishnah codified a preference of craft over trade.⁵⁶¹ Additionally, the Tannaim attempted to counter what they perceived as an exploitative deployment of capital by curbing two specific trends. Firstly, the growing dispersion of the Jewish communities in the Diaspora weakened the tribal solidarity conducive to the extension of interest-free emergency loans,⁵⁶² while the opportunity cost of extending such loans simultaneously soared.⁵⁶³ These factors led to the increasing exploitation of the

559 Rappaport, Josef H., *Das Darlehen nach talmudischem Recht*, in: *Zeitschrift für Vergleichendes Recht* 47, Stuttgart, 1933, p. 38. This stance is similar to the biblical assumption that workers hiring their labor power out to others as opposed to working for their own household are poor and needy (עֲבָדֵי וְעַמְּוָלָיִם), Dtn 24,14, see fn. 1045.

560 Gamoran, Hillel, op. cit., p. 4f. The resulting idiosyncrasy of the Israelite interest prohibition might also explain why the Bible permits charging interest from non-Israelites (Dtn 23,21): a situation in which Israelites were commanded to extend interest-free loans to another nation which in turn could relend it at a profit would not have been sustainable. This economic explanation of the particularistic nature of the interest prohibition seems more plausible than Max Weber's attempt to portray the prohibition as a reflection of the "Binnen- und Außenmoral des jüdischen Rechtssystems" (*Die Wirtschaftsethik der Weltreligionen. Das antike Judentum*, Tübingen, 19 11-1920/1986, p. 54), and also more likely than the hypothesis that interest-free loans were a benefit to incentivize "membership" in the Israelite tribes. That the principle of reciprocity explains why the Bible permitted exacting interest from non-Israelites is also supported by mBM 5,6, which teaches that one may both *borrow from* and *lend to* "Goyim" on interest, and one may accept a so-called iron-flock investment from them as well, although such an investment was prohibited as usury between Israelites (אבל מקבלין צאן (ברזל מן הגויים, ולווים מהן ומלווים אותם בריבית).

561 See for instance mBB 2,3.

562 By loosening communal bonds, the dispersion decreased the trust necessary for creditor to extend loans.

563 In Babylonia, interest payments of seventeen to twenty percent on financial loans and thirty-three percent on loans of grain were commonplace, see Cohn, Emil, *Der Wucher im Talmud, seine Theorie und ihre Entwicklung. Ein Beitrag zur Rechts- und Wirtschaftsgeschichte des Talmud*, in: *Zeitschrift für vergleichendes Recht*, Band 18, Stuttgart, 1905, p. 321. While there had been an opportunity cost of interest-free loan extensions in Palestine as well, given that

destitute for commercial gain by those in possession of capital, to which the rabbis responded both by strengthening the interest prohibition and by instituting the extension of interest-free emergency loans as a positive commandment. The second financial phenomenon criticized by the Tannaim was the common business investment instrument in Babylonia called *Charranu*, which involved creditors receiving half of business equity without paying for the labor of the debtors acting as business managers and which had no downside risk for creditors due to a loss exclusion clause.⁵⁶⁴ Such an instrumentalization of labor by capital was considered unjust by the Tannaim, who consequently required investors to shoulder financial losses as well and to directly compensate business managers for their work.⁵⁶⁵

The mishnaic legacy regarding investor relations is hence the banishment of a capital investor who always wins, who extracts interest from the poor, and who subjugates labor “under the yoke” of his investment. Through their strengthening and extension of the interest prohibition, the Tannaim effectively banned investors from generating a return on capital exclusively by means of others’ neediness, risk, and effort. As a result, R. Nachman summed up the fundamental principle of the rabbinic interest prohibition as follows: כללא דריביתא: כל אגר נטר ליה - אסור.⁵⁶⁶ While this principle was a means for the Tannaim to realize their vision of a community based on self-sufficient households in Palestine, it became an increasing impediment for the exiled Jews to participate in the Babylonian economy, the lifeblood of which was investment credit. Consequently, a paradigm shift took place amongst the Babylonian Amoraim, as reflected by their appreciation of commerce,⁵⁶⁷ their loopholes, and pragmatism regarding the interest prohibition⁵⁶⁸ and their formulation of the first formalized *halakhic* investment construct.

interest could be exacted from the *Nakhri*, the potential return on loans increased greatly in Babylonia due to lower transaction costs based on decreased default risk. Simultaneously, the need to derive income from capital investments grew as families in most cases no longer had an agricultural foundation to sustain themselves with.

564 Klingenberg, Eberhard, op. cit., p. 93.

565 See tBM 4,16 and mBM 5,4. Klingenberg (op. cit., p. 95) notes that the term למצויה שטר used by the Mishnah is reflected in the wording of the *Charranu* agreement: *acha zitti ina utur*. This further supports the argument that the tannaitic perspective on just investor relations was influenced by surrounding economic circumstances.

566 bBM 63b: The [fundamental] principle of interest is: All reward for waiting is forbidden.

567 See for instance the amoraic teachings preferring commerce to agriculture, as noted in section 2.2.2. on the talmudic work ethic.

568 For instance, R. Chama lent *Zuz*-coins for the payment of one *Peshita*-coin per day, and Rava permits paying a potential creditor so that he in turn extends a loan to a third party (bBM 69b). For the sages, Shmuel annulled the prohibition to give gifts to creditors (bBM 75a), and it is taught in his name that the money of orphans may be lent at interest (op. cit., 70a).

The *Iska*

While the Bible only contains investor obligations rather than rights and the most forceful mishnaic investor protection is merely a homiletic appeal to repay debts,⁵⁶⁹ the Gemarah explicitly teaches how investors can profit from the *Iska*. In the first presentation of this construct, its mutually beneficial qualities are emphasized: אמרי נהרדעי: האי עיסקא, פלגא מלוה ופלגא פקדון. עבוד רבנן מילתא דניחא ליה ללוה, וניחא ליה למלוה.⁵⁷⁰ By explicitly aligning the interests of its transacting parties, the *Iska* implicitly codifies and hence legitimizes the investor's right to generate a return on capital.⁵⁷¹ And by designating the transacting parties as לוה and מלוה, terms normally used to designate “debtor” and “creditor” in the context of a lending agreement, the Nahardeans indicate that the *Iska* could be used as a commercial substitute for a traditional loan. Similar to biblical loans, it thereby also fulfilled a social function by protecting against unemployment and impoverishment.⁵⁷² As Gamoran notes, “[a] creditor could not legally profit from a loan, but from an *Iska* he could. Thus the *Iska* grew in popularity, satisfying the Rabbis that the interest laws were not

569 mAv 2,12. Responding to the question of what the evil path is from which a person should distance himself (הלוה ואינו משלם--אחד), R. Shimon states: הלוה מן האדם כלוה מן המקום ברוך הוא, שנאמר "לווה רשע, ולא ישלם; וצדיק, חונן ונותן" (He who borrows and does not [re]pay—one who borrows from a person is like one who borrows from the Place blessed be It [one of God's many names in Jewish tradition; nk], as it is stated: “The wicked [person] borrows, and does not (re)pay; and the righteous [one], is gracious and gives.” [Ps 37,21.]

570 bBM 104b: the Nahardeans said: The *Iska* is partly a loan and partly a deposit. The rabbis have [thereby] developed something which is beneficial [lit. pleasant] for the borrower, and beneficial for the lender.

571 It is likely no coincidence that the Gemarah establishes investor rights following a Mishnah (mBM 9,3) that teaches obligations of the agricultural land tenant towards the landlord, when the rent is fixed as a percentage of a crop. This Mishnah hence codifies duties of those renting a factor of production (in this case land) towards its owner, and hence the right of the land owner to a fair return on his property. Similarly, the *Iska* provides a business manager with capital as a factor of production, and codifies his responsibilities towards the investor. In both cases, the worker adds his labor to the factor of production he assumes control over to make it productive, and both cases hence deal with joint transactions and ventures.

572 bShab 63a teaches that lending money is greater than performing charity, and that forming a partnership is greatest of all. According to Maimonides (Mishneh Torah, Sefer Zeraim, Hilkhoh Mattanot Aniyim, 10,7-14), the greatest level of charity is to help others become independent of it. He explicitly states the formation of a business partnership as a way to achieve this ideal. According to the Sifra commenting on Lev 25,35, one should strive to help others avoid falling into poverty in the first place. This injunction is explained with the analogy of a donkey, which, as long as it is still standing, a single person can keep upright and prevent from falling, whereas not even five people can lift it up again once it is already lying on the ground. (Sifra Behar 6,5 Weiss ed. 109a.) The *Iska* is hence not to be perceived as a mere loophole to white-wash interest payments, as posited for instance by David Bleich in his paper Hetter *Iska*, the Permissible Venture: A Device to Avoid the Prohibition Against Interest-Bearing Loans, in: The Oxford Handbook of Judaism and Economics, Oxford, 2010, pp. 197-220.

being violated, yet meeting the demands of the economy for credit.”⁵⁷³ The genius of the *Iska* is hence its ability to synthesize economic needs with social ideals, while simultaneously aligning the interests of investors and business managers.⁵⁷⁴

The Savoraim explain why the *Iska* is beneficial for both its transacting parties, as posited by the above Gemarah.⁵⁷⁵ An investor provides a business venture with capital, half of which is considered an interest-free loan to the venture’s manager. The other half of the capital is a deposit which hence remains the property of the investor. Now if the entire *Iska*-capital were classified as a loan, any profit share the investor receives would be considered a forbidden interest payment, while the manager would carry the full risk of a business loss based on the legal obligation to repay loans in full. Such a set-up would hence be disadvantageous for both transacting parties. However, if the *Iska* were considered a pure deposit, then the entire risk of loss would remain entirely with the investor, and the manager could not use the capital for his own business purposes, because none of it belonged to him. By dividing the *Iska*-capital into a half-loan and half-deposit, however, the business loss risk can be divided equally between the transacting parties, and the investor can therefore pocket the profit generated with his deposit.⁵⁷⁶ Thereby, the economic interests of both the investor and manager are fulfilled, without violating the strict interest prohibitions.

As a side note, the *Iska*’s concern for lender and investor rights is also reflected in a Midrash demanding high standards of responsibility from those conducting business with other people’s capital: טוב מלא כף נחת טוב מי שיש לו עשרה זהובים ונושא ונותן ומתפרנס בהם ממי שהוא נוטל ממון של אחרים ומפסידו ומאבדו מתלא אמר לא מיסתייה מובד דידיה אלא דאחרונן מובד דידיה ודלא דידיה ורעות רוח רעותיה די יהוי מתקרי פרגמטיוטא.⁵⁷⁷ This tradition teaches that doing less business with one’s own money is preferable to doing more with that of others, particularly if one loses it. Those dealing with external sources of capital should thereby be especially prudent and diligent to avoid losses.

Through their development and presentation of the *Iska*, the Amoraim transitioned Jewish tradition from its biblical, mishnaic emphasis on protecting the

573 Gamoran, Hillel, op. cit., p. 38.

574 The *Iska* shares these qualities with the *Prozbul* (mGit 4,3), which synthesizes the biblical ideals of debt relief and debtor protection with the pragmatic need for investment capital and the legitimacy of creditor rights.

575 R. Sherira b. Chanina’s responsum, quoted in: Klingenberg, Eberhard, op. cit., p. 96.

576 Maimonides, Mishneh Torah, Sefer Kinyan, Hilchot Shelukhin veShutafin, 6,2.

577 EcclR 4,6: “Better is a handful of contentment” [Eccl 4,6]—better is the one who possesses ten gold pieces with which he does business [lit. trades] and maintains himself [with them] than the one who takes money from others and loses it and causes it to vanish. It is said [in an aphorism], “Not only does he lose his own but he also loses what belongs to others, both what is his and what is not his.” “And a striving after the wind” [Eccl loc. cit.]—his striving to be called a business man. According to Jastrow’s talmudic dictionary (p. 1214), the term פרגמטיוטא stems from a Greek root and means trader, especially a travelling merchant (פרגמטא means “business, ware, goods”).

needy from capitalistic exploitation to a talmudic embrace of mutually beneficial investment. The entire continuation of the above *Sugya* presenting the *Iska* emphasizes that this mutual advantageousness translates into rights and responsibilities for both the investor and the manager. The Gemarah begins by suggesting: *השתא דאמרנין פלגא מלוה אי בעי למשתי ביה שכרא שפיר דמי*.⁵⁷⁸ It then suggests a further benefit of the *Iska* for the manager: *ואם מת נעשה מטלטלין אצל בניו*.⁵⁷⁹ These two teachings fundamentally strengthen managerial rights, by permitting the use of the *Iska* loan share for any, even non-commercial, purpose, and by declaring this share an inheritance for managers' children. Conversely, these rights make the *Iska* less attractive for investors, because they can no longer sue managers for squandering an enterprise's capital on consumption and lose at least half of their investment when the manager passes away.⁵⁸⁰

Yet Rava immediately rejects these suggestions by referring to the etymology of the term *Iska*: *להכי קרו ליה עיסקא דאמר ליה כי יהבינא לך לאיעסוקי ביה ולא למשתי ביה שכרא*.⁵⁸¹ He then rejects the second of the manager-friendly rulings above as well: *להכי קרו ליה עיסקא דאם מת לא יעשה מטלטלין אצל בניו*.⁵⁸² These views therefore strengthen the rights of investors, by giving them license to demand that the entire *Iska* capital, including the loan half, be deployed for business purposes, and by protecting their investment in the case of the manager's death. The *Iska* thereby encourages the profitability and efficiency of enterprises. And it enables businesses to transcend the lives of their individual partners, which is in fact an essential characteristic of the corporation versus the traditional partnership.⁵⁸³

The *Sugya* then concludes with three further, quite complicated teachings of Rava explaining the workings and laws of the *Iska*:

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- 578 bBM 104b: Now that we have said that a part (of the *Iska*) is a loan, if he [the manager] wishes to drink beer with it [the loan share of the *Iska*], this is also good [i.e., permitted].
- 579 Ibid.: If he [the manager] passes away, it [the loan share of the *Iska*] is declared movable property with [belonging to] his sons.
- 580 Because movable property cannot then be seized for the manager's debt from his heirs.
- 581 Ibid.: Therefore it is called an *Iska*, for he [the investor] can say to him [the manager], "I gave it to you for business [*le-issuki*], and not for drinking beer."
- Note that it is Rava who rejects these suggestions, further underlining the importance he places on business activity as described in section 2.1.2., and the *Iska*'s intention of fostering it.
- 582 Ibid.: Therefore it is called an *Iska*, for if he [the manager] passes away, [the *Iska*] is not declared movable property with his sons.
- 583 From a legal perspective, the corporation is immortal: "[A] corporation enjoys perpetual existence. Neither the death of officers, directors, shareholders, or members, nor the transfer of ownership interests from one shareholder to another terminates the corporation's legal authority to continue its business." Brody, Michael J./Resnicoff, Steven H., *Jewish Law and Modern Business Structure*, in: *The Wayne Law Review*, Philadelphia, PA, Fall, 1997, p. 1711. This "immortality" hence decreases business uncertainty and consequently fosters the long-term planning essential for strategic management.

A	Rava said, “One <i>Iska</i> and two contracts, [this setup is a] loss for the creditor [investor]. Two <i>Iskas</i> and one contract, [this setup is a] loss for the debtor [manager].”	אמר רבא חדא עיסקא ותרי שטרי פסידא דמלוה תרי עיסקי וחד שטרא פסידא דלוה
B	And Rava said: “One [a manager] who accepts an <i>Iska</i> from his fellow and loses [thereon], then made an effort and recovered the losses, yet had not informed [the investor of the losses], he [the manager] cannot say to him [the investor], ‘Deduct that loss’ [bear your share of that loss, and consider the subsequent profit a separate <i>Iska</i>], since he [the investor] can say, ‘Because of this you made an effort to recover the losses, so that you would not be called a loser of <i>Iskas</i> .’”	ואמר רבא האי מאן דקביל עיסקא מן חבריה ופסיד טרח ומלייה ולא אודעיה לא מצי אמר ליה דרי מהיאך פסידא בהדאי משום דאמר ליה להכי טרחת למלוותיה כי היכי דלא ליקרו לך מפסיד עיסקי
C	And Rava said: “When two managers start an <i>Iska</i> together, and the venture generates a profit, and one of the two managers says, ‘Come, let us divide [our profit and end the <i>Iska</i> now],’ if the other manager says, ‘Let us profit more [and not wind down the <i>Iska</i> yet],’ the law is that he may block [the other manager from winding down the <i>Iska</i>]. Because if he [the manager who wants to wind down] says, ‘Give me half of the profit,’ the other manager can respond, ‘The profits are mortgaged to the principal [which should be saved until the end of the <i>Iska</i> to ensure that the investor’s capital can be repaid].’ And if he says, ‘Give me half the profits and half the principal,’ the other can respond, ‘The <i>Iska</i> funds are mortgaged to each other [each share provides security for the other].’ And if he says, ‘Let us divide the profit and divide the principal, and if you then incur a loss, I will bear it with you,’ the other can respond, ‘No, the <i>Mazal</i> [fortune] of two is better [than that of one].’	ואמר רבא הני בי תרי דעבדי עיסקא בהדי הדדי ורווח וא"ל חד לחבריה תא ליפלוג אי א"ל איך נרווח טפי דינא הוא דמעכב ואי א"ל הב לי פלגא דרווחא אמר ליה רווחא לקרנא משתעבד ואי א"ל הב לי פלג' רווחא ופלגא קרנא אמר ליה עיסקא להדדי משועבד ואי א"ל נפלוג רווחא ונפלוג קרנא ואי מטי לך פסידא דרינא בהדך א"ל ⁵⁸⁴ לא מזלא דבי תרי עדיף

In order to understand Rava's teaching that the benefit of the investor and manager depends on the *Iska's* deal structure (A), it is necessary to take into account the obligation of the investors to compensate managers separately for their labor. As noted above, the *Iska* consists of half a loan and half a deposit, both given to a manager by an investor. The loan half is to be returned to the investor in full when the *Iska* venture winds down, whereas the deposit is returned at the end of the venture with the profits or the losses which accrued to that half of the venture's capital added or subtracted, respectively. The manager hence retains profits generated with his loan or is liable to compensate for any losses suffered thereto. Now if the investor and manager shared profits and losses equally, then the only benefit of the manager for generating a return on the investor's deposit is that he received a loan to do business with. In such a setup, the rabbis perceived the manager's labor as a forbidden interest payment for the extension of a loan. Therefore, in order to avoid transgressing the interest prohibition, an explicit and separate compensation of the manager's labor is required.⁵⁸⁵

According to the Amoraim, the manager can be compensated through a skewed profit-loss distribution, whereby he receives either half the profits yet bears only one-third of the losses, or bears half the losses for a two-third profit share.⁵⁸⁶ The investor hence always receives less of the profits than he must cover for the losses, which is why Rava notes that incorporating multiple ventures into a single contract benefits the investor (A). For when one *Iska* is separated into two contracts, the investor gains less than if the net results of the two contracts had been combined into one accounting.⁵⁸⁷ Conversely, the manager is at a disadvantage when two *Iskas* are drawn up in a single contract.⁵⁸⁸ Incorpor-

585 As criticized and demanded by mBM 5,4. Maimonides (loc. cit.) explains that this would be a case of *אבק ריבית*, the "dust of interest."

586 bBM 68b-69a. A Baraita quoted on bBM 68b teaches that according to R. Meir, whatever wage investor and manager agree upon is sufficient in order to avoid transgressing the interest prohibition, whereas for R. Yehudah, even the symbolic act of allowing the manager to dip his bread into the investor's sauce is a sufficient wage.

587 Assume for instance that an *Iska* is drawn up for the venture of selling two crates of tomatoes, but the sale of the crates is accounted for in separate contracts. Assume that contract A made a profit of 100 and contract B a loss of 30, and the investor receives 50 % of the profit and bears 2/3 of losses. Now if one *Iska* is drawn up combining both contracts, the net result is 70, of which the investor receives a total of 35. Yet if the two contracts are accounted for separately, the investor gains 50 on deal A, and loses 20 on deal B. The total net profit for the investor across both deals is thereby 30 and hence 5 lower than in the combined accounting scenario. In a case where the investor bears 50% of losses for a 1/3 profit share, the combined contracts generate a profit for him of 23.3, which falls to 18.3 when they are separated.

588 Since the manager bears a lower share of losses than he earns from profits, if one of the two deals suffers a loss, he gains more if the two had been accounted for separately as opposed to the result of the loss-bearing deal being subtracted from that of the profitable one.

ation that integrates multiple deals into a single accounting hence always benefits the investor and consequently costs the manager, given a skewed profit-loss distribution. This teaching of Rava emphasizes that one contract per *Iska* balances the interests of both the investor and manager. This emphasis implicitly also reiterates the view that both sets of interests are valid and to be taken into account.

Whereas the first of Rava's above three teachings is concerned with the incorporation of multiple deals into a single *Iska*, the second (B) studies the incorporation of multiple time-periods. The exemplary case is one in which the manager makes a loss on an *Iska*, yet instead of communicating it to and sharing it with the investor, the manager reinvests the remaining capital and recoups the losses. He then asks the investor to treat the two periods separately by bearing half the losses of the first period and reaping only a third of the profits generated in the second (or two-thirds of the loss and half of the subsequent profit). This is of course disadvantageous for the investor, who always benefits from incorporation into a single accounting, as noted above. Rava teaches that if the manager did not notify the investor of losses as they were suffered but rather proactively continued the venture to recoup them, he may later not demand that the investor treat the two periods separately. Implicit in this teaching is that a manager is free to wind down an *Iska* at any point he wishes to, yet the accounting thereof cannot be divided into multiple periods retroactively. Of course, the response of the investor to the manager's request (concluding B) shows that Rava believes a loss-making reputation is to be avoided, and that the manager should hence strive to generate a profit for himself and his investor.

The third of the above teachings (C) deals with a dispute between two managers of a single *Iska*. Whereas B relates that a single manager can wind down and do a final accounting of an *Iska* whenever he pleases, C limits this liberty in the case of managerial partnerships. When a specific duration for an *Iska* has been designated, Rava gives three reasons why one of the managers cannot pull his share of the venture's capital out as soon as it shows a profit. Firstly, one of the managers cannot extract his share of the profits prematurely, because it functions as a security that the investor's principal can be repaid even if losses are suffered subsequently. Rava thereby again emphasizes the importance of bearing investor interests in mind. Secondly, one of the managers cannot pull both his share of the profits and of the principal out of the venture prematurely, because the lower overall capitalization can harm the venture. This reasoning implies that there is a negative correlation between a venture's capitalization and its business risk, and hence more capital is better than less for a business enterprise. Thirdly, even without the risk of suffering losses due to the departure of one of the

managing partners, one manager can prevent the other from leaving the venture prematurely because the fortune of a team is better than that of an individual. Similar to how “it is not good for man to be alone,”⁵⁸⁹ this view propounds that a manager is more likely to achieve business success when joining forces in a managerial partnership. The Talmud concludes the presentation of the *Iska* with this lesson. Its unique financing invention synthesizes biblical-mishnaic ideals with the pragmatic need for business investments into an ingenious construct governing the mutual dependency between and addressing the respective interests of investment capital and managerial labor.

4.1.3. *Seven Talmudic Principles of Investor Relations Governance*

Based on the above analyses and discussion the *Iska*, the following is an attempt to deduce central implications for how managers ought to govern their relationship with investors from a talmudic perspective. This attempt requires quite a high degree of abstraction, for the original teleology, intention, and context of the *Iska*'s development was the making for flexible and legitimization of interest-bearing loans, thus a very different normative basis than the characteristics marking the contemporary relationship structure linking managers and investors. Nonetheless, the *Iska* is the talmudic enabler of entrepreneurial partnerships between creditors and debtors, venture capitalists, and managers, and its implications can therefore unfold significant relevance for contemporary corporate investor relations.⁵⁹⁰

589 Gen 2,18.

590 Beyond offering guidance within the framework of conventional corporate debt and equity relationships, Jewish ethics in general and the *Iska* in particular can contribute to the innovation of financing instruments themselves, similar to how principles and constructs of Islamic finance are gaining traction in global financial markets. For instance, the noted *halakhic* heir of the *Iska*, the *Heter Iska*, forms the basis of many lending agreements issued by Israeli banks and can function as a model for financing instruments to contain the following four characteristics: Profits rather than interest, measured principal protection, agreed-upon expected earnings, and compensation for labor (characteristics as synthesized by R. Meir Orlan of the Business Halacha Institute). The following papers study new forms of Judaism-based ethical investment: Schwartz, Mark, The Development of a Jewish Mutual Fund: Criteria and Challenges, International Association for Business and Society Conference, Victoria, June 30, 2002; Schwartz, Mark S./Tamari, Meir/Schwab, Daniel, Ethical Investing from a Jewish Perspective, in: Business and Society Review, Vol. 112, Issue 1, 2007, pp. 137-161. Republished in a collection issued by The Arab Financial Forum: Convergence: New Directions in Islamic Finance?, pp. 76-82.

Principle 1: Develop a Win-Win Situation

The mutual dependency between investors' capital and managers' labor can and must be translated into a mutually beneficial relationship structure. As noted, the Gemarah stresses this point by introducing the *Iska* with its advantageousness for all transacting parties. Therefore, relational aspects between a corporate management team and the investment community that lead to one-sided benefits or costs should be addressed and resolved. For example, if a corporation provides meager returns to its investors but because of its governance structure can and does award its management hefty compensation packages against the will of the shareholders and bondholders, then one could argue that, unlike the *Iska*, this particular investor-manager relationship is not a מילתא דניחא ליה ("thing that is pleasant") for both its parties. Such a dichotomous one-sidedness should hence be transformed into a mutually beneficial governance structure that addresses the legitimate aspirations of both the investors and the managers, in this case for instance by granting shareholders a veto-right on executive pay levels beyond a certain ratio of compensation to profit.⁵⁹¹

Rava's recommendation to write one contract per *Iska* further supports the Gemarah's concern to address both the legitimate needs of investors and managers. A deal structure in which two contracts are issued for one *Iska* is disadvantageous for investors, and the incorporation of two *Iskas* into one contract is disadvantageous for the manager. In corporate practice, a corollary might be that if management bonuses depend on the performance of the corporation as a whole, then the managers of successful business units are penalized because they subsidize their lesser-performing colleagues. While this might be advantageous for investors by decreasing labor costs, it would be more in line with Rava's reasoning to account for business units separately and to compensate their respective managers accordingly. The fundamental principle underlying all these dynamics is to structure the relationship between investors and managers in such a way that balances the legitimate interests of both.

Principle 2: Build a True Joint-Venture with Investors

The *Iska* capital structure is a unique investment mechanism because it integrates debt and equity financing. The investor and the manager are equal partners and shareholders, each owning fifty percent of the venture's equity. Yet the manager's

591 The issue of executive compensation is discussed in the next chapter.

share is acquired with a personal loan from the investor, which the former must repay in full irrespective of the business result. Half of the business equity is hence financed by a personal debt of management. Managers thereby relate to investors both as partners and as debtors. The two are thus simultaneously at eye level with each other and dependent on one another: as partners, both have an incentive to generate a profit and avoid a loss and one cannot do without the other; as lender, the investor is interested in the personal solvency of the manager to repay his (interest-free) loan; and as borrower, the manager is indebted to the investor for enabling him to invest in and run a business. Managers can thus avoid being “salary slaves” and rather become masters of their own ship with a personal stake in both profits and losses, while investors build a direct relationship with both the actual business results and with the managers as well.⁵⁹²

Such a set-up is far removed from contemporary corporate practice. Managers rarely invest their personal capital into the corporations they run, and hence might deal with corporate funds in a less risk-averse manner than if these funds were their own money.⁵⁹³ The fact that corporate managers carry no real downside risk in case of financial losses can prevent them from acting like real owners, which is why Dominic Barton notes the suggestion of some pundits “that new executives invest a year’s salary in the company.”⁵⁹⁴ And unlike the *Iska* investor who derives his return based on the actual net business result and who builds a financial bond directly with management, stockholders of contemporary corporations are typically interested only in short-term share price movements to sell their stake or a derivate thereof at a profit, while bondholders care primarily about a corporation’s solvency and frequently have no direct relationship with managers themselves. The nature of contemporary corporations’ investor relations hence indeed seems conducive to the prevalence of negligence and profusion, as foreseen by Smith.⁵⁹⁵

592 This dynamic could enable the *Iska* to support the remodeling of the financial markets in the wake of the sovereign debt crisis. For it would give investors a stake in a country’s growth, and it would grant governments freedom from the pressure of compound interest.

593 Unlike the stake of the *Iska* manager in his venture, stock options awarded to corporate executives bear no risk of actual financial loss and are mostly exercised to reap a quick profit through their resale.

594 Barton, Dominic, op. cit. p. 9.

595 Smith, WoN, loc. cit.

Principle 3: Commit to Business

Just as the manager of the *Iska* may not misappropriate his venture's capital to drink beer, corporate managers should be mindful not to use their shareholders' and bondholders' capital for their own non-productive purposes. Management is thereby not free to do what it pleases with corporate capital. Rather, it must be committed to using investor funds for business purposes. This obligation implies that managerial pet projects, lavish expense accounts, or in fact any use of corporate capital that has no impact beyond a manager's personal gratification are to be avoided. This is the opinion of Rava, but an alternative perspective presented by the Gemarah posits that the manager is in fact free to drink beer with the share of the *Iska* capital declared a loan. While this perspective appears to be rejected or at least overruled, the Talmud nonetheless points to the fact that fundamentally the manager *is* free to drink beer with his business's capital, since he controls it. Even if this freedom should not be made use of, the awareness of its existence can imbue managers with a sense of both the significant power and authority bestowed upon them by investors. Also, reminding themselves of their fundamental liberty to allocate capital according to their judgment might help managers avoid suffering under a sense of bondage vis-à-vis their investors. Mutual dependencies and mutual benefits hence carry mutual obligations: investors must grant managers the discretionary freedom and authority needed to conduct business effectively, while managers may not abuse the resulting powers by putting their personal interests ahead of the corporation's through misappropriation of their investors' capital.

Principle 4: Understand that Managing Differs from Owning

The Talmud reminds the *Iska* manager that despite his authority over a business venture, his ownership of it is limited. This is taught by means of a particularly marked difference between an owner and a manager. Whereas the former can pass on his business to his family's next generation, the heirs of the latter inherit none of the venture. Such a limitation shows that a manager falls somewhat short of the biblical-mishnaic ideal of the self-sufficient householder. The *Iska* manager depends on the investor's funds to sustain himself and his family, the fruits of the manager's labor sustain the investor and are hence not fully enjoyed by the former's own household, and once the manager passes away the family is left with none of the *Iska*'s assets.

The Talmud thereby reminds us that although the *Iska* benefits both manager and investor without violating the interest prohibition, it is nonetheless a construct that makes the best of suboptimal conditions. Ideally, the manager would not have to become a debtor towards nor laborer for others in order to sustain his household in the first place, and the investor would not depend on and desire the return on capital that imposes these conditions on a manager. Due to the mutual dependency of its investor-manager relationship, the *Iska* in itself cannot realize the noted prophetic ideal of each person living fearlessly and self-sufficiently on his own land. The *Iska* venture is not really owned by the manager, the investor is removed from the productive locus sustaining him, and it can be marked by fear because of the asymmetrical elements of their relationship.

What this fourth principle might teach corporate executives is that despite their power and success, they are still not as independent and autonomous as the Torah would like them to be, for they sustain themselves with capital and an organization which they themselves do not (wholly) own. Their dependence on investors and organizational circumstances is reflected by the pressure that the financial community can exert on them and the ease with which they are replaced. The fact that managers toil for others is demonstrated by their general inability to pass on their position to their own heirs. Nonetheless, there is a further opinion in the Talmud which holds that the descendents of the *Iska* manager can in fact inherit the venture. Corporate executives might be able to reconcile these contrary perspectives by understanding that while they cannot bequeath their position, the income they derive from it is their very own property. This income in some cases far exceeds the earnings any entrepreneur and business owner can hope for, and dialectically the organizational and financial dependence of corporate managers can hence realize the ideals of autonomy and liberty.

Principle 5: Insist on Adequate Compensation of Labor

Unlike the *Iska's* investor, its manager labors for the venture, and the Talmud insists that this labor be specifically compensated. Otherwise, the work required to run a business can be perceived as a forbidden interest payment for the investor's capital necessary to fund a business. The compensation of labor can either be effected directly, whereby manager and investor agree upon a certain wage payment, or it can be mediated through a skewed risk-reward compensation, whereby the manager gains more from profits than he must suffer from losses. Hence, even if a corporation institutes a true joint venture between its

investors and managers, in which both have a right to gain from profits and an obligation to share losses, it must additionally account for the fact that unlike investors, managers invest their labor power into the business operation. Providing management with the corporate resources necessary to reap a profit is in and of itself not considered a sufficient commutative compensation for this labor, which can function as an interest-like payment for the provision of these resources. Rather, managers should insist that investors provide them with an explicit and separate reward for the work required to fulfill their fiduciary obligations.⁵⁹⁶

Principle 6: Maintain Communication and Reputation

Rava's teaching that managers may not separate the accounting of earlier losses from later gains can be understood as a recommendation to maintain open communication channels with their investors. For if a manager immediately informs his investor of losses, these could have been shared between the two. But if a manager conceals negative business results, then these cannot be separated from subsequent positive results and must hence form a single accounting, which as noted is advantageous to the investor.

Applied to corporate management, these teachings urge managers to regularly keep investors in the loop of business results. In practice, contemporary financial markets institutionalize Rava's recommendation through the required issuance of quarterly and annual reports as well as the earnings guidance corporations provide to the financial community. Failing to keep investors updated, particularly about impending bad news, can have negative consequences for investors. For instance, the share price of the Internet search giant Google did not just fall by seven percent in one day because its quarterly earnings fell short of analyst expectations but because Google refused to issue earnings guidance that might have tempered these expectations.⁵⁹⁷ And U.S. studies have found that corporations that wait until the last few weeks of a quarter to relate bad news to the investment community are 45 times more likely to face shareholder lawsuits than firms announcing the news in the quarter's opening weeks.⁵⁹⁸

596 For the appropriate level of this reward, see the next chapter on executive compensation

597 Hsieh, Peggy/Koller, Timothy, *The Misguided Practice of Earnings Guidance*, in: McKinsey Quarterly, Chicago, IL, March 2006, https://www.mckinseyquarterly.com/The_misguided_practice_of_earnings_guidance_1759.

598 Cited in Cossette, Jeff, *op. cit.*

The objection that a manager does not want to be called an “*Iska* loser,” which Rava says the investor can raise, teaches the importance of reputation.⁵⁹⁹ A manager with a loss-making reputation is likely to have a hard time finding further investors. Therefore, managers should first of all make an effort to generate a profit for their corporation and investors, thereby building the reputation of an “*Iska* winner.” Similarly, corporate managers should bear the obvious fact in mind that their performance has a direct effect on their reputation, which in turn can affect their corporation’s future access to capital. The dependency on a solid reputation must hence be balanced against the need for open communication channels, because relating every failure to investors might tarnish a management’s and hence a corporation’s reputation. Managers should therefore build an investor relationship that is as open and candid as possible without impinging on their legitimate reputational interests.

Principle 7: Harness the Power of Teams

Rava’s final teaching regarding the *Iska* implicitly recommends that managers form teams to run a venture. The converse of the reasons Rava provides for why one manager can prevent another from quitting a venture implies that ventures run by more than one manager have tangible benefits. By combining their powers, managers can i) provide additional security to investors and hence attract capital more readily, ii) improve their venture’s performance through increased capitalization, and iii) attract a better “fortune” than a solitary venture. Nonetheless, Rava makes it clear that these benefits come at a cost—namely the loss of liberty to end an *Iska* whenever a manager desires to. The power of management teams is hence paid for with the mutual responsibility of its members. Instead of a two-way dependency between a manager and investor, management teams create a triangular dependency through its additional relationship between the managing partners themselves. Just as the dependency between investors and managers carries rewards, dependency between managers has tangible benefits as well. In contemporary corporate practice, the power of management teams is already commonly harnessed. The management board consists of multiple executives, and the supervisory board fulfills its duties with a team of directors. Yet the loyalty that the Talmud demands of managing partners towards each other is less prevalent in corporations marred by politics, where managers frequently view each other as competitors or even adversaries. In such an environment, Rava

599 For an exposition on the principle of reputability in the Talmud, see pp. 334-338.

might urge managers to realize that just as their labor forms a symbiotic relationship with the investor's capital, combining efforts and unifying aspirations in a management team can enable them to achieve more than on their own.

By means of the above principles, the talmudic invention and presentation of the *Iska* can be interpreted as encouraging managers to become indivisible along multiple dimensions. By becoming debtors and *de facto* partners in a joint venture with investors, managers have both a personal and a professional stake to be aligned with their investors' interests. Managerial labor and financial capital become unified in the *Iska* to their mutual benefit. Because of their personal liability, and the prospect of both downside risk as well as upside reward, managers become directly connected to the business result, thus developing an ownership mindset in driving it. The encouragement of forming a management team and the obligation of loyalty within it makes managerial colleagues inseparable from their common and mutual interests. And by elevating laborers into owners, the *Iska* enables managers to foster integrity, wholeness and peacefulness through a dignified, prosperous and independent means of sustaining themselves and their family.

4.2 Issue 6: Executive Compensation

4.2.1. *How Much to Take for What One Has Given, Relative to What Others Get*

The remuneration of corporate executives is a highly controversial issue, particularly because it relates to both distributive and commutative justice. This duality becomes evident in the two main strands of the issue's public discourse. On the one hand, executive pay is criticized for being excessively high relative to the salaries of average workers. For instance, the AFL-CIO⁶⁰⁰ launched a website entitled "Executive Paywatch," which lists the total compensation of corporate CEOs, and compares it to workers' median pay.⁶⁰¹ This distributive critique is further provoked by statistics showing absolute and relative executive pay to have

600 The American Federation of Labor and Congress of Industrial Organizations, which unites 56 U.S. and international labor unions.

601 <http://www.aflcio.org/corporatewatch/paywatch/>.

risen sharply over the past decades⁶⁰² and by cases of executives being awarded tens of millions of US dollars while laying off thousands of employees.⁶⁰³

On the other hand, the executive pay debate centers on the commutative question of whether the remuneration of top managers adequately reflects their performance.⁶⁰⁴ This question became especially acute and resulted in public outrage when some companies that in the wake of the recent financial crises had been bailed out with tax money awarded their executives multi-million dollar bonuses.⁶⁰⁵ A corollary within the corporation following from this commutative critique is the “say-on-pay” movement, which has led some supervisory boards to present proposed executive pay levels to shareholders, who can then vote at the annual meeting in support of or against the proposition.⁶⁰⁶ The resulting increase in so-

602 Until 1979, the median annual CEO pay at the 50 largest U.S. firms hovered at around 1m USD, as it had since the mid-30s of the same century. By the new millennium, this figure has risen to 9.2m. (Anderson, Sarah et al., 17th Annual Executive Compensation Survey, Institute for Policy Studies, Washington, DC, 2010, p. 3.) And while the ratio of average CEO total direct compensation to average production worker compensation was 24.2 in 1965, this metric stood at 298.5 in 2000. (Economic Policy Institute, charted analysis retrieved online from: http://www.stateofworkingamerica.org/files/images/orig/8-Wages_ceo_pay.png).

603 For instance, the Institute for Policy Studies report cited above juxtaposes total compensation of CEOs to the number of people they laid off (e.g., the “highest-paid CEO layoff leader” was the pharmaceutical company Schering-Plough’s Fred Hassan, who in 2009 was awarded nearly 50m USD in total compensation, while 16,000 layoffs had been announced in the same period (p. 6.) It can be noted that such juxtapositions are primarily based on a moral sentiment of injustice, whereas from a strictly economic perspective the CEO reaps some of the financial rewards of improving profitability through lower labor costs.

604 See for instance, Khurana, Rakesh in his book *Searching for a Corporate Savior: The Irrational Quest for Charismatic CEOs*, Princeton, NJ, 2002 argues that the return on investment of CEO pay packages is significantly below other outlays of corporate resources. For further scholarly studies of executive compensation, see Dorata, Nina T./Petra, Steven T., *Corporate Governance and Chief Executive Officer Compensation*, in *Corporate Governance*, Vol. 8, Issue 2, 2008, pp. 141-152; Perel, Mel, *An Ethical Perspective on CEO Compensation*, in: *Journal of Business Ethics*, Vol. 48, No. 4, 2003, pp. 381-391; Bebhuk, Lucian Arye/Fried, Jesse M., *Executive Compensation as An Agency Problem*, National Bureau of Economic Research Working Paper No. 9813, New York, NY, July 2003; Finkelstein, Sydney/Hambrick, Donald C., *Chief Executive Compensation: A Study of the Intersection of Markets and Political Processes*, in: *Strategic Management Journal*, Vol. 10, Issue 2, 1989, pp. 121-134.

605 Barack Obama called such bonuses “shameful” and promised to crack down “against excesses in executive compensation.” (Quoted in: *Bonuses for Bad Performance*, *The New York Times*, New York, NY, January 29th, 2009.) As a result, the Troubled Asset Relief Program, a federal program to support financial institutions after the subprime mortgage crisis, instituted a 500,000 USD pay limit for executives at institutions bailed-out with public funds. Germany has also introduced legislation aimed at regulating executive compensation: its *Gesetz zur Angemessenheit der Vorstandsvergütung* of 2009 demands sustainability, reasonableness, and transparency of compensation policies.

606 These shareholder votes are still mostly non-binding, but nonetheless send a powerful signal to executives that they are being monitored and held accountable.

called shareholder democracy implies that the owners of a company should play a more active role in determining adequate pay levels for management in light of its performance.⁶⁰⁷ This demand becomes particularly relevant given the constitution of the standard institution and process by which executive compensation levels are determined—namely by the supervisory board’s compensation committee, which consists of directors who are mostly well-paid executives in other corporations. Executive compensation levels are hence essentially determined by managers themselves, further adding to the controversial nature of the issue.⁶⁰⁸

Beyond the above critiques, the discourse on executive compensation reflects a concern with the question whether multi-million dollar pay packages can ever be justified from an ethical standpoint. Some religious and philosophical doctrines preach the virtues of poverty and warn of vices relating to wealth.⁶⁰⁹ Does this imply that there is something intrinsically wrong with large executive pay packages, and should their recipients hence reject them, donate them or feel guilty about them? The following exposition first inquires what the Talmud might consider a fair compensation of corporate leaders to then study the talmudic stance towards wealth.

4.2.2. *Mediating Pay and Approaching Prosperity*

The Owner, Agent, and Worker

The first Mishnah of the sixth chapter in the Bavli’s tractate Bava Metzi’a opens with the case of a householder contracting workers who then deceive one another: *השוכר את האומנין והטעו זה את זה אין להם זה על זה אלא תרעומות*.⁶¹⁰ Asking

607 Both the commutative and distributive issues of executive compensation are reflected in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, a U.S. federal statute mandating that corporations must give their shareholders a “say on pay” at least every three years, and that they must publish the ratio of CEO pay to that of the average worker.

608 As examples of a general phenomenon, in 2011 all four compensation committee members of the consultancy Accenture, all eight at Goldman Sachs and all four at Ford were leading executives at other companies. (Source: Bloomberg Businessweek.)

609 See for instance Matthew 19,21 and 1 Timothy 6,10; Buddhist and Hindu renunciation of wealth in favor of an ascetic life to reach enlightenment; Aristotle condemning chrematistics (Politics, 1257a-1258b), and Karl Marx desiring the emancipation from money (for instance in his *Zur Judenfrage*).

610 mBM 6,1: When someone hires workers who then deceive one another, they [the workers] have nothing [to legally hold against each other] except resentment. The deceived workers thereby have no legitimate claims for restitution.

how workers might have cause for resentment, the ensuing Gemarah⁶¹¹ attempts to find the case in which they deceive each other:

A	<p>One or the other retracts is not taught [by the Mishnah], but rather “they deceive one another,” [implying] that the workers deceive [each other]. What is the case [in which this occurs]? The owner [householder] said to him [a worker functioning as a hiring agent], “Go and hire me workers,” whereupon he went and deceived them [the other workers]. What’s the case? If the owner stipulated [a wage of] four [Zuz per day], and he [the agent] went and offered them [the other workers] [a wage of] three [Zuz per day], what cause for resentment have they? [The deal was] understood and accepted!</p>	<p>חזרו זה בזה לא קתני אלא הטעו זה את זה דאטעו פועלים אהדדי היכי דמי דאמר ליה בעל הבית זיל אוגר לי פועלים ואזיל איהו ואטעינהו היכי דמי אי דאמר ליה בעל הבית בארבעה ואזיל איהו אמר להו בתלתא תרעומת מאי עבידתיה סבור וקביל</p>
B	<p>Perhaps if the owner stipulated three and [the agent] went and offered them four. What is the case? If [the agent] said to them, “I am responsible for paying your wages,” [the agent must] pay [the wage] to them from his own funds. For it is taught [in a Baraita], “If one hires a worker to labor on his own property, and then directs him to [work on] the property of his fellow, he must pay the worker from his own [funds] and can then return and take from the [other owner] the equivalent of the benefit he received.”</p>	<p>אי דאמר ליה בעל הבית בתלתא ואזיל איהו אמר להו בארבעה ה"ד אי דאמר להו שכרכם עלי נתיב להו מדידיה דתניא השוכר את הפועל לעשות בשלו והראהו בשל חבירו נותן לו שכרו משלם וחוזר ונוטל מבעל הבית מה שההנהו</p>
C	<p>No, it is necessary [to teach the Mishnah for a case where the agent] said to them, “The owner is responsible to pay your wages.” But let us look at the [market] wage level of workers! No, it is necessary [to teach this for the case in which] some workers engage themselves at four and other workers at three, for they can then say [to the agent], “If you hadn’t told us four, we</p>	<p>לא צריכא דאמר להו שכרכם על בעל הבית ולהזוי פועלים היכי מיתגרי לא צריכא דאיכא דמגר בארבעה ואיכא דמתגר בתלתא דאמרו ליה אי לאו דאמרת לן בארבעה טרחינן ומתגרינן בארבעה איבעית אימא הכא בבעל הבית עסקינן דאמרו ליה</p>

611 bBM 76a.

<p>would have made an effort to find [an alternative employment] at four.” Alternatively [lit. if you want I will say], here we are dealing [with a case] of an owner [who hires himself out to other owners] who can say to him [the agent], “If you hadn’t told me four, it would have been beneath my dignity to hire myself [out as a wage laborer].” Alternatively, we are dealing with [a case where all are] workers after all, and they can say to him [the agent], “Since you told us for four, we made an effort to provide you with superior work.” But let us go and look at their work [to see if it is worth more than three]? [We are dealing] with a dyke. With a dyke [superior workmanship] can be recognized! It is filled with water, and it can hence not be recognized.</p>	<p>אי לאו דאמרת לן בארבעה הוה זילא בן מילתא לאתגורי איבעית אימא לעולם בפועלים עסקינן דאמרי ליה כיון דאמרת לן בארבעה טרחינן ועבדינן לך עבידתא שפירתא וליחזי עבידתייהו בריפקא ריפקא נמי מידע ידע דמלי מיא ולא ידיע</p>
<p>D Alternatively, [we are] after all [dealing with a case where] the owner said for four and [the agent] went and said to them for three. And to your objection that the wage was understood and accepted, the [workers] can reproach [the agent] by saying, don’t you [believe in the verse] “Do not withhold a good from whom it is due” [Prov 3,27]?</p>	<p>איבעית אימא לעולם דאמר ליה בעל הבית בארבעה ואזל איהו אמר להו בתלתא ודקאמרת סבור וקביל דאמרי ליה לית לך אל תמנע טוב מבעליי</p>

The Gemarah (A) begins by proposing that the Mishnah deals with a case where the owner instructs a hiring agent to contract workers for him at a certain pay level from which the agent then deviates. The relevance of this setup to the issue of executive compensation is clear given that the board of directors as shareholders’ agent determines executive pay levels through its compensation committee. Similar to our *Sugya*, in this process a third party mediates remuneration between owners and workers. In the following discussion, therefore, the house-

holder is treated as a shareholder/owner, the agent as a member of the compensation committee, and the worker as an executive.⁶¹²

Seeking to determine what case the Mishnah is dealing with, the Gemarah first proposes that it is one in which the agent pays less than the householder had been willing to expend.⁶¹³ In this case, the Gemarah at first rejects that there is even any justified cause for resentment, since the deal was understood and accepted by its transacting parties. This implies that if a certain pay level is agreed upon between the workers and the agent, the agreement is binding, no legal redress can be claimed, and there is no justified reason for resentment, even if the agent pays less than he was instructed to. Yet the Gemarah later (D) questions the “agreed and accepted” defense against claims of underpayment, stating that the workers could protest the agent’s conduct by invoking the verse “אֶל-תִּמְנַע-טוֹב -- מִבְּעַלְיוֹ-- בְּהִיּוֹת לְאֵל יָדָהּ לַעֲשׂוֹת”⁶¹⁴. Thereby, if someone is willing to pay a certain wage, a hiring agent is wrong to be parsimonious beyond this pay level.⁶¹⁵

But prior to this, the Gemarah believes the Mishnah’s case is one in which the agent pays more than the owner has stipulated (B). If the agent told the workers that he is responsible for their wages (שְׂכָרְכֶם עָלַי), then he must compensate them for the excess pay out of his own pocket. Based on the cited Baraita (השוכר את הפועל), an agent who takes upon himself to pay higher wages than the householder wanted him to is hence perceived as becoming the labor contractor himself who then in turn directs the workers to the householder. He must therefore pay the workers the wage that he had agreed upon with them and can only recoup the actual value of the benefit they contributed to the householder, which would likely be near the wage rate the householder had stipulated. Payment of wages inflated beyond the level of commutative equity as expressed in labor market wage-levels is hence the responsibility of the agent, not that of the householder. The Mishnah, therefore, cannot be dealing with such a case in which there is neither deceit nor cause for resentment between the agent and the workers.

612 The only discussion of executive compensation in the Jewish business ethics literature seems to be a short essay by Asher Meir, which establishes the connection between bBM 76a and the issue of executive compensation (Exorbitant Execs, in: *The Jewish Ethicist: Everyday Ethics for Business and Life*, Jerusalem, 2005, pp. 199-202). Because his use of the complex *Sugya* encompasses but three sentences and only relates the case in which a worker is paid less than the householder had stipulated, a more in-depth and contextualized exposition seems merited.

613 See illustration 9 for a visualization of the following analysis.

614 Prov 3,27: Do not withhold good from those to whom it is due, when it is in [the power of] your hands to bestow [it].

615 This is also supported by the Baraita cited on bBM 68b, in which R. Meir teaches that whether large or small, any wage agreed upon between an investor and a manager is to be accepted.

Instead, the Gemarah suggests that the Mishnah is dealing with a situation in which the agent declares that the householder is responsible for wage payments (שכרכם על בעל הבית) and promises to pay more than was stipulated by the householder (C). Now such a case does not necessarily lead to a justified cause for resentment, because the going wages in the labor market provide a benchmark as to how much the householder ought to pay his workers: if the higher wage is the market rate, the agent can claim this pay level from the householder, based on the Baraita quoted above and assuming this higher level corresponds to the benefit provided. And if the lower wage stipulated by the householder is the market rate, the workers must accept this rate, because the agent stated that the householder is responsible for paying their wages, and he in turn need not pay more than the value he is receiving.

Yet section C then concludes with the specification that when there is no clear market wage available, resentment on behalf of the workers is justified when an agent promises higher wages than the householder stipulated and says the householder is responsible for paying them. The Gemarah explains how this situation can lead to justified grounds for resentment: when there are multiple market wage rates, some workers might have been willing to work only for the higher rate they had agreed upon with the agent; or when the worker is a householder himself, he might find it below his dignity to work for the lower rate; or the workers could have made an effort to do the work particularly well because they were expecting a higher wage than the one they actually ended up receiving. These three cases of lower than expected pay are justified causes for resentment on behalf of the workers, as would be the above one where the agent pays a lower wage than the householder had asked him to expend. Note however that these deviations are in no case a basis for *halakhic* restitution, only for homiletic condemnation.⁶¹⁶ By proposing these four cases as justified grounds for resentment, the Gemarah implicitly states that higher pay attracts an increased number of workers, higher pay might motivate them to improved performance, pay levels are connected to dignity, and that agents should be no more parsimonious in wage-setting than expected by their principals.

616 As implied by the Mishnah, which states that the workers can only harbor resentment but have no cause for legal redress.

A Talmudic Perspective on Wealth

Once an executive pay package is awarded, how should its recipient relate to it? Essentially, the talmudic stance towards wealth encourages both the forces of accumulation and moderation.⁶¹⁷ According to this perspective, prosperity is desirable and poverty perceived as a terrible affliction. But wealth carries challenges of its own, and its accumulation should hence be moderated to mitigate the risks of affluence.⁶¹⁸

Accumulation

The Talmud encourages the accumulation of wealth. This praise of prosperity traces its roots to biblical sources, which consider material blessings a reward for upright behavior.⁶¹⁹ The Bible describes all three patriarchs as possessing great wealth,⁶²⁰ God promises the Israelites that they will not leave Egypt empty-handedly and enables them to take possession of the Egyptians' wealth during the Exodus.⁶²¹ In the Talmud, this positive perception of prosperity is continued and perhaps strengthened. Even R. Shimon b. Yochai, an erstwhile critic of economic activity, considers wealth one of eight qualities that are "becoming to the righteous and becoming to the world."⁶²² A large body of talmudic teachings offers business advice and hence guidance on how to best accumulate wealth. For instance, R. Yitzchak advises dividing wealth into three parts (i.e., diversifying): investing one-third into land, a further third into merchandise, and keeping the rest liquid to capture commercial opportunities as they arise.⁶²³ Bar Kappara also

617 The following section is partly based on research conducted for a talk I gave at the Evangelischer Kirchentag in Dresden on June 3rd, 2011, about the Jewish perspective on the relationship between money and happiness ("Macht Geld doch glücklich?"). Further sources informing this section are Tamari, Meir, *The Challenge of Wealth*, pp. 3-24, and --, *With All Your Possessions: Jewish Ethics and Economic Life*, pp. 25-59; Kahaner, Larry, *Values, Prosperity, and the Talmud. Business Lessons from the Ancient Rabbis*, pp. 1-23; Friedman, Hershey, *The Simple Life: The Case Against Ostentation in Jewish Law*, in: *Jewish Law*, <http://www.jlaw.com/Articles/againstosten.html#1>.

618 See illustration 10 for a graphical depiction of the talmudic stance towards material wealth.

619 Lev 26,3-13; Dtm 11,13-15; Prov 22:4; Eccl 5,18.

620 Abraham: Gen 13,2; Isaac, op cit. 26,12-14; Jacob, op cit. 30,43.

621 Op. cit. 15,14; Ex 3,21; 12,35-36. Besides these biblical influences, the Pharisaic rabbis may have also emphasized the importance of wealth as a reaction to early Christian texts praising poverty as a virtue.

622 mAv 6,8.

623 bBM 42a.

urges lucrative investments, teaching that when goods are available at an attractive price, money should be raised to acquire them.⁶²⁴ A relatively long *Sugya* in Tractate Pessachim suggests partnering with those who are already successful, ensuring the timing of a sale is right, and trading in liquor because it allows one to both grow wealthy and to be charitable.⁶²⁵ The same *Sugya* records the business lessons Rav teaches his son (after giving up hope he might become a scholar): sell merchandise shortly after buying it; every sale might be cause for regret once prices rise, except wine, because perhaps it will sour; receive up-front payment for merchandise; deal with less merchandise in close proximity rather than with more from a distance; run to the brewer with dates before you eat them.⁶²⁶ R. Yochanan suggests raising small cattle in order to become prosperous,⁶²⁷ and ironically teaches: מי שהניח לו אביו מעות הרבה ורוצה לאבדן ילבש בגדי פשתן וישתמש בכלי זכוכית וישכור פועלים ואל ישב עמהן עמהן.⁶²⁸ Even religious obligations are rationalized as being conducive to wealth accumulation—a scriptural source for the commandment of agricultural tithes is interpreted to mean that one ought to tithe in order to grow rich,⁶²⁹ and Rava urges the men of Machuza to honor their wives, so that they may be enriched.⁶³⁰

In contrast to the biblical and even mishnaic preference of agriculture relative to commerce, some later talmudic sages recommended engaging in business because it is more lucrative than working the land. R. Ela'zar teaches: אין לך אומנות פחותה מן הקרקע.⁶³¹ When he came across a plot of land that was ploughed across its width, he remarked: אי תשיייה לאורכך הפוכי בעיסקא טב מינך.⁶³² Likewise, when Rav saw growing ears of corn swaying, he called out to them: אי נייפת איתנופי אי נייפת איתנופי.⁶³³ And Rava teaches: מאה זוזי בעיסקא כל יומא בשרא וחמרא מאה.⁶³⁴ The underlying assumption of all these teachings is the desirability of prosperity.

624 bBer 63a.

625 bPes 112a-113a.

626 Ibid., 113a.

627 bChul 84a-b.

628 bBM 29b: He to whom his father has left much money and who wants to lose it should wear linen garments, use glassware, and hire workers without sitting with [i.e., supervising] them.

629 bTaan 9a.

630 bBM 59a.

631 bYev 63a: There is no occupation more inferior than land [i.e., agriculture].

632 Ibid.: If you were ploughed along your length also, engaging in business would still be more profitable than in you.

633 Ibid.: Swing as you wish, engaging in business is still more profitable than in you.

634 Ibid.: A hundred *Zuzim* invested in business [makes] meat and wine every day [affordable], a hundred *Zuzim* in land [i.e., agriculture], [makes only] salt and vegetables [affordable]. And not just this, but it causes him [the agricultural investor] to sleep on the ground and embroils him in strife.

The flipside of this encouragement of wealth accumulation are the talmudic warnings against poverty. For instance, the talmudic sages teach that poverty in one's home is worse than fifty plagues,⁶³⁵ that it causes familial strife,⁶³⁶ that it outweighs the entire world's pain and suffering,⁶³⁷ that charity is to be limited lest its donor falls into poverty himself,⁶³⁸ that there can be no Torah in a place of hunger,⁶³⁹ and R. Eli'ezer haQapar urges continuous prayers to be spared the fate of the poor.⁶⁴⁰ Such warnings have roots in the Bible as well, which perceives poverty as a terrible affliction.⁶⁴¹ Again, the Talmud appears not only to uphold but to strengthen these warnings. For instance, R. Chanin teaches in Rav's name: כל מקום and שכל מקום שהזכרת השם מצויה שם עניות מצויה ועניות כמיתה: This teaching contains an idea found throughout the Talmud: that poverty is similar to death. For instance, the Gemarah suggests that the poor person is one of four groups of people that even while alive resemble the dead next to the leper, the blind and the childless;⁶⁴³ and that "a poor man's life is not a life."⁶⁴⁴ These traditions are by no means intended to evoke callousness towards the destitute by portraying them as already deceased. On the contrary, they are likely meant to invoke empathy with the predicament of the poor, as suggested by the numerous biblical and rabbinic norms and beliefs relating to *Tzedaqah* ("social justice").⁶⁴⁵

Given the "this-worldly" focus of Judaism and its rejection of asceticism, many of the Torah's commandments require money for their fulfillment. The prescribed daily 100 blessings,⁶⁴⁶ marriage, procreation, elaborate festival meals, charity, *Tefillin*, *Mezuzot*, communal institutions, as well as the economic opportunity cost of Torah study and daily prayers all require a certain degree of financial capital and security. Wealth is hence valued as a means to fulfill the Torah's commandments, as reflected in a tradition teaching that the sages respect the

635 bBB 116b.

636 bBM 59a.

637 ExR 31,14.

638 bKet 16b.

639 mAv 3,21.

640 bShab 151b.

641 Lev 26,14-32; Dtn 11,16-17; 15,4. And one of Ivov's afflictions is to endure poverty, after which God blesses him with twice the wealth he had at the outset (Job, 42,10).

642 bNed 7b: Every place where God's Name is remembered [i.e., spoken] in vain, poverty is found, and poverty is like death ... Every place where the sages cast their eyes [in disapproval], [either] death or poverty [resulted].

643 bNed 64b.

644 bBeit 32b.

645 For a study of the Jewish perspective on social justice and philanthropy, see chapter 5.2.

646 bMen 43b.

affluent when they use their prosperity to help others.⁶⁴⁷ Furthermore, abstinence and asceticism are frowned upon—as R. Dimi teaches in the name of R. Yitzchak: לא דיידך מה שאסרה לך התורה אלא שאתה מבקש לאסור עליך דברים אחרים.⁶⁴⁸ And Abbaye teaches that Shimon ha-Tzaddik, R. Shimon and R. Eli'ezer haQapar were all of the same opinion that the Nazirite is a sinner, because he afflicts himself by abstaining from wine, from which the Gemarah deduces with a *Kal vaChomer*: המצער עצמו מכל דבר על אחת כמה וכמה מכאן כל היושב בתענית נקרא חוטא.⁶⁴⁹ The fulfillment of *Mitzvot* in the positive and the rejection of abstinence in the negative imply the need for financial means, which thereby become a medium enabling a person and his family, as well as his community, to live a life according to the letter and the spirit of the Torah. Thereby, the accumulation of wealth becomes a means towards a greater good, rather than an end in and of itself.

Moderation

The talmudic sages viewed the lust to accumulate wealth as a natural drive while warning that this lust is endless. When Alexander the Great asked the rabbis why a human eyeball outweighs all his gold and silver, they responded that the human eye is never sated, and support their point by sprinkling dust on the eyeball, whereupon it is outweighed by Alexander's wealth.⁶⁵⁰ And a Midrash teaches that he who has 100 coins desires 200.⁶⁵¹ Probably in order to temper this accumulative lust, Ben Zoma and R. Meir teach that wealth itself can never make one rich, but rather only how one perceives it and relates to it: איזה הוא עשיר-- איזה בחלקו השמה בעשרו,⁶⁵² and איזה עשיר כל שיש לו נחת רוח בעשרו.⁶⁵³ The power of the lust for money might also be the reason why 120 of the 613 *Mitzvot* relate to economic matters, whereas the laws of kosher food and sexual relations number 26 each.⁶⁵⁴ All of these wealth related traditions can be perceived as an attempt to moderate the desire for riches. The Talmud perhaps emphasizes moderation in monetary

647 bEr 86a.

648 yNed 9,4 41b [Venice and Krotoshin Editions]: Is it not enough for you what the Torah has forbidden you that you ask to prohibit yourself further things?

649 bNed 10a: He who abstains from everything how much more so [should he be called a sinner]! From here [we learn] that he who fasts [beyond the prescribed fast days] is called a sinner.

650 bTam 32b. Cf. Prov 27,20.

651 EcclR 1,34.

652 mAv 4,1: Who is wealthy? He who celebrates his portion.

653 bShab 25b: Who is wealthy? All who are satisfied with their wealth.

654 Based on Maimonides' counting of the *Mitzvot*, see <http://www.jewfaq.org/613.htm>.

matters so strongly because it realizes that its own encouragement of wealth accumulation might not only lead away from poverty but into an obsession with material prosperity.

As a balance to its encouragement of wealth creation and inner-worldly action, the Bible and Talmud thus warn of the risks of riches. This dialectic is summed up in the Proverbs, which asks to be spared both poverty and affluence: וּפְן־אֲנָרֶשׁ וּגְבַרְתִּי; וְתַפְשֵׁתִי, שֵׁם אֱלֹהֵי פֶן אֲשַׁבֵּעַ, וְכַחֲשֵׁתִי -- וְאַמְרַתִּי, מִי יְהוָה.⁶⁵⁵ Riches thereby carry the risk of forsaking God, a warning echoed throughout the Bible, where the wealth of the Egyptians with which the Israelites are at first blessed eventually leads to the Sin of the Golden Calf (חֲטֵאת הָעֵגֶל).⁶⁵⁶ God warns the Israelites not to forget Him when they become prosperous,⁶⁵⁷ and Yeshurun is criticized for becoming fat and forsaking God.⁶⁵⁸ Likewise, the Prophets and Proverbs warn of placing one's trust in wealth.⁶⁵⁹

Maintaining a connection to God amidst affluence is not the only challenge of wealth. As Hershey Friedman points out, there are three central risks of riches from the perspective of the Jewish tradition: envy, shame, and arrogance.⁶⁶⁰ Avoiding these is hence a central challenge of the affluent, which is reflected in a number of biblical and talmudic traditions. For instance, the Talmud interprets the biblical verse in which Jacob asks his sons why they make themselves conspicuous⁶⁶¹ as a warning not to arouse the envy of Esau or Ishma'el by appearing sated.⁶⁶² And out of deference to the impecunious, the rabbis abolished differences in the funeral rituals between the rich and poor because they had caused the latter to be ashamed of their poverty.⁶⁶³ Similarly, the Mishnah records that unmarried girls of Jerusalem would court potential spouses on *Tisha Be'Av* and *Yom Kippur* in borrowed white dresses so as not to shame those that did not possess the means to afford expensive clothing.⁶⁶⁴ And the Gemarah suggests that the reason why someone burning a Pashal lamb that had become ritually unclean may not do so with his own wood but must rather use the temple's altar

655 Prov 30,9: Lest I be sated, and forget—and will have said, “Who is YHWH?” And lest I be poor and will have stolen and profane the Name of my God.

656 Ex 32,4.

657 Dtn 8,14.

658 Dtn 32,15.

659 E.g. Jer 9,22; Prov 11,4; 28.

660 Friedman, Hershey H, *The Simple Life: The Case Against Ostentation in Jewish Law*, in: *Jewish Law*, <http://www.jlaw.com/Articles/againstosten.html>, 2002.

661 Gen 42,1.

662 bTaan 10b. Jacob himself had been envied for his prosperity both by Laban's family (Gen 31,1), similar to how the Philistines envy Isaac for his wealth (Ibid. 26,14).

663 bMQ 27a-b.

664 mTaan 4,1.

expend, and communicates it to his representative. Applied to contemporary corporate practice, this implies that shareholders ought to give the board of directors as their proxy guidance regarding the salaries and bonuses they are willing to expend for their management. Such a procedure is gaining ground with the “say-on-pay” and related shareholder democracy movements through which the owners of a corporation increasingly monitor and control the workings of the compensation committees.⁶⁷¹ Nonetheless, only a minority of corporations has instituted such “say-on-pay” measures, and even when they have, it is the compensation committees rather than the shareholders who formulate a pay proposal.

Now in the case where the agent pays less than the householder was willing to, the Gemarah homiletically gives the workers cause for resentment, because the agent is withholding a benefit from those to whom it is due. This implies that if shareholders are willing to pay their executives a certain remuneration, it is not legitimate for the supervisory board or any outside party to withhold this remuneration level from management. It is up to the shareholders to decide how much of their corporation’s money should be spent on its management, and they should play an active role in articulating a view on this decision. But the Gemarah also argues that once workers have agreed and accepted a certain pay level that happens to be lower than what the owners had been willing to expend, this agreement is binding without cause for resentment. These two opinions thereby construct a tension between consent and equity, and the talmudic dialectic of executive compensation consequently requires a navigation of the dilemma arising from the conflict between paying what shareholders want and paying what their agent (the board of directors) believes is possible and justified.

In the case where the worker is paid more than the householder had stipulated, the Gemarah differentiates between the case where the agent is responsible for paying the wages and the one in which the householder is responsible for doing so. In the former case (which is closer to corporate practice given that compensation committees are responsible for setting pay levels and the corporation rather than its shareholders pays this compensation), the agreed-upon salaries must be paid out, but the agent can only recoup the actual value or benefit of the work from the householder. This implies that when a supervisory board sets compensation levels above the value which management is contributing to shareholders, its members might be liable to pay for the differential out

671 These committees are appointed by the board of directors to design a compensation system for a corporation’s officers. The members of these committees should be corporate directors who fulfill certain independence requirements (Reifler, Stewart et al., *Compensation Committee Handbook*, Hoboken, NJ, 2008, p. 3.)

of their own pocket. Thereby, executive compensation should be tied more closely to the actual performance of management. Rather than awarding multi-million dollar pay packages simply because its competitors do so as well, a corporation should analyze what each executive is contributing to its performance and set pay accordingly. In some cases, this might imply that compensation levels are even higher than current ones, for example, for a CEO who orchestrated a multi-billion dollar innovation. Or conversely, an executive might even have to compensate the shareholders for having destroyed value.

Nonetheless, the Gemarah seems to also justify setting pay levels according to market rates. In the case where the householder is responsible for wages, when the agent agrees to pay more than the householder had stipulated, the Gemarah states to go look “what workers are being paid,” implying that irrespective of what had been agreed upon, the workers have a right to be paid no less and no right to be paid more than the market wage rate. From this perspective, then, executives can demand compensation levels corresponding to those of their peers. However, since the talmudic ideal of commutative justice pervades its vision of the ideal labor market as well,⁶⁷² it can be assumed that wage levels ought to correspond to some value or benefit the one paying them is receiving in return, hence reconnecting pay to performance.

Finally, the concluding cases presented by our *Sugya* raise two further important points regarding executive compensation. Firstly, by stating that some workers might not be willing to sell their labor below a certain rate and might do a better job for higher pay, the Gemarah implicitly acknowledges that high pay levels can attract both more workers and simultaneously induce them to improve their performance. This implies that high executive salaries might be needed in order to attract top talent with top results, particularly given the demanding nature of corporate management and the income that can be generated by leaders in other fields, for instance as successful entrepreneurs, entertainers, and hedge fund managers. Secondly, by teaching that a worker might find it below his dignity to work for less than a certain level of compensation, the Gemarah connects pay levels to respect. This important point should be borne in mind when determining the salaries and treatment of both executives and employees. Low pay of average workers, particularly in stark contrast to high executive salaries, might impinge on the self-worth and dignity of these workers, and thereby reduce their performance as well. Yet these risks must be weighed against the fact that a corporation awarding its executives a lower compensation than its competitors might also hurt the dignity of its leaders, even when their pay levels seem high in absolute terms.

672 See chapter 7.

The talmudic perspective on wealth can be applied legitimately with little abstraction from the talmudic context, which is familiar with both great individual wealth and a significant degree of income inequality, to today's top managers, for many of whom the proper philosophical stance towards their oftentimes substantial earnings is an important question. According to the perspective developed above, once executives receive their pay packages, they have fulfilled an important precept of the talmudic relation to wealth: avoiding poverty and achieving prosperity. There is therefore no need, both from a biblical and talmudic perspective, for executives to feel guilty about their compensation level itself (whether it is justified is another question). Poverty is not a virtue but an affliction, and everyone who escapes it can consider himself blessed. Conversely, prosperity is desirable, and those achieving it can view it as a source of joy and gratitude. But wealth should never be viewed as an end in itself, but as a means to live a complete life, participate in society, and support the needy. Otherwise, prosperity, especially in the form of great riches (which many executive pay packages could be classified as) can have serious downsides. Executives need to be careful that their wealth does not become an idol and they temper their natural and legitimate drive for more money with humility, modesty, and charity towards those with lesser means.

As an indivisible hand of their corporation, executives should strive to make their compensation indivisible from the contributions they provide, focusing firstly on only receiving pay that is justified from a commutative standpoint. They should emphasize and articulate what they give, the value they add to their stakeholders, and understand how their compensation is linked to these contributions. When they destroy corporate value, they could consider returning money to their shareholders out of their own pocket. Secondly, executives need to bear distributive issues in mind—how does their pay level compare to that of “average workers?” Instead of conceptually separating their own remuneration from that of lower-income employees, they can make the two indivisible instead by aspiring towards legitimate and dignified relative valuations. Thirdly, reflection is required upon how money is spent—ostentatiously or responsibly. When an executive is indivisible, his compensation is legitimized by what he has given *for* it and gives *of* it in return, connecting him with humanity and the spiritual source of his blessings.

5 Ethics Taxonomy Dimension 4: Society

5.1 Issue 7: Societal Expectations

5.1.1. Corporate Liberty and Social Responsibility

Through their size and power, corporations have a significant impact on society. For instance, the mass-marketing of cigarettes has not just harmed the customers of tobacco conglomerates but passive smokers as well,⁶⁷³ retailing giants threaten community-based “mom-and-pop stores,”⁶⁷⁴ and corporate bail-outs financed by taxpayers put additional pressure on already strained national budgets.⁶⁷⁵ These are cases in which corporate activities might negatively affect society. Yet the activities of corporations provide social benefits as well: corporate income tax accounts for over ten percent of total U.S. federal tax revenue,⁶⁷⁶ investments of multinational corporations in emerging markets have improved standards of living and education for local residents,⁶⁷⁷ and corporations attract related and

673 Numerous epidemiological studies have shown that passive smokers risk many of the health conditions faced by smokers. A comprehensive review by the International Agency for Research on Cancer of the World Health Organization found that non-smoking spouses of smokers face a 20-30% higher risk of lung cancer than non-smokers, see <http://monographs.iarc.fr/ENG/Monographs/vol83/index.php>.

674 See for instance Clark, J./Irwin, E.G, Wall Street vs. Main Street: What Are the Benefits and Costs of Wal-Mart to Local Communities, in: Choices Magazine, 2nd Quarter 2006, <http://www.choicesmagazine.org/2006-2/grabbag/2006-2-14.htm>, and Stone, K., Impact of the Wal-Mart Phenomenon on Rural Communities, in: Increasing Public Understanding of Public Problems and Policies, Farm Foundation, Oak Brook, IL, 1997, pp. 189-200.

675 For instance, the U.S. government’s Troubled Assets Relief Program might cost U.S. taxpayers as much as 25bn USD, as calculated by the Congressional Budget Office. See the Report on the Troubled Asset Relief Program, November 2010, <http://cbo.gov/doc.cfm?index=11980&zzz=41404>. The severity of this strain is further augmented through the recent sovereign debt crises.

676 Congressional Budget Office, A Preliminary Analysis of the President’s Budget and an Update of CBO’s Budget and Economic Outlook, March 2009, Table F-3, <http://www.cbo.gov/ftpdocs/100xx/doc10014/HistoricalMar09.pdf>.

677 Such as the involvement of the food giant Nestlé in India, which led to a significantly higher standard of living and education in the Moga District relative to other Indian regions, see Kramer, Mark R./Porter, Michael, Strategy & Society: The Link Between Competitive Advantage and Corporate Social Responsibility, in: Harvard Business Review, Cambridge, MA, December 2006, p. 12.

supporting industries, thereby boosting overall economic growth for the communities in which they are based.⁶⁷⁸ In economics, these societal costs and benefits of corporate conduct are described as negative and positive externalities, because they are incurred by parties who have not consented to the transactions that cause them.⁶⁷⁹ This power of corporations to inadvertently cause harm or do good for society has given rise to a fervent discourse about the social responsibility of corporations and their managers.⁶⁸⁰

In 1960, one of the earliest and most influential contributors to this discourse understood corporate social responsibility to mean that managers, just as all businessmen and women, “should oversee the operation of an economic system that fulfills the expectations of the public.”⁶⁸¹ According to this view, managers must hence take societal expectations into account and respond to them.⁶⁸² This position is rejected, at first sight, by those who believe that managers may use corporate resources solely to further the interests of their shareholders, a belief epitomized by Milton Friedman’s dictum that “[t]he social responsibility of business is to increase its profits.”⁶⁸³ Thereby, the liberty of managers to further corporate performance is simultaneously their one and only responsibility vis-à-vis society.

These two opposing positions may in fact be increasingly converging: in the negative because failing to address societal expectations can undermine a corporation’s license to operate and hence the foundation on which its profit genera-

678 Porter, Michael E., *The Competitive Advantage of Nations*, Detroit, MI, 1990, p. 151ff.

679 Mankiw, Nicholas Gregory, *Principles of Economics*, 6th ed., Mason, OH, 2009, p. 204. For an example of an economic study about the externalities of corporations, see Blomström, Magnus/Kokko, Ari, *Multinational Corporations and Spillovers*, in: *Journal of Economic Surveys*, Vol. 12, Issue 3, July 1998, pp. 247-277. For an attempt by the United Nations to understand the impact of externalities, see the report by the United Nations Conference on Trade and Development, *Disclosure of the Impact of Corporations on Society. Current Trends and Issues*, Geneva/New York, NY, 2004, http://www.unctad.org/en/docs/iteteb20037_en.pdf.

680 “CSR,” “corporate citizenship,” “corporate accountability,” and “business in society” are some of this discourse’s keywords.

681 Frederick, W.C., *The Growing Concern Over Business Responsibility*, in: *California Management Review*, 2, pp. 54-61, quoted in: Carroll, Archie B., *Corporate Social Responsibility. Evolution of a Definitional Construct*, in: *Business and Society*, Vol. 38, No. 3, September 1999, p. 271.

682 The etymology of “responsibility” is in fact the Latin *responsus*, pp. of *respondere*, “to respond.” See the Online Etymology Dictionary, <http://www.etymonline.com/index.php?term=responsible>.

683 Friedman, Milton, *op. cit.*, p. 133.

tion rests,⁶⁸⁴ and in the positive because taking societal expectations into account can provide profit growth opportunities for corporations.⁶⁸⁵ Corporations hence not only impact but are also impacted by the society in which they operate, and taking note of this interrelationship is fundamental for business success.⁶⁸⁶ As a result, management must adapt its decision-making to societal expectations, such as those regarding child labor, fair trade, environmental pollution, and philanthropy, irrespective of whether this adaptation is primarily motivated by a genuine concern for societal welfare or by an interest to protect and improve corporate performance.⁶⁸⁷

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- 684 Cases such as the moratorium of the Obama administration on deep-sea oil drilling permits following the BP Deepwater Horizon oil disaster in 2010 or the invigoration of the German protest movement opposing nuclear energy in the wake of Japan's nuclear crisis in 2011, which led to a commitment by the German government to shift to alternative sources of energy, exemplify how public sentiment and government interventions affect the corporate license to operate. McKinsey's Reputation, Government & Regulatory Strategy Initiative estimates that "across most industries, government actions have the potential to impact industry profit pools between 30 and 50%—even more factoring in government interventions following the global financial crisis." Such actions include interventions to ensure fair pricing, safety and quality, control of demand, long-term investment, and sector competitiveness. (http://www.mckinsey.com/Client_Service/Strategy/Expertise/Reputation_Government_and_Regulatory_Strategy.)
- 685 See Kramer, Mark R./Porter, Michael E., *Creating Shared Value. How to Reinvent Capitalism—and Unleash a Wave of Innovation and Growth*, in: Harvard Business Review, Cambridge, MA, January-February 2011, for cases of how corporations grow by creating benefits for society.
- 686 Consequently, an enormous body of literature deals with what has been termed "the business case for corporate social responsibility." For a review, see Carroll, Archie B./Shabana, Kareem M., *The Business Case for Corporate Social Responsibility: A Review Of Concepts, Research and Practice*, in: International Journal of Management Reviews, Vol. 12, Issue 1, pp. 85-105, March 2010. For a practitioner's guide on how to translate social responsibility into business success, see Kotler, Philip/Lee, Nancy, *Corporate Social Responsibility: Doing the Most Good for Your Company and Your Cause*, New York, NY, 2005. Hohnen, Paul, *Corporate Social Responsibility: An Implementation Guide for Business*, Winnipeg, 2007, pp. 11f. lists the following potential benefits for firms implementing CSR: better risk management, improved reputation management, enhanced recruiting and staff retention, improved innovation and competitiveness, enhanced operational efficiencies, improved ability to build effective supply chain relationships, enhanced ability to address change, more robust social license to operate, improved access to capital, and better relations with regulators.
- 687 Further supporting a convergence within the societal expectations vs. profits dichotomy, Friedman agrees with this conclusion when he writes that a corporate executive is responsible to "conduct the business in accordance with their [the owners'] desires, which generally will be to make as much money as possible *while conforming to the basic rules of the society*, both those *embodied in law and those embodied in ethical custom*." [Emphasis added, nk] Quoted from: Friedman, Milton, *The Social Responsibility of Business is to Increase its Profits*, in: The New York Times Magazine, New York, NY, September 13, 1970, available online under: <http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html>.

In order to develop a talmudic perspective on the responsibility of corporations to meet societal expectations, a definition of society is required. According to Anthony Giddens, “a good society, locally, nationally and globally, is one that balances the state and government, civil society and a market economy.”⁶⁸⁸ These three societal components provide the framework for the following section in which the Talmud is hence asked what responsibilities a business has towards the expectations and demands of the state, civil society, and the economy.

5.1.2. *Talmudic Responsibility towards State, Economy, and Civil Society*

Many contributions to the Jewish business ethics literature have argued for an integration of social goals into business conduct and have legitimized forcing businesses to do so.⁶⁸⁹ Given that these contributions unanimously answer the question of whether business has social responsibilities in the affirmative, the following section instead focuses on what exactly these responsibilities entail from a talmudic perspective. For this purpose, the above three-part framework of society’s components (state, civil society, and economy) is useful because it supports both exhaustiveness and specificity. Before analyzing each of the three components in turn, the following beautiful talmudic narrative gives a general *aggadic* warning that disregarding public interests is not in one’s best self-interest: ת”ר לא יסקל אדם מרשותו לרה”ר מעשה באדם אחד שהיה מסקל מרשותו לרה”ר ומצאו חסיד אחד אמר לו ריקה מפני מה אתה מסקל מרשות שאינה שלך לרשות שלך לגלג עלינו לימים נצרך למכור שדהו והיה מהלך באותו רה”ר ונכשל באותן אבנים אמר יפה אמר לי אותו חסיד מפני מה אתה מסקל מרשות שאינה שלך לרשות שלך.⁶⁹⁰ This tradition can be

688 Giddens, Anthony/Hutton, Will, *On the Edge. Living With Global Capitalism*, London, 2001, p. 18.

689 See for instance, Levine, Aaron/Pava, Moses (eds.), *Jewish Business Ethics. The Firm and Its Stakeholders*, New York, NY, 1999 and within this publication particularly Wurzburger, Walter S., *Covenantal Morality in Business*; Levine, Aaron, *Free Enterprise and Jewish Law. Aspects of Jewish Business Ethics*, New York, NY, pp. 150-160; Pava, Moses, *Business Ethics. A Jewish Perspective*, New York, NY, pp. 64-75; Meir, Asher, *Value Conflicts in Jewish Business Ethics: Social Versus Fiduciary Responsibility*, in: *Jewish Law*, 1996, <http://www.jlaw.com/Articles/fiduciary.html>; Tamari, Meir, *The Challenge of Wealth*, pp. 127-244.

690 tBQ 11,10; bBQ 50b: The rabbis taught, “A person should not remove stones from his domain onto the public domain.” A story of a certain man who removed stones from his grounds onto the public grounds when a pious man found him [doing so] and said to him, “Fool, why do you remove stones from the domain which is not yours onto the domain which is yours?” The man laughed at him. Some days later he had to sell his field and he was walking on that public domain when he stumbled over those stones. [He] said, “Beautifully did that pious man say to me, ‘why do you remove stones from the domain which is not yours onto the domain which is yours?’” Cf. tBQ 2,13.

understood to teach that the public impact of private corporations affects shareholders and managers as well and that they should consequently, at least to a certain extent, view themselves as indivisible from the public good.

Responsibility towards the State

In its characteristic dialectical manner, the Talmud both legitimizes state authority and is simultaneously skeptical of it. For instance, one tradition teaches that the government is one of two daughters who cry from *Gehinnom*,⁶⁹¹ whereas another anticipates the Hobbesian perspective that one should pray for the welfare of the government, for if people did not fear its authority they would swallow each other alive.⁶⁹²

The first talmudic codification of the state's right to intervene in the economy is its משפט המלך (*Mishpat haMelekh*, "Law of the King").⁶⁹³ Embedded in the chapter that discusses this law, the following Mishnah teaches that royal interests override the right to private property: ומוציא למלחמת הרשות על פי בית דין של שבעים ואחד ופורץ לעשות לו דרך ואין ממהה בידו דרך המלך אין לו שיעור וכל העם בוזין ונותנין לו והוא נוטל חלק בראש.⁶⁹⁴ Whether for strategic purposes or as *Rashi* comments in order to reach his field and vineyards,⁶⁹⁵ the sovereign hence has the power to impose his will on the property of others, and no one can object to him doing so. Nonetheless, the Mishnah also teaches that the king does not just enjoy economic rights but must also submit to obligations: besides being prohibited from entering into offensive wars without the consent of the judicial system, a king may not

691 bAZ 17a. *Rashi*, loc. cit., s.v. רשות, comments that the reason for this unfavourable view is that the government constantly imposes additional taxes and duties.

692 mAv 3,2. Cf. bAZ 4a.

693 The following section on the "Law of the King" is based on my unpublished seminar notes and research from Ronen Reichman's seminar Die Politische Dimension im Denken und Wirken der Rabbinen that took place at the Hochschule für Jüdische Studien Heidelberg in the winter semester 09/10. For a study of rabbinic traditions regarding the "Law of the King," see Blidstein, Gerald J., The Monarchic Imperative in Rabbinic Perspective, in: Association for Jewish Studies Review, 7, 1982, pp. 15-39. For a further discussion of monarchy in the Jewish tradition, see Lorberbaum, Menachem/Walzer, Michael et al. (eds.), The Jewish Political Tradition, Vol. I: Authority, Chapter 3: Kings, pp. 108-165, New Haven, CT, 2000.

694 mSan 2,4: He [the king] may lead forth into a voluntary war based on the decision of a court of seventy-one. And he may force a path [through private property], and no one can protest [against] him. The path of the king has no measure [i.e., no limit]. And the entire nation must present the spoils [of war] to him, and he takes his first choice [when they are divided]. Cf. the parallel traditions in tSan 4.

695 *Rashi*, bSan 20b, s.v. לעשות לו דרך.

accumulate an excessive amount of horses or gold and silver for himself.⁶⁹⁶ Juxtaposed to these last two obligations is the biblical commandment that the king write a Torah scroll for himself, and that it should accompany him at all times: וְהָיְתָה עִמּוֹ, וְקָרָא בוּ כָּל-יְמֵי חַיָּיו.⁶⁹⁷ The responsibilities of the sovereign are hence interconnected with the responsibilities towards him.

Yet the subsequent discussion in the Gemarah challenges not just the rights of a king but the institution of kingship itself. In a central *Machloket* between Rav and Shmuel, the two sages argue over the interpretation of the Book of Samuel's prophetic teachings regarding the king.⁶⁹⁸ Whereas Shmuel holds that the prophetic "Law of the King" contains actual rights of the sovereign, Rav believes that the law is not to be interpreted literally but rather as a means to inspire fear and awe in the nation: אמר רב יהודה אמר שמואל כל האמור בפרשת מלך מלך מותר בו רב אמר לא נאמרה: אמר רב יהודה אמר שמואל כל האמור בפרשת מלך מלך מותר בו רב אמר לא נאמרה: אמר רב יהודה אמר שמואל כל האמור בפרשת מלך מלך מותר בו רב אמר לא נאמרה: פ.ר.ש.ה. ז.ו. א.ל.א. ל.א.י.י.ם. ע.ל.י.ה.ם. ש.נ.א.מ.ר. ש.ו.ם. ת.ש.י.ם. ע.ל.י.ך. מ.ל.ך. ש.ת.ה.א. א.י.מ.ת.ו. ע.ל.י.ך.⁶⁹⁹ According to Rav, then, the nation has no obligation to allow the king to do what the "Law of the King" lays out, whereas for Shmuel, this obligation does in fact exist.

The ensuing Gemarah then presents a tannaitic *Machloket* between R. Yossi and R. Yehudah that mirrors the above controversy between Rav and Shmuel, yet the *Seifa* of this tradition makes a further point: whereas R. Yehudah views the institutionalization of kingship as one of three positive commandments to be fulfilled by the nation upon entering *Eretz Israel*,⁷⁰⁰ R. Nehorai does not view it as a commandment but rather as a prophecy that the nation will demand a king.⁷⁰¹ The discussion of this *Sugya* hence communicates a talmudic ambiguity towards the monarchy: on the one hand, the institutionalization of kingship is viewed as a

696 mSan 2,6, based on Dtn 17,16-20.

697 Ibid., Dtn 17,19: And she [the Torah scroll] shall be with him and he shall read therein all the days of his life.

698 In I Sam 8, the elders of Israel request the prophet Samuel to appoint a king because his sons are corrupt. Samuel is displeased by this request, and although God perceives the nation's desire for a king as a rejection of His direct rule, He encourages Samuel to listen to the voice of the nation. Samuel thereupon formulates the "Law of the King," stating that the king will take the sons of the people to be his horsemen, plow his ground, reap his harvest, fight his wars, and that he will take the daughters to be perfumers, cooks, and bakers, and he will take the best of the people's fields, vineyards, and oliveyards, and a tenth of their harvest and flocks, and he will take servants and cattle to put them to work for him. Samuel concludes that the people will be the king's servants, and that the nation will regret having asked for a king. Despite these warnings, the people still desire a king, and God once again encourages Samuel to appoint one for them.

699 bSan 20b: Said R. Yehudah in the name of Shmuel, "All that is said in the chapter of the king, the king is permitted to do." Rav said, "This chapter was not spoken except to threaten/intimidate them, as it is written, 'Thou shalt surely set a king over thee' [Dtn 17,15], his fear/awe should be over thee."

700 Based on Dtn loc. cit.

701 bSan loc. cit.

positive commandment, and the king is given far-reaching powers to impose his will upon the people; on the other hand, kingship is perceived as the result of the people's inability to handle God's more direct rule, and the king's power is only a symbolic method of intimidation. The tension between these two positions implies that a sovereign power is to be instituted with far-reaching rights, while a considerable degree of skepticism towards both is warranted.

This dialectical stance towards state authority continued when the Jewish community lost its national sovereignty through subjugation to foreign rule.⁷⁰² Upholding the biblical ideals of national freedom and independence,⁷⁰³ the Tannaim declared that the Romans have no right to levy taxes and customs in Palestine: אין פורטין לא מתיבת המוכסין ולא מכיס של גבאין, ואין נוטלין מהם צדקה, אבל נוטל: הוא מתוך ביתו או מן השוק.⁷⁰⁴ *Rashi* explains these prohibitions with the opinion that the funds of the tax and customs collectors are considered stolen property, further supporting the mishnaic refusal to abide by Roman fiscal demands.⁷⁰⁵ In contradistinction to this rejection of state legitimacy and authority, the ensuing Gemarah questions the Mishnah by introducing Shmuel's dictum of דינא דמלכותא והאמר שמואל: דינא דמלכותא דינא! אמר רב חנינא בר כהנא אמר שמואל במוכס שאין לו קצבה; דבי ר' ינאי דינא דמלכותא דינא.⁷⁰⁶ By offering an *Ukimta* ("qualification") to the above Mishnah, this Gemarah's two *Terutzim* ("resolutions") implicitly accept Shmuel's dictum and hence acknowledge the legitimacy of the tax demands from a land's sovereign power.

702 Parts of the following section are based on a chapter from my unpublished seminar paper titled דינא דמלכותא דינא, עיסקא, גניבת דעת: Samuel bar Abbas Integrationsplan für die Juden Babyloniens, written in March 2010 for Ronen Reichman's seminar "Die politische Dimension im Denken und Wirken der Rabbinen" at the Hochschule für Jüdische Studien Heidelberg.

703 Ex 6,5-7 establishes a direct connection between the Israelites' liberation from Egyptian rule and their subsequent development into a holy nation; bBM 10a interprets the verse "For onto Me are the children of Israel servants, they are My servants" [Lev 25,55] to imply that they are "(hence) not the servants of servants." And while Jeremiah encourages the exiled Jews in Babylonia to pragmatically rebuild their lives in the diaspora (Jer 29,5-7), he simultaneously perceives the exile as divine punishment (Ibid., 5,19), albeit a temporary one that will be followed by the longed-for return to the homeland and newly gained freedom (Ibid., 29,10). A similarly reluctant acceptance of foreign rule and the wish for freedom and independence is also formulated by Nechemiah (Nech 9,36-37).

704 mBQ 10,2: It is forbidden to change money both from the chest of the customs collector as well as from the purse of the tax collector, and it is forbidden to take charity [*Tzedaqah*] from them, but it is permitted to take it [*Tzedaqah*] from [their personal coins] in their homes or in the market.

705 *Rashi*, bBQ loc. cit., s.v. לפי שהם גול.

706 bBQ 113a: But Shmuel said: The law of the land is [binding] law! Said Rav Chanina b. Kahana in the name of Shmuel, [the Mishnah is dealing] with a customs collector who has no limit; in the School of R. Yannai they said, [the Mishnah is dealing] with a customs collector who stands on his own [is not appointed by a sovereign ruler].

The fourth appearance of *Dina deMalkhuta Dina* indicates that a state's civil law was accepted as binding by the talmudic sages even when it contradicted *Halakhah*: אמר רבה, הני תלת מילי אישתעי לי עוקבן בר נחמיה ריש גלותא משמיה דשמואל: דינא דמלכותא דינא, ואריסותא דפרסאי עד מ' שנין, והני זהרורי דזבין ארעא לטסקא - זביניהו זביני. ⁷¹² The latter two of these three teachings are applications of *Dina deMalkhuta Dina* that stand in direct conflict to Jewish law. *Halakhically*, a three-year period of undisputed possession is sufficient to be considered the owner of a field, ⁷¹³ yet Shmuel requires a forty-year period, in accordance with Persian law. And according to the Bible, a poor person who sells his land has the right to buy it back once he has the funds to do so. ⁷¹⁴ This right however does not exist in Persian law, and Shmuel consequently revokes it. ⁷¹⁵

All four talmudic appearances of the *Dina deMalkhuta Dina*-dictum hence grant the state far-reaching authorities and demand compliance to the law of the land. Exactly why Shmuel decided to formulate this dictum remains unknown. ⁷¹⁶ Yet there are clear indications that he reacted to developments both within and outside of the Jewish community. During Shmuel's lifetime (c. 160—257 CE), ⁷¹⁷ Jews were suffering from the devastating consequences of the three Jewish uprisings against the Romans. The first of these uprisings (known as the first Jewish-Roman War, 66-70 CE) was initiated by the Zealots who rejected foreign rule in the Land of Israel and rebelled against all forms of taxation against the Romans. And the third uprising, the Bar-Kochba-Revolt (132-135 CE) connected the insurgency against the Romans with messianic hopes. ⁷¹⁸ Besides the destruction of Herod's temple, these rebellions cost hundreds of thousands, if not millions of lives, and led to increasingly harsh living conditions for the Jews of

712 bBB 55a: Rabbah said, "These three rules were taught to me by the exilarch Ukba b. Nechemiah in the name of Shmuel: [1.] The laws of the kingdom are binding law, [2.] landed property is transferred by the Persians after 40 years, and [3.] when land is acquired by wealthy real estate owners who pay taxes on the land [and thereby expropriate the previous owners who were too poor to pay these taxes], the transaction is valid.

713 By means of a *Chasakah*.

714 Lev 22,25.

715 Ben Meir, Samuel (*Rashbam*), Commentary to Tractate Bava Batra, Barditshef, 1894, pp. 31f.

716 Shilo, Shmuel, דינא דמלכותא דינא, Jerusalem, 1995, p. 4: ספק אם אי פעם לדעת בוודאות, למה התכוון שמואל: "It is doubtful whether we will ever know with certainty what the exact intention of Shmuel was when he determined that the law of the land is [binding] law."

717 There is no consensus about Shmuel's year of birth. According to Graetz, it was 160 CE (Graetz, Heinrich, *Geschichte der Juden von den ältesten Zeiten bis auf die Gegenwart*, Bd. 4, Leipzig, 1908, p. 260), whereas Fessler holds it to be 179 (Fessler, Sigmund, *Mar Samuel. Der bedeutendste Amora. Beitrag zur Kunde des Talmud*, Breslau, 1879, p. 10) and Hoffmann (op. cit., p. 8) states it as 165 CE.

718 Kitos War was the second rebellion, which unlike the first and third took place in territories where Jews were exiled.

Palestine.⁷¹⁹ The rebels are therefore criticized by the Talmud for their lacking willingness to compromise, their messianic aspirations and their aggressive militarism.⁷²⁰ This negative stance towards rebellion against foreign rule is reflected by Shmuel's reaction upon hearing of the 12,000 Palestinian Jews who perished when they resisted the Persians during their Roman conquest: He refused to show any sorrow and to tear his clothes.⁷²¹ For the Babylonian sages, the harm and suffering resulting from a refusal to abide by state expectations, irrespective of their source, hence seem to have outweighed the values of autonomy and independence.

The second threatening development to which Shmuel may have reacted occurred within Babylonia. After the Sasanian Dynasty assumed power in 224 CE, a climate of increasing religious hostility threatened to unleash pogroms against the Jewish community in the Babylonian Diaspora. The lack of acceptance for state authority by the Jewish community was used as a pretext by those instigating this growing threat,⁷²² similar to how Haman complained that the Jews do not abide by the laws of the land and used this as a reason to call for their annihilation.⁷²³ Hence, the dictum *Dina deMalkhuta Dina* might have also been formulated to mitigate the increasingly dangerous separation and isolation of the Jewish community in the Diaspora.⁷²⁴

719 Josephus, Flavius, *Geschichte des jüdischen Krieges*, Wiesbaden, 1978, vi. 9, § 3.

720 See for instance bGit 56b; yTaan 4,5 68d [Venice and Krotoshin Editions]. [Piortrkow Edition: yTaan 24a-b.]

721 bMQ 26a. Cf. this reaction to the dismay with which Shmuel reacted upon hearing of Rav's death: According to bMQ 24a, Shmuel tore twelve clothes as an expression of his sorrow.

722 Hoffmann, David, *op. cit.*, p. 33-43.

723 Est 3,8. In these verses, Haman complains to king Achashveros that there is a nation in his kingdom with different laws than all other nations, and that this nation does not follow the laws of the king. Based on this complaint, Haman recommends that the king no longer tolerate this disobedience: וְדַתֵּיהֶם שְׁנוֹת מִכָּל-עַם, וְאֶת-דַּתֵּי הַמֶּלֶךְ אֵינָם עֹשִׂים, וְלִמְצֻלָּה אֵין-שְׁנוּהָ, לְהַיָּיֵם.

724 There are several hints in the Talmud that the rabbis legitimized the authority of the land's law due to the above two developments. The applications of *Dina deMalkhuta Dina* are reminiscent of events in Palestine. The tax case in bBB 113a implicitly touches on one of the central reasons for the rebellion of the Zealots, namely Vespasian's and Domitian's taxation of the Jewish community with the Fiscus Judaicus, which was perceived by many Jews as a humiliation, particularly because its revenue was used to finance the maintenance of the Jupiter Capitolinus temple in Rome. (Josephus, Flavius, *op. cit.*, vii. 6, § 6.) By means of the dictum *Dina deMalkhuta Dina*, however, the obligation to pay taxes became a core component of *Halakhah* and tax evasion thereby declared a sin. This was an absolute innovation, as reflected by the tannaitic perception of tax and customs revenue as stolen property in mBQ 10,2. And the application of *Dina deMalkhuta Dina* in bBQ 113b also contains hints that the dictum was formulated as a reaction to the rebellions in Palestine. For bGit 57a explicitly notes that the Beitar massacre was caused by the refusal of the Jews to allow the Romans to make use of a cedar tree. It is hence perhaps no coincidence that the Gemarah uses a case involving trees to legitimize the binding authority of the state. *Dina deMalkhuta Dina* could thereby have functioned as an attempt to prevent further bloodshed by discouraging insurgencies and rebellions.

For Shmuel, the dictum's promulgator, obeying state demands was more than just a grudging concession to foreign rule. In the Mishnah, one should pray for the welfare of the government for purely pragmatic reasons,⁷²⁵ and intimacy with the government is to be avoided.⁷²⁶ Shmuel on the other hand chose to sanctify the law of the land⁷²⁷ to incorporate obedience to and respect for state authority into *Halakhah*⁷²⁸ and to forge a close, friendly relationship with the Sasanian king Shapur I.⁷²⁹ In light of this stance towards state expectations, it is not surprising that Shmuel, as noted above, interprets the laws of the king spoken by the prophet Samuel as actual rights of the sovereign. Shmuel's appeasement towards the state counteracted anti-Semitic tendencies superficially caused by a perceived separationist Jewish particularism and thereby led to a noticeable improvement in the living conditions of Jews⁷³⁰ and paradoxically allowed the Jewish community to regain some of its self-regulatory autonomy.⁷³¹

Yet Shmuel likely did not just react to the above two threatening developments in Palestine and Babylonia, but to strains within the Jewish community as well. For Jews in a Diaspora that seemed to be permanent, a dual home and legislation led to increasing cognitive dissonance, a tension which the dictum that the law of the land is a component of the *Halakhah* managed to ease.⁷³² Thereby, Jews in Babylonia no longer had to perceive life in the Diaspora as an affliction, and they could keep Babylonian laws without alienating themselves from the Torah. Despite, or perhaps because of these advantages, the dictum of *Dina deMalkhuta Dina* in and of itself is both too little and too much of a guidepost to inform a talmudic perspective on the proper stance towards state

725 mAv 3,2. As noted, R. Chaninah here teaches the Hobbesian perspective that if it weren't for people's fear of the government, they would eat each other alive.

726 mAv 1,10.

727 Graetz (op. cit., p. 262) makes this point as follows: "Samuel wollte nicht bloß eine abgezwungene Duldung gegen die fremde Gesetzgebung geübt wissen, sondern diesen Grundsatz [i.e., דינא דמלכותא דינא; nk] vollständig als Norm anerkannt sehen, dessen Übertretung auch von dem religiösen Gesichtspunkte sträflich sei."

728 See for instance bAr 6a; bBB 3b; bYo 22b; bSan 20b.

729 Shilo, Shmuel, op. cit., Jerusalem, 1995, p. 4. Shmuel is even called Shapur Malka on account of his friendship with Shapur and his loyalty to the government (bBB 115b).

730 Graetz (op. cit., p. 263) describes how *Dina deMalkhuta Dina* enabled this: "...die Judenfeinde aller Jahrhunderte, welche den scheinbar feindlichen Geist des Judentums zum Vorwande nahmen und zur Verfolgung und gänzlichen Vertilgung der jüdischen Nation rieten, [konnten] auf ein jüdisches Gesetz verwiesen werden, welches ihre Behauptung mit drei Worten entkräftete."

731 bBer 56a ; bSuk 53a; bMQ 26a; Graetz, op. cit., p. 263.

732 As Graetz (op. cit., p. 262) notes: "Die Samuelsche Anerkennung der Landeseinrichtungen wurde ... ein Rettungsanker für die Zerstreuten. Sie versöhnte ... die Juden ... mit demjenigen Staate, wohin das unerbittliche Geschick sie geworfen hatte; ihr religiöses Gewissen fühlte sich nicht in Widerspruch mit den harten Gesetzen, die man ihnen zumeist auferlegte."

expectations: too little because simply abiding by the letter of the state's legal norms is insufficient to fulfill the ethical demands of the Talmud,⁷³³ and too much because these norms do not supersede conflicting demands from Jewish ritual law.⁷³⁴ Nonetheless, *Dina deMalkhuta Dina* is unequivocal in its message that compliance with civil, criminal, and public law pronounced by a sovereign authority is a *halakhic* duty, and the dictum thereby provides a baseline of how to deal with state expectations.

Responsibility towards the Economy

Because this thesis deals with economic ethics, nearly all of the talmudic traditions presented herein can be perceived as responsibilities towards the economy (e.g., obligations towards customers, shareholders and employees). In the following section, however, responsibility towards the economy is specifically defined as the responsibility one business has towards another, i.e., the ethics of competition. This seems warranted because businesses are the backbone of the economy by providing income, products, services, jobs, and investment opportunities.

733 There are numerous traditions in the Talmud that posit the existence of moral obligations beyond the compliance with positive-legal norms. For instance, the principle of *Lifnim meShurat haDin* (lit. "within the boundaries of the law") urges behavior over and above the letter of the law. For a comprehensive discussion of this principle, see Kirschenbaum, Aaron, *Equity in Jewish Law. Beyond Equity: Halakhic Aspirationalism in Jewish Civil Law*, New York, NY/Jerusalem, 1991, p. 109-136. Moses Pava has applied this principle to the social responsibility of business in the following paper: Pava, Moses L., *The Talmudic Concept of 'Beyond the Letter of the Law': Relevance to Business Social Responsibilities*, in: *Journal of Business Ethics*, Vol. 15, No. 9, 2009, pp. 941-950. See also pp. 308f in this thesis. Further talmudic concepts urging extra-*halakhical* ethical behavior are *Tikkun Olam* (lit. "repairing the world," see pp. 47f.), *Mipnei Darchei Shalom* (lit. "for the ways of peace"), and *Mishum Eynva* ("because of animosity").

734 This exemption of Jewish ritual law from *Dina deMalkhuta Dina* is based on the subsequent rabbinic legitimation of the dictum with the Noahide Laws. For instance, *Rashi* in his commentary on mGit 1,4 states that because the Noahide Laws command non-Jews to institute a legal system as well (see tAZ 8,4), the legal systems and the resulting laws of all peoples are holy as well. Regarding ritual laws that are only binding for Jews, however, the Torah is to be viewed as the only legitimate legal source. Based on this reasoning, the rabbis restricted the application of *Dina deMalkhuta Dina* to civil law. Menachem Lorberbaum (in Walzer, Michael, et al. (eds.), *The Jewish Political Tradition*, Vol. 1, New Haven, CT, 2004, pp. 433f) describes this separation as follows: "They [the rabbis] distinguished between mamona, civil, and economic matters, where dina de-malkhuta was legitimately dominant even over Tora law, and isura, literally, "forbidden," that is, religious matters, where the Tora could not be superseded ... Jews were to accommodate themselves ... to gentile rule in the secular realm, but in the religious realm accommodation was impossible."

The Talmud institutes a number of norms regulating competition.⁷³⁵ These are typically dialectical—fostering competition on the one hand and limiting it on the other. A *Sugya* in the second chapter of Tractate Bava Batra is the longest talmudic discussion of competitive ethics and clearly shows this tension. The passage begins with a protectionist stance, limiting competition in order to protect livelihoods: אמר רב הונא האי בר מבואה דאוקי ריחיא ואתא בר מבואה חבריה וקמוקי גביה דינא הוא דמעכב עילויה רב הונא דא"ל קא פסקת ליה לחיותי.⁷³⁶ According to this opinion, protectionism is warranted when a means of earning a livelihood would otherwise be at risk. A competing enterprise should thereby not be established if it is ruinous and causes deprivation, and a person who is existentially threatened by competition consequently has the right to protect himself against competitive pressures. Yet the ensuing *Sugya* strongly reflects the dialectical and controversial nature of the issue of competition:

A	Let us say that this [view] is supported by the following [teaching] —“Fishing nets are to be distanced from [the location of] a fish [which another fisherman has spotted] a full length of the fish’s swim.” And how much [is this]? Said Rabbah b. R. Huna, “A <i>Parasang</i> [a historical Persian unit of distance].” Fishes are different, because they move about looking [for food].	לימא מסייע ליה מרחיקים מצודת הדג מן הדג כמלא ריצת הדג וכמה אמר רבה בר רב הונא עד פרסה שאני דגים דיהבי סייארא
B	Said Ravina to Rava, “Let us say that R. Huna says the same as R. Yehudah, as we have learned [in mBM 4,11]—R. Yehudah says that a shop-keeper may not distribute parched corn and nuts to children, because he thereby accustoms them to come back to him. The sages, however, allow this.” [No,] you can even say that he [R. Huna]	א"ל רבינא לרבה לימא רב הונא דאמר כרבי יהודה דתנן רבי יהודה אומר לא יהלק חנוני קליות ואגוזין לתינוקות מפני שמרגילן אצלו והכמים מתירין אפי' תימא רבנן עד כאן לא פליגי רבנן עליה דרבי יהודה

735 For expositions of competition law in *Halakhah*, see Levine, Aaron, *Free Enterprise and Jewish Law. Aspects of Jewish Business Ethics*, New York, NY 1980, Chapter 2: Monopoly and Restraint of Trade, Chapter 3: Ruinous Competition, Chapter 8: Regulation of Market Conduct/Snatching Away Another’s Anticipated Gain; Jachter, Chaim, *Hasagat Gevul: Economic Competition in Jewish Law*, in: Frazer, Ezra/Jachter, Chaim, *Gray Matter: Discourses in Contemporary Halakhah*, New York, NY, 2000, online at Jewish Law: <http://www.jlaw.com/Articles/hasagatgevil.html#star>.

736 bBB 21b: Said R. Huna, “If a resident of an alley has a mill set up and another resident of the alley wants to set up [a mill] next to him, the law is that the first has the right to stop the other, for he can say to him, ‘you are interfering with my livelihood.’”

	<p>is in agreement with the rabbis as well. The reason why the rabbis allowed the shopkeeper to do this was because he can say to his competitor, “Just as I make presents of nuts so you can make presents of almonds.” But in this case, they would agree that the first person can say to the other, “You are interfering with my livelihood.”</p>	<p>התם אלא דאמר ליה אנא קמפלגינא אמגוזי את פלוג שיוסקי אבל הכא אפילו רבנן מודו דא"ל קא פסקת ליה לחיותי</p>
C	<p>An objection was raised [against R. Huna's ruling from the following] : “A person may open a shop next to another person's shop or a bath next to another person's bath, and the latter cannot protest, because he can say to him, ‘You do [what you want] in yours [your property], and I do [what I want] in mine.’” [This is a <i>Machloket</i> between Tannaim], as we learn in the following [Baraita]—“The residents of an alley can prevent one another from settling [letting real-estate to] a tailor or a tanner or a teacher or any other craftsman, but one [craftsman] cannot force another [prevent a competitor from opening]. R. Shimon b. Gamliel [however] says that one may force [prevent] another.”</p>	<p>מיתיבי עושה אדם חנות בצד חנותו של חבירו ומרחץ בצד מרחצו של חבירו ואינו יכול למחות בידו מפני שיכול לומר לו אתה עושה בתוך שלך ואני עושה בתוך שלי תנאי היא דתניא כופין בני מבואות זה את זה שלא להושיב ביניהן לא הייט ולא בורסקי ולא מלמד תינוקות ולא אחד מבני בעלי אומניות ולשכנו אינו כופיהו רשב"ג. אומר אף לשכנו כופיהו</p>
D	<p>R. Huna the son of R. Yoshua said, “It is clear to me that the resident of one town can prevent the resident of another town [from starting a competing enterprise in his town], not however if he pays taxes to that town and that the resident of an alley cannot prevent another resident of the same alley [from starting a competing enterprise in the same alley]. Came R. Huna the son of R. Yoshua and raised the question, “Can the resident of one alley prevent the resident of another [from competing with him]?” <i>Teiku</i> [this question cannot be resolved at this point].</p>	<p>אמר רב הונא בריה דרב יהושע פשיטא לי בר מתא אבר מתא אחריתי מצי מעכב ואי שייך בכרגא דהכא לא מצי מעכב בר מבואה אבר מבואה דנפשיה לא מצי מעכב בעי רב הונא בריה דרב יהושע בר מבואה אבר עזרא מבואה אחרינא מאי תיקו תיקן.⁷³⁷</p>

This *Sugya* first attempts to support R. Huna's protectionist teaching, citing a ruling which protects a fisherman who has found a source of fish from the free-riding competition of other fishermen (A). Yet the Gemarah rejects this attempted proof of the validity of R. Huna's protectionism given that fish are a mobile resource scouring about for food, whereas a mill is stationary and hence does not move from one competitor to the next. Ravina then attempts to support R. Huna with a Mishnah that regulates marketing practices (B). Could R. Huna's protectionist opinion be supported by R. Yehudah's restriction of permissible sales tactics? The Gemarah rejects this as well, because whereas a competitor can simply copy sales tactics and thereby counteract competitive pressures, the existence of another mill in the same alley most likely will threaten the existing livelihood of the first mill-owner in a manner that cannot easily be counteracted. Nonetheless, the cited Mishnah and the Gemarah discussing it provide one of the clearest talmudic legitimatizations of competition: רבי יהודה אומר לא יחלק החנוני קליות ואגוזין לתינוקות מפני שהוא מרגילן לבא אצלו והכמים מתירין ולא יפחות את השער והכ"א זכור לטוב.⁷³⁸ The majority opinion hence permits competitive sales tactics and portrays the competitive lowering of market prices as a good deed, but the fact that a minority opinion forbids these measures reflects the Mishnah's dialectical ethics of competition. Asking for the reasons why the sages permit competitive sales tactics, the Gemarah responds: דאמר ליה אבא מפליגנא אמגוזי ואת פליג שיסקי.⁷³⁹ And the Gemarah then suggests the following reason why the sages teach that a market participant who lowers prices is remembered for the good: משום דקא מרווח לתרעא.⁷⁴⁰ For the rabbis, the benefit of lower prices for consumers hence outweighs the cost a price war can have on competitors, and competitive sales tactics are permitted, because and so long as they can be applied by all suppliers.

Returning to section C of the above *Sugya* in bBB 21b, the Gemarah challenges R. Huna after two failed attempts to conclusively prove the validity of his protectionism. It begins this challenge by citing a classic laissez-faire doctrine—the freedom to do with one's own private property as one wishes and legitimized by the fact that such freedom is granted to all. This issue was already the subject of a tannaitic *Machloket*, in which the sages granted residents the power to block businesses from settling in their neighborhood—but withheld this power from businesses themselves in contrast to the minority opinion that grants the

738 mBM 4,11: R. Yehudah says, "A shopkeeper may not distribute parched corn and nuts to children, because he thereby accustoms them to come back to him." The sages, however, allow this. And he [the shopkeeper] should not lower the price, but the sages say that he is remembered for the good [if he does so].

739 bBM 60a: I distribute nuts, you [can] distribute plums.

740 Ibid.: Because he thereby eases [lit. widens] the market.

authority to limit competition to both residents and businesses. Note how the sages' differentiation between the rights of residents and businesses again prioritizes human needs (such as freedom from disturbing noise and nauseating smell) over commercial ones.

In the conclusion of the *Sugya's* above quoted section (D), the dialectical controversy of talmudic competitive ethics is brought to the foremost clarity. The final opinion states that residents have the right to limit competition from out-of-towners, unless the latter pay taxes to the resident's town. This implies that abiding by the state's taxation demands grants the right to compete in its economy—no taxation without competition, so to speak. And almost *en passant*, the final ruling teaches the opposite of what the *Sugya* begins with, namely that residents of an alley may *not* prevent another resident of the same alley from starting a competing business. The *Sugya* ends the discussion of R. Huna's opening statement with a question regarding the competitive rights of the resident of one alley towards that of another, which is left unresolved with the classic talmudic mark of inconclusiveness, the *Teiku*.⁷⁴¹ This is perhaps in order to show that because of the underlying tension between the liberty and right to earn a livelihood of two competing parties the issue of competition is so controversial that it can never be resolved conclusively.

Yet because a string of exceptions to R. Huna's protectionist stance then follows, it appears reasonably clear that the Gemarah leans towards a pro-competitive stance. R. Joseph states that R. Huna agrees that teachers cannot prevent each other from setting up in the same alley, because the jealousy between scribes increases wisdom (קנאת סופרים תרבה חכמה).⁷⁴² This implies that when there are clear benefits from competition, even R. Huna would promote it. This is supported by the next exception listed which teaches that spice-sellers cannot prevent each other from selling in any given town, so that the daughters of Israel (בנות ישראל) can be beautified by their wares.⁷⁴³ And while Ravina limits out-of-towners from selling their baskets in the market on market-days, he permits them to sell in the market on non-market days and door-to-door even on market-days, perhaps because the out-of-towners thereby provide a convenience for local consumers.⁷⁴⁴ The final exception listed deals with wool, regarding which R. Kahana rules that the local townspeople have a perfect right to stop out-of-towners from selling it,

741 For a discussion of this unique talmudic term, see Jacobs, Louis, *Teyku: The Unresolved Problem in the Babylonian Talmud: A Study in the Literary Analysis and Form of the Talmudic Argument*, London/New York, NY, 1981.

742 bBB 22a.

743 Ibid.

744 Ibid.

unless the outsiders have unpaid debts in that town, in which case they may sell their wares until they recover their debts.⁷⁴⁵ Perhaps a more restrictive approach is taught in this case because it deals with the raw material wool, which is mostly undifferentiated from one provider to the next. Irrespective of the *ratio legis*, this final exception teaches that outstanding debts override protectionism.

Based on the preceding discussion, the talmudic ethics of competition hinge on the following principles: business competition is condoned or even encouraged when it contributes to human or societal needs, even if it reduces the profits of existing businesses, whereas it is prohibited when it has a ruinous impact on livelihoods and society. This dialectical principle is reflected not just in the central talmudic teachings regarding competition from the second chapter of Tractate Bava Batra discussed above. On the one hand, there are numerous traditions criticizing harm that can result from competition: eliminating an individual's ability to earn a livelihood, which could be caused by competition, is equated to murder,⁷⁴⁶ and a prohibition to snatch away another's anticipated gain is instituted.⁷⁴⁷ Yet on the other hand, competition is condoned as well: for instance, one tradition teaches that "he performed no evil against his fellow man, namely he began no competitive enterprise where there was no demand for it."⁷⁴⁸ The implication is that opening a competitive enterprise when there *is* demand for it is not evil. This shows that the Talmud is simultaneously mindful of the deprivation and ruin that competition can cause amongst competitors, while accepting limited harm, i.e., business performance reductions that are not existentially threatening, if doing so is beneficial for the community. These two positions are synthesized in the teaching in which two butchers who engaged in a restraint of trade agreement (thereby forming a monopoly) are forced to pay the community restitution, whereas if a "distinguished person" (אדם חשוב) had permitted the restraint of trade, no restitution would have been necessary.⁷⁴⁹ This further supports the notion that competition is desirable yet may be limited for societal interests by an authority that guards these interests. A business is thereby called upon to balance its responsibility towards societal expectations regarding competitive prices, quality, and convenience, with its responsibility not to existentially threaten the livelihood of its direct competitors and wider business environment.

745 Ibid.

746 bYev 78b.

747 mQid 3,2; bQid 59a.

748 bMak 24a.

749 bBB 9a.

Responsibility towards Civil Society

Besides responsibilities vis-à-vis the state and market, the Talmud codifies a set of amenity rights, i.e., rights of every citizen to enjoy a good quality of life, which in turn translate into responsibilities towards civil society.⁷⁵⁰ These talmudic responsibilities are again typically dialectical, simultaneously protecting civil rights against business encroachment and protecting business activity against civilian protest. In his excellent comparative study of external costs in economic theory and Jewish law,⁷⁵¹ Aaron Levine differentiates between i) small-number negative externalities and ii) large-number negative externalities.⁷⁵² This differentiation serves as the framework for the following section.

Regarding i) In cases of potential small-number externalities, the Talmud explicitly both protects and limits the following five civil rights: living comfort, clean air, private property, privacy, and quietness. It does so *ex negativo*, by establishing limited restraining orders when these rights are encroached upon. The traditions on which these rights are based will now be analyzed in turn.

In a striking *halakhic* narrative, the case of Papi Yonah suffering under negative externalities of industrial activity is presented: פאפי יונאה עני והעשיר הוה: בנה אפדנא הוה הנך עצורי בשיבבותיה דכי הוו דייקי שומשמי הוה נידא אפדניה.⁷⁵³ Annoyed by the shaking nuisance, Papi Yonah appealed against the sesame-makers before R. Ashi, who in response refers to the *Giri deLei*-criteria: כי הוואן בי רב כהנא הוה: כי הוואן בי רב כהנא הוה.⁷⁵⁴ Hence, the Talmud codifies that those causing direct harm or damage are responsible for it, and consequently that people have an amenity right not to suffer under homes shaken by industrial activity. Yet the continuation of the *Sugya* shows that this responsibility and right is not without limits, for when the Gemarah asks how much the house must shake in order for it

750 Common definitions place civil society between the private (i.e., familial), state and market spheres. In the following section, civil society is understood as the non-state and non-market public sphere, including the relationship between this public sphere and the private sphere.

751 Levine, Aaron, *Free Enterprise and Jewish Law. Aspects of Jewish Business Ethics*, New York, NY, 1980, pp. 58-77. In his thorough exposition, Levine considers sources from all eras of Jewish law, from the Bible to the responsa, and hence does not focus on an in-depth exposition of the talmudic traditions. Levine here neither cites nor discusses the talmudic passages based on their own wording in the original Hebrew and Aramaic.

752 This differentiation is made by the economics literature to contrast externalities affecting large numbers of people with those affecting only a few.

753 bBB 25b: Papi Yonah was a poor man who grew wealthy and built a country house. In his neighbourhood, there were sesame-oil makers who when they crushed the sesame seeds made his country house shake.

754 *Ibid.*: When we studied under R. Kahanah we said that R. Yossi acknowledges the arrows of someone [i.e., that a person is responsible for damage which he causes].

to be considered harmful, the answer is: כדנייד נכתמא אפומיה.⁷⁵⁵ This limitation implies that a resident may have no legal claims even when he feels his home shaking from a nearby manufactory.

The ensuing case in the Gemarah deals with a weaker case of *Giri deLei*, when flax is beaten and the wind subsequently causes dust to fly around and annoy people, thereby preventing them from enjoying clean air. When the disturbed people appealed to Ravina because of the nuisance, he responds: כי אמרינן מודה ר' יוסי בגירי דיליה הני מילי דקא אזלא מכהו הכא זיקא הוא דקא ממטי לה.⁷⁵⁶ Ravina hence views this case as an instance of *Gerama beNeziqin*, the *halakhic* concept which states that someone is not liable to compensate for damage caused indirectly.⁷⁵⁷ Yet the Gemarah proceeds to teach that Mar, the son of R. Ashi, strongly objects to this ruling (מתקיף לה), and Meremar agrees with this objection. Ravina's view thereby becomes the minority opinion, and subsequent rabbinic literature consequently requires flax-producing enterprises to be safely distanced in order to prevent flying dust from injuring their neighbors.⁷⁵⁸ Nonetheless, the above *Gerama deGiri* controversy is reflected by the fact that the plaintiff's claim for nuisance restitution is not recognized in this case.⁷⁵⁹

The obligation not to cause property damage through commercial or industrial activity is codified by the following Mishnah: לא יפתח אדם חנות של נחתומין ושל צבעין. תחת אוצרו של חבירו ולא רפת בקר באמת ביין התירו אבל לא רפת בקר.⁷⁶⁰ Most probably because smoke or heat rising up from bakeries or dyer shops can damage goods stored above them, the Mishnah restricts these enterprises from operating under a warehouse. That this is the reason for the mishnaic restriction is supported by the fact that an exception is made for wine, which is not damaged by smoke from the bakery or dyer, whereas even in this case the cowshed is prohibited because its scents do cause damage to wine stored in close proximity. A Tanna strengthens this reasoning, teaching that wine is an exception because it is actually improved by smoke.⁷⁶¹ Not just refraining from causing damage, but harnessing positive externalities thereby becomes a means to retain the license to operate.

755 bBB 26a: Enough to make the lid of a pitcher rattle.

756 Ibid.: When we say that R. Yossi acknowledges the arrows of someone, this applies only to the case where he himself sets the cause of damage in motion. Here it is the wind that disperses the dust [and the flax-beaters are hence not liable].

757 See Talmudic Encyclopedia, s.v. *Gerama BeNeziqin*.

758 Levine, op. cit., p. 63 and the sources from the codes and responsa cited in fn. 18 on p. 192.

759 Ibid.

760 mBB 2,2: A person may not open a shop of breads [i.e., a bakery] or one of colors [i.e., a dyer's workshop] under the storehouse of his fellow, nor a cowshed. In truth, [the rabbis] permitted [a bakery or dyer's workshop to be opened under] wine [storages], but not a cowshed.

761 bBB 20b.

The Gemarah raises the question of why enterprises that can *potentially* cause damage are allowed to operate in the first place: טעמא דאיכא אוצר הא ליכא אוצר עביד דירה שאני דיקא נמי דתני עלה אם היתה רפת בקר קודמת לאוצר מותר.⁷⁶² This first asks whether businesses that can cause damage to storehouses are permitted to operate at all and offers an interesting reason for its affirmative answer: because the premises of a business such as a bakery can be used as a home for people, they may retain their license to operate despite their negative externalities if they were in operation before the storehouse that they can potentially cause damage to. This implies that the Talmud protects businesses that can potentially cause negative externalities to other people's property, as long as they were there first and can potentially provide positive externalities for people as well.

Yet the talmudic privacy rights indicate that potentially harmful externalities may be circumvented *a priori*. The Mishnah teaches that a person may not construct windows opening into a courtyard that he shares with others.⁷⁶³ The ensuing Gemarah then clarifies that a window may definitely not open into a neighboring courtyard, whereas in a shared courtyard the resident desiring to install a window can claim: סוף סוף הא קא בעית אצטנועי מינאי בחצר.⁷⁶⁴ Based on the Mishnah, the Gemarah now posits that the other residents can respond to this claim as follows: עד האינדא בחצר הוה בעינא אצטנועי מינך השתא אפי' בבית נמי בעינא מינך אצטנועי מינך.⁷⁶⁵ These laws hence prohibit privacy invasion, even when this invasion will only potentially cause harm.⁷⁶⁶ The ensuing Gemarah permits installing a privacy-invading window when a *Chazakah* permits the assumption that the other residents do not mind the window. Furthermore, the Gemarah establishes a right to daylight by prohibiting the obstruction of an existing window (the opposite of installing a new window). It does so by noting that a person will not

762 Ibid. 18a: The reason is that there is a storehouse there, but if there is no storehouse there, may he [open a bakery, dyer, or cowshed]? A dwelling place is different, as is taught in a Baraita above [connected to our Mishnah]: "If there was a cowshed before the storehouse, it is permitted [to remain in operation]."

763 mBB 3,9.

764 bBB 59b: Either way you have to take measures to protect your privacy from me in the courtyard.

765 Ibid.: Until now I had to take measures to protect my privacy from you in the courtyard, whereas now even at home I have to protect my privacy from you [i.e., either the window would permit the resident to impinge on the other's privacy even from his own home, or the window would allow the resident to peek into the other's house].

766 This potential will not be actualized if other residents never use the courtyard for private purposes and their privacy would hence not be invaded. Levine (op. cit. p. 63f.) cites a responsa of R. Jacob Lorberbaum (1760-1832) which applies the right to privacy and restrains window-installing activity in a case involving potential and unlikely privacy invasion—when the window faces a neighbour's ruin, and where privacy invasion would hence only take place if the ruin were to be rebuilt.

accept the light in his dwelling from being diminished: שאין אדם עשוי שסותמים אורו בפניו ושותק.⁷⁶⁷ Societal expectations are anticipated here prior to any actual complaints.

The following Mishnah limits permissible noise disturbances caused by commercial activities, yet limits the right to quietness in the case of industrial activity: חנות שבחצר יכול למחות בידו ולומר לו איני יכול לישן מקול הנכנסין ומקול היוצאין אבל עושה כלים יוצא ומוכר בתוך השוק ואינו יכול למחות בידו ולומר לו איני יכול לישן לא מקול הפטיש ולא מקול התינוקות.⁷⁶⁸ The courtyard is like a public sphere, and its permitted usage balances private economic interests with private residential needs. On the one hand, the rights to quietness and sound sleep thereby override commercial liberty, yet on the other they do not outweigh industrial liberty.⁷⁶⁹ Consequently, commercial enterprises such as retailers making use of shared spaces must respect their residential neighbors' expectations regarding noise pollution, whereas industrial enterprises such as manufactories have no *halakhic* obligation to do so. The Gemarah specifically lists weaving concerns, bloodletting enterprises and trade schools as ventures that may be restrained due to noise pollution, whereas it mentions that Torah schools may not be restrained due to their desirable social and religious function.⁷⁷⁰ The right to enjoy peace and quiet hence hinges on what type of activity is causing a disturbance.

Regarding ii) When negative externalities simultaneously affect many people, the Talmud institutes a number of zoning ordinances to protect the amenity-rights of a town's citizens by keeping intrusive activities at a distance. Consequently, a number of enterprises must be zoned at least fifty cubits from town limits. Implied by these zoning ordinances regarding potential large-numbers externalities are the four civil rights of private property protection, clear air, fresh smell, and aesthetic beauty. The traditions establishing these rights are now presented in turn.

767 bBB 60a.

768 mBB 2,3: A shop that is in a courtyard, one [of the adjacent residents] has the right to protest against it, saying to him [the shop owner] "I cannot sleep from the voice [i.e., noise] of those [the customers] coming and going." But someone manufacturing vessels [i.e., merchandise] to go out and sell them in the market, one [of the adjacent residents] has no right to protest and say, "I cannot sleep," neither due to the noise of the hammer, nor of the mill-stones, nor of the children.

769 The Soncino Edition (bBB 20b, fn. 29) comments that this is one of many instances in which the rabbis show preference to industry over trade. This might be a result of the Tannaim attempting to stem the burgeoning tide of commerce to assert their vision of an economy based on self-sufficient, mostly agrarian households (see pp. 135-138).

770 bBB 21a.

The Mishnah demands dovescotes to be kept at a distance of fifty cubits from a town: מרחיקין את השוכך מן העיר חמשים אמה ולא יעשה אדם שובך בתוך שלו אלא אם כן יש לו חמשים אמה לכל רוח.⁷⁷¹ Because pigeons can eat the seeds of vegetable gardens,⁷⁷² the Talmud requires them to be at a safe distance. This hence implies an obligation not to establish enterprises that can potentially cause uncontrollable damage to a large area. Also, the Mishnah rules that permanent threshing floors must be zoned fifty cubits from town limits in order to protect people from being exposed to flying chaff particles and to prevent damage being caused to surrounding agriculture: מרחיקין את גורן קבוע מן העיר חמשים אמה לא יעשה אדם גורן קבוע בתוך שלו.⁷⁷³ The right to clear air resulting from this mishnaic tradition is also established by the Tosefta which teaches that furnaces must be distanced fifty cubits from a town in order to protect its residents from suffering smoke damage.⁷⁷⁴

The following Mishnah teaches that the decaying flesh of dead animals, graves, and tanneries must be distanced from a town due to their bad smell: מרחיקין את הנבלות ואת הקברות ואת הבורסקי מן העיר חמשים אמה אין עושין בורסקי אלא למזרח העיר רבי עקיבא אומר לכל רוח הוא עושה חוץ ממערבה.⁷⁷⁵ Because the wind can carry the bad smells of tanneries into towns, the Mishnah specifies permissible directions in which to install them. Enterprises causing wide-spread smell pollution must hence be kept at a distance from people that might suffer under it.

The Talmud also recognizes the right of residents to preserve the aesthetic quality of a town. For instance, one of the special regulations regarding Jerusalem noted by the Gemarah is that no furnaces be installed in the city: אין עושין בה.⁷⁷⁶ Also, the Mishnah decrees that trees planted within twenty-five cubits of a town are subject to removal, even if their planting predates the town's establishment: מרחיקין את האילן מן העיר עשרים וחמש אמה ובהרוב ובשקמה חמשים אמה אבא שאול אומר כל אילן סרק חמשים אמה ואם העיר קדמה קוצץ ואינו נותן דמים

771 mBB 2,5: A dovescote must be distanced 50 *Ama'ah* from the city, [and] a person should not put a dovescote on his property unless he has 50 *Ama'ah* [clear] in every direction.

772 Tosafot to mBB loc. cit., s.v. מרחיקין את השוכך מן העיר חמשים אמה.

773 mBB 2,8: Fixed [i.e., permanent] threshing floors are to be distanced 50 *Ama'ah* from the city, [and] a person should not install a fixed threshing floor on his property, unless he has 50 *Ama'ah* [of free space] in every direction, [and] he must distance it from the plantation of his fellow and his ploughed field a sufficient [distance] to prevent damage.

774 tBB 1,7.

775 mBB 2,9: The corpses of dead animals, graveyards, and tanneries must be distanced 50 *Ama'ah* from a town. A tannery may only be installed to the east of a town, R. Akiva says that from any direction it [a tannery] may be installed, except from the west.

776 bBQ 82b: No furnaces should be installed because of the smoke [which would subsequently blacken the buildings].

ואם אילן קדם קוצץ ונותן דמים ספק זה קדם וספק זה קדם קוצץ ואינו נותן דמים.⁷⁷⁷ The ensuing Gemarah explains that the reason for this regulated distance of trees is to preserve the beauty of the town (משום גיירי העיר).⁷⁷⁸ This right to enjoy beauty however may only be enjoyed if the owner of the trees is compensated for his loss, given that he planted them before the town was established. The fact that compensation is not mentioned in the other zoning ordinances involving large-number externalities might indicate that aesthetic rights are less strong than the right to property protection, clean air, and fresh smells. Nonetheless, the Talmud is unequivocal in its stance that the imperative to promote a town's quality of life can override individual economic interests.

5.1.3. *Implications for the Management of Societal Expectations*

Corporations are societies in and of themselves. This is reflected not only in their name (e.g., *Société Générale*) but also organizational form (*Aktiengesellschaft*). The societal character of corporations also becomes apparent in their mode of operation which is in itself a microcosm of society's structure as a whole. Take McKinsey for instance, a firm in which many thousands of employees worldwide are governed and organized by organs resembling the state, the market economy, and civil society. Similar to a state's legislative branch, the consulting firm's "Shareholders' Council" legislates overall policies and approaches; the geographic, industry, and functional practices resemble the executive branch of government with authority and responsibility for day-to-day operations; and the "Professional Standards Committee" serves as a judicial body. And by resembling the market economy's function as a mechanism matching supply and demand, McKinsey's purpose is to supply the people, knowledge, and infrastructure that can meet and develop the demand of organizations for performance improvements. Finally, a broad range of social groups and institutions at the consulting firm resemble civil society organs—such as the charitable initiative McKinsey for Children or diversity groups like the "Hispanic/Latino Client Service Staff" and GLAM ("Gays and Lesbians at McKinsey").

⁷⁷⁷ mBB 2,7: A tree should be distanced from a town 24 *Ama'ah* and with carobs and sycamore trees 50 *Ama'ah*. Abba Saul says, "Every tree within 50 *Ama'ah* may be cut down and if the town predated [the tree, it] is cut down and no compensation is given. And if the tree came first it is cut down and compensation is given. If there is a doubt which came first, it is cut down and no compensation is given."

⁷⁷⁸ bBB 24b.

Perhaps in part because corporations have increasingly become societies themselves, it can be easy for their managers to forget that they are integrated into the wider society within which they operate. Yet corporate societies do not function in a social vacuum but rather impact and are themselves impacted by the national and international governmental organizations, economic institutions, and structures, as well as the civil societal groups of the locations in which they operate and through social media innovations even by groups in locations where they do not operate. Corporate, national and transnational societies thereby become indivisibly linked to each other. This connection requires the leaders of corporations to reflect on how they respond to and shape the expectations of their surrounding society. What insights and guidance can the preceding talmudic discussions provide for this reflection? In answering this question, it is important to bear in mind that the three societal dimensions analyzed occupy different quadrants in our theoretical-methodological matrix.⁷⁷⁹ The application of the concept *Dina deMalkhuta Dina* to the corporate context is only possible with a very high degree of abstraction, because the concept was originally developed for a diasporic context by an exiled Jewish community in search of a *modus vivendi* with foreign dominating powers, a far cry from corporate policies in relation to the state.⁷⁸⁰ Yet by abstracting from a religious community's relationship with a state to that of a business organization, interesting albeit not always practical insights can be developed. Less abstract and more relevant is the application of the moral ethos and even specific casuistic norms regulating economic competition from the Talmud to the corporate context, for the scope of business activity has changed more than its competitive forces. An even more direct application is possible in the third societal dimension, as we learn about talmudic rights and restrictions of enterprises to impact the quality of life of their surroundings. On the relevance axis of our theoretical-methodological matrix, the three societal areas also occupy different degrees. Regulatory strategy has become a top-management concern, the impact of corporate operations on living conditions is in the limelight, while competitive ethics are generally considered less of a focus area as long as legal responsibilities are honored.

In any case, both timeless and relevant is the opening narrative of the stone-thrower rebuked by the pious man teaching that private actions are indivisible from the public sphere, and that individuals should be aware of their fundamental connection to society. Damaging the public is thereby self-damaging. Yet the narrative also makes it clear that there is such a thing as "private ground," and

779 See illustration 5.

780 I am grateful for Prof. Reichman emphasizing this point in his evaluation of my thesis.

that people should be free to do as they please on their own property, so long as they thereby avoid causing a negative impact on their surroundings. What the implications of this tension between liberty and responsibility are along the three dimensions of our societal framework will now be analyzed in turn.

State Expectations

Regarding the relationship to the state, the Talmud on the one hand encourages liberty and autonomy, but it simultaneously demands support and respect. While a king is given the authority to intervene in the economy, the institution of kingship is simultaneously perceived as a suboptimal yet expedient solution given a society's inability to govern itself under the auspices of God Himself. Applied to corporate practice, this can imply that the ideal would be for a corporation to govern through self-regulation, freed from external coercion and direction by a state authority. But because of the fallibility of human decision-making, a sovereign authority is required as an external legislator and regulator, and the corporation should hence acknowledge and obey the government, albeit with a healthy measure of skepticism.

This dialectical stance towards the state is strengthened by the talmudic concept of *Dina deMalkhuta Dina*. Whereas the Mishnah perceives tax and customs collectors as robbers and warns of fostering close relationships with government leaders, the Gemarah demands not just a grudging acceptance of state authority but a sanctification of its laws, and encourages close or even friendly relations with heads of state. This paradigm shift likely resulted from the insight that rebellion against government authority and separation from ruling majorities can cause a backlash leading to harm and damage that far outweighs the downsides of acquiescing to or even embracing state expectations. Corporate leaders can bear this in mind when demanding liberalization and absolving themselves of responsibility to explicitly further societal interests, for the ensuing public and regulatory backlash can become very costly and can even threaten corporations' license to operate.⁷⁸¹ Yet embracing a positive relationship to the state not only

781 For instance, the head of Goldman Sachs in Germany, Austria, Russia, Central, and Eastern Europe told a group of German students that banks "do not have an obligation to promote the public good." This remark became one of many instances that have led to a public and official backlash against the investment bank in Germany. See for instance Walker, Marcus, In Germany, A Backlash. Officials, Companies Speak Out Against Goldman Sachs's Approach, in: The Wall Street Journal, New York, NY, April 23rd 2010, <http://online.wsj.com/article/SB10001424052748704830404575200153404880626.html>.

decreases regulatory and reputational risk but can also improve corporations' upside performance. Similar to how the integration of state laws into *Halakhah* absolved Jews in the Babylonian Diaspora of the cognitive dissonance resulting from a life perceived as an affliction under foreign rule, a company's commitment to corporate citizenship can motivate officers and employees by transforming a grudging and reluctant acquiescence to state regulation into an empowering public-private partnership.⁷⁸²

Yet the corporate obligation to abide by national and transnational legal norms should only be perceived as the baseline of managerial responsibility. The Talmud makes ethical demands beyond compliance with the letter of the law, and managers can consequently strive to fulfill its spirit as well.⁷⁸³ At the same time, corporate leaders should assert their independence and liberty from the state in matters where they have the ultimate authority. Similar to how the application of *Dina deMalkhuta Dina* is limited to civil law, whereas traditional *Halakhah* remains authoritative in matters of ritual law, business corporations can insist on remaining autonomous of the state to protect free enterprise and business judgment.

Competitor Expectations

For the contemporary business world, the concept of corporate responsibilities towards competitors might appear foreign. Business is commonly perceived as a combination between a Darwinian struggle in which only the fittest survive and a sports competition where only market leaders are considered true winners. It is therefore perhaps unsurprising that the ethics taxonomy forming the foundational framework of this book does not feature a separate dimension or issue to deal with the ethics of competition, and that the legal system tends to encourage and

782 For the relationship between corporate citizenship and employee performance, see Peterson, Dane K., The Relationship Between Perceptions of Corporate Citizenship and Organizational Commitment, in: *The Journal of Business & Society*, Vol. 43, no. 3, Sept. 2004, pp. 296-319; Zappalà, Gianni, Corporate Citizenship and Human Resource Management: A New Tool or a Missed Opportunity?, in: *Asia Pacific Journal of Human Resource Management*, Vol. 42, no. 2, Aug. 2004, pp. 185-201; and Ferrell, O.C./Hult, G. Thomas M. et al., Corporate Citizenship: Cultural Antecedents and Business Benefits, in: *Journal of the Academy of Marketing Science*, vol. 27, no. 4, Oct. 1999, pp. 455-469.

783 A view also propounded by the framework of the Harvard Business School MBA Program's business ethics course "Leadership and Corporate Accountability," which examines the ethical in addition to the legal and economic responsibilities of corporate leaders. See LCA course description at <http://www.hbs.edu/mba/academics/term2.html>.

even demand competition, most notably through anti-trust laws. For the Talmud, however, businesses have substantial, albeit limited responsibilities towards competitors.

The dialectic of talmudic competitive ethics revolves around the tension between the claims of a market entrant establishing a competing enterprise and the businesses that already operate in the market.⁷⁸⁴ Whereas an existing business can claim that a new competitor is “interfering with his livelihood,” the market entrant can respond that “you are free to do as you please on your property, and I am free to do so on mine.” The two poles forming this fundamental tension are thereby the right to insist on economic liberty and the obligation to protect livelihoods. These two strains of liberty and responsibility are found throughout the Talmud, which thus attempts to balance protectionism with laissez-faire ideals. On the one hand, a fisherman can restrain others from free-riding on the source of fish discovered by him. From this example, a degree of copyright protection can be deduced,⁷⁸⁵ which implies that companies should have the right to enjoy the fruits of their own research and development, and copyrights, intellectual property, and patents ought to be protected from infringement. On the other hand, a retailer cannot restrain his competitors from using sales tactics such as free give-aways to gain a comparative advantage, because everyone is free to use these same tactics as well, and suppliers will exert themselves more to benefit customers. The sages even remember a competitor who lowers market prices for the good. Thereby, competition’s benefits for consumers outweigh its cost for suppliers. A corporation can hence embrace price cuts and sales inducements as meritorious conduct contributing to societal welfare, although it must be mindful of not unleashing a ruinous vicious circle that will deprive competitors of their livelihood. The three essential principles of the talmudic ethics of competition might hence be summarized as follows: i) freedom to establish a competitive business, ii) restraint when i) results in the ruin of existing business owners, and iii) acceptance of decreased business profitability caused by competition if this competition leads to societal benefits.

This third point is stressed by the string of exceptions to R. Huna’s protectionism, which all contribute to social goals by fostering competition: whether it is the increased wisdom induced by “the jealousy of scribes,” the beautification and broader product range enabled by opening the market to foreign spice-sellers,

784 Therefore, competitive ethics can also become relevant in cases where a corporation establishes its own retail structure in direct competition to its existing retailers. In particularly controversial cases, corporations have stopped supplying existing distributors to benefit their own retailing aspirations.

785 Schneider, Israel, Jewish Law and Copyright, in: Jewish Law, <http://www.jlaw.com/Articles/copyright2.html>.

or the convenience of shopping from home on non-market days by granting sales licenses to out-of-town basket salesmen. Corporations contemplating an increase in competitive pressure should accordingly try to determine which clear, measurable, and relevant social goals this increase can contribute to. And just as the Talmud fosters competition to benefit societal welfare, it permits a distinguished authority to limit competition for the social good as well. Corporations seeking a restraint of trade through such as an oligopoly or even monopoly should hence find ways in which the resulting decrease in competition leads to societal benefits.

Societal concerns can thus override the interests of individual businesses, which is why the Talmud tends to permit competition in cases where the community benefits from it and individual enterprises suffer only a decrease in performance that is not existentially threatening for their owners and employees. Accordingly, communal apprehensions can restrain businesses from being established in a neighborhood, whereas competitors' reservations cannot. According to the majority opinion in the second tannaitic *Machloket* cited by the central talmudic *Sugya* on competition,⁷⁸⁶ residents of the same neighborhood may restrain each other from letting real-estate to certain businesses, whereas these businesses themselves cannot prevent each other from establishing a competitive enterprise. Residential interests can hence circumvent the establishment of businesses in a certain neighborhood,⁷⁸⁷ whereas anticompetitive interests may not. This seems to imply that when Wal-Mart for instance considers opening a new retail location, it must heed the protest of local residents, and can only ignore that of competitors provided that their livelihood is not existentially threatened.⁷⁸⁸ When campaigning for its proposed new store, the retail giant could communicate that it will provide the local community with benefits such as lower prices and more jobs, and it should simultaneously present a truthful and convincing strategy on how it can avoid ruining the livelihood of competitors. Furthermore, Wal-Mart can follow the Gemarah's reasoning with the argument that by paying taxes to the local community, it has a right to participate in the local economy. A further applicable talmudic insight could be that whereas it is unclear whether the resident of one neighborhood can open a business in another, a resident can definitely not be restrained from opening a competitive enterprise in his own neighborhood. Wal-Mart could consequently try to recruit as many local managers and

786 bBB 21b.

787 Courts in the State of Israel have applied the talmudic "alley" to contemporary neighborhoods. See Levine (op. cit.), in the section on Ruinous Competition.

788 It might be invalid to draw the above implication from the Talmud, because it deals with residential competitors on eye-level, whereas Wal-Mart is a giant corporation compared to its competitors, who are mostly small local retailers run by local residents.

workers as possible for its planned new location, or relocate existing employees to the surrounding neighborhood in order to demonstrate that the interests of its employees are interwoven with the expectations of the local economy.

Civil Society Expectations

The Talmud recognizes certain civil rights that may not be impinged upon by commercial and industrial activity, yet limits these rights in order to enable businesses with negative externalities to operate. Given that the justified expectations of civil society are codified in the order *Neziqin* (“damages”), it is unsurprising that they are given credence *ex negativo*, formulated as the imperative to avoid causing harm and damage to surrounding residents.

For small-number externalities, the Talmud recognizes the five amenity rights of living comfort, clean air, private property, privacy, and quietness. Similar to how an archer is responsible for his arrows, business activity that impinges on these rights is prohibited or to be limited. For instance, the operation of a business may not cause a house to shake excessively, but a limited amount of vibrations is not perceived as reducing living comfort to an extent that warrants legal redress. This could imply that a corporation such as a subway operator is responsible to take precautions against its trains causing homes to judder, but these precautions need not entirely eliminate motion effects on the surrounding area in order for the corporation to retain its license to operate.

In the case of enterprises causing air pollution, the Talmud’s majority opinion holds that they must avoid creating a nuisance for people through their emissions, although the harm is caused indirectly, mediated by the wind. Corporations should consequently make an effort to minimize the amount of dust, refuse, etc. they emit into the air, or locate their operations at a sufficient distance so as not to create a nuisance.⁷⁸⁹ Regarding businesses with emissions that can potentially cause property damage, such as smoke and heat in close proximity to stored goods, the Talmud restrains them from being established, unless doing so will benefit their social and material environment. A corporation with operations causing potentially damaging emissions could thereby try to locate close to property that it may benefit (e.g., using the heat emitted by a factory to power a nearby storage cooling system), and try to see how it can use its facilities to further social goals (e.g., establishing an orphanage on a part of the company grounds).

789 This chapter deals only with the effect of pollution on society and individuals. See chapter 6 for a study of this topic from an ecological viewpoint.

The Talmud furthermore establishes a right to privacy and a right to daylight. Someone may not install a window into a shared courtyard without the consent of the other residents, because they might have to take additional measures to protect their privacy. And in order to protect the light flowing into existing windows, an obstruction may not be built in front of them. This implies that citizens and consumers have a right to demand protection of privacy and light. Corporations using their customer's private information would thereby first have to ask them for permission. The outrage over the Google Street View map service or the online social network Facebook's privacy policies shows that simply using information about people which they themselves deem private can harm business and perhaps even threaten the license to operate.⁷⁹⁰ Similar to how the Talmud demands that those whose privacy is invaded agree to it, Google reacted to the protests by enabling German users to block their home from being shown in Street View, and Facebook made its default settings more protective of privacy. In times of increasingly detailed, personal, and dispersed information being stored by corporations, managers are increasingly called upon to ensure a measured handling of the private sphere. A talmudic perspective on privacy argues that just as one may not install a window that provides a view into a courtyard without consent, customer-data-heavy corporations such as Google and Facebook may not "peek" into the private lives of their users via the "windows" of their monitors and displays, unless these users explicitly or implicitly consent to their personal information being stored, analyzed, and monetized.

Regarding the obstruction of light, the Talmud makes it clear that residents have a right to protest it. When corporations construct buildings (particularly skyscrapers), erect billboards, etc., they should be mindful of not diminishing the amount of natural daylight that reaches neighboring homes. Noise pollution should be avoided as well, although the Mishnah seems to permit it when it is caused by industrial rather than commercial activity or by an institution explicitly furthering social goals. Residents would accordingly have the right to block retail locations from settling in their local neighborhood, and corporations should be careful about any additional noise their local sales branches can cause.

Similar to the talmudic responsibilities in the case of the above small number externalities, corporate managers should measure, acknowledge, and minimize the effect of their operations on entire towns and regions.⁷⁹¹ When an enterprise

790 Particularly in Germany, these online services have led to significant public and official protest deeming their conduct an invasion of privacy.

791 This is already becoming increasingly prevalent in corporate practice through social accounting reports, published by corporations in addition to financial reports.

causes damage to nearby property, pollutes the air, emits an unpleasant smell, or decreases the beauty of a town, a relocation of its operations to a place where this negative impact can be avoided might be advisable.

In conclusion to the above discussion, the talmudic perspective on managing the expectations of the state, the economy, and civil society towards business can be perceived as urging corporate managers to become indivisible. Rather than separate from the state or even view it as a nemesis, a corporation should respect its laws, foster constructive relationships with its heads, and contribute to its sustainability for instance by paying honest taxes.⁷⁹² Rather than viewing competitors as enemies to be destroyed, a corporation should foster a degree of competition that benefits society but must remember that it is connected to its wider industry and has a responsibility not to cause deprivation within it. And rather than myopically disregarding external costs of its operations on civil society, a corporation should take responsibility for harm and damage it might have caused and perceive the sustainability of its own performance as indivisible from the health of the wider society in which it operates.

5.2 Issue 8: Corporate Philanthropy

5.2.1. *Philanthropy between Charity and Thievery*

Should and may managers invest a corporation's resources in philanthropic causes? According to Milton Friedman, the answer is an unequivocal no. When asked in an interview whether John Browne, the former CEO of BP who spearheaded the oil giant's "green" *Beyond Petroleum* brand campaign, may put ecological interests ahead of economic ones, the Nobel Laureate responded: "No. He can do it with his own money. If he pursues those environmental interests in such a way as to run the corporation less effectively for its stockholders, then I think he's being immoral. He's an employee of his stockholders, however elevated his position may appear to be."⁷⁹³ While Friedman answered a question regarding green convictions of corporate managers, he would likely give the same answer regarding any other idealistic resource allocation of management that does not directly or ultimately benefit a corporation's bottom line or share price and there-

792 These conclusions are of course more difficult and ethically problematic to implement when operating in corrupt countries in which governments oppress their citizens.

793 Interview with Milton Friedman, in: Bakan, Joel, *The Corporation*, London, 2005, pp. 41f.

by its owners.⁷⁹⁴ The reasoning underlying this position is that since corporate assets belong to shareholders, and managers have a fiduciary responsibility to act in the best interest of the corporation, these interests being identified with shareholders' economic interests by U.S. law,⁷⁹⁵ a manager may donate to philanthropic causes if and only if doing so benefits profits or valuations. In a case where there is no positive link between a philanthropic contribution and business performance, the argument continues that shareholders are free to choose themselves whether and how they wish to donate the proceeds of their own capital, and managers consequently have no right to philanthropically diminish shareholder dividends but should rather make such non-performance-enhancing donations only from their own private funds and time.⁷⁹⁶ The disposition of philanthropic funds should thereby be a shareholder prerogative.

Either corporations believe that they can substantially improve their performance through philanthropy, or they are disregarding the above argumentation. A bit of both is probably the most likely scenario, for corporate philanthropic giving has reached remarkable dimensions. According to one estimate, U.S.-headquartered corporations gave a total of 14.1bn USD to charitable causes in 2009.⁷⁹⁷ The year before, the top three U.S. corporate donors were Wal-Mart (over 320m USD given to education, employment and training, environment and conservation, health and hunger charities), AT&T (nearly 240m given to arts and culture, community and economic development, education, and health charities), and Bank of America (over 209m given to arts and culture, community and

794 For a historical study of cases in which executives have furthered their personal interests by allocating corporate funds to philanthropic causes providing little, if any, business benefits, see Barnard, Jayne W., *Corporate Philanthropy, Executives' Pet Charities and the Agency Problem*, College of William & Mary Law School Faculty Publications, Paper 314, Williamsburg, VA, 1997.

795 *Dodge vs. Ford Motor Co.*, 170 N.W. 668, Michigan, 1919, p. 8. While later court rulings upheld the requirement of corporate philanthropy's business justification, they broadened this justification to a considerable extent, giving executives the freedom to use their business judgment as they see fit. For an overview of relevant court cases, see Himmelstein, Jerome L., *Looking Good and Doing Good: Corporate Philanthropy and Corporate Power*, Bloomington, IN, 1997, p. 20ff.

796 Aaron Levine finds a precedent for Friedman's above argument in a 16th-century responsum of R. Moses Isserles (the *Rema*), who rules that even when it is customary for partners in an *Iska* to donate ten percent of their income to charity, the managing partner has no right to donate this same share of the venture's total profits. Explaining this ruling of the *Rema*, Levine notes that "instead, the financier is entitled to receive his full pre-tithing share of the profits and be given the opportunity to allocate his charitable funds in a manner of his own choosing." (Levine, Aaron, *Case Studies in Jewish Business Ethics*, New York, NY, p. 355.)

797 Giving USA estimate, cited in: Committee Encouraging Corporate Philanthropy (an international forum of CEOs dedicated to corporate philanthropy), *Giving in Numbers*. 2010 Edition. Corporate Giving Standard, New York, NY, p. 13.

economic development, education, human services, and nonprofit development charities).⁷⁹⁸ Additionally, these and many other corporations increasingly commit their executives and employees to donate their time for charitable causes.⁷⁹⁹ For the purpose of managing, coordinating, and publicizing these efforts, some corporations establish their own philanthropic foundations.⁸⁰⁰ Now managers could not engage in philanthropy with corporate resources to such a remarkable extent without legitimizing how doing so benefits the corporation, and particularly its shareholders. As a result, a wealth of publications exist which argue that and how philanthropic activities can improve business performance,⁸⁰¹ and corporations themselves point this linkage out, albeit in a discrete manner so as not to promote cynicism by appearing exclusively self-interested.⁸⁰²

But even if or perhaps precisely because philanthropy can improve a corporation's reputation, increase its sales, improve its employee loyalty, secure its access to an educated and healthy workforce, ease its regulatory risk, and decrease its tax burden (to name a few of the central business benefits of charitable giving), the fundamental management dilemma related to philanthropic giving remains: do managers have an ethical right or even duty to engage in philanthropy with corporate funds? Secondly, what philanthropic obligations do managers have

798 Tracking Big Corporate Donors, USA Today interactive chart, available online at http://www.usatoday.com/money/companies/2010-08-08-corporate-philanthropy-interactive-graphic_N.htm.

799 For an international overview of this trend, see Wolf, Annika, *Corporate Volunteering: Bürgerschaftliches Engagement von Unternehmen*, Ilmenau, 2007.

800 For the above top three U.S. donors, the website of their respective philanthropic foundation can be found at: <http://Wal-Martstores.com/communitygiving/203.aspx>, <http://www.att.com/gen/corporate-citizenship?pid=7736>, and <http://www.bankofamerica.com/foundation/>.

801 See for instance Weeden, Curt, *Smart Giving is Good Business: How Corporate Philanthropy Can Benefit Your Company and Society*, New York, NY, 2011; Kotler, Philip/Lee, Nancy, *Corporate Social Responsibility: Doing the Most Good for Your Company and Your Cause*, New York, NY, 2005; Porter, Michael E./Kramer, Mark R., *The Competitive Advantage of Corporate Philanthropy*, in: *Harvard Business Review*, Cambridge, MA, December 2002; and Krausz, Joshua/Pava, Moses L., *The Association Between Corporate Responsibility and Social Performance: The Paradox of Social Cost*, in: *Journal of Business Ethics*, Vol. 15, No. 3, 1996, pp. 321-357. Charitable giving that links philanthropy with financial performance is commonly referred to as strategic philanthropy or cause-related marketing.

802 For instance, the website of the Bank of America Foundation states that corporate social responsibility is "[a]n investment in the bank's long-term success." (<http://www.bankofamerica.com/foundation/>.) A number of CEOs comment on how philanthropy benefits their corporation's performance in the following report: Preston, Caroline, *Corporate Leaders Tout Philanthropy's Benefits Amid Grim Financial News*, New York, NY, February 24 2009, <http://philanthropy.com/article/Corporate-Leaders-Tout/63022/>.

regarding the disposition of their personal time and wealth?⁸⁰³ Given the considerable size of today's executive pay packages and the significant problem-solving skills and networking benefits corporate leaders can offer charities, the issue of what charitable responsibilities, if any, result from the wealth and capabilities of managers is a pressing concern. What can the Talmud teach regarding these questions?

5.2.2. *A Talmudic Perspective on Philanthropy*

Engaging in philanthropy is a central religious duty in Judaism. According to R. Assi, it is equal to all commandments combined: שקולה צדקה כנגד כל המצוות.⁸⁰⁴ Consequently, it is unsurprising that there is a large body of literature dealing with the biblical and talmudic conceptions of charity.⁸⁰⁵ Yet the Jewish business ethics literature has not devoted more than a few paragraphs to the specific question of whether a manager should or may allocate corporate funds to charitable causes, based primarily on codes or responsa, rather than explicitly talmudic traditions. In his discussion of the relationship between fiduciary and social responsibilities of business, Levine touches on corporate charitable giving in two paragraphs with the responsum of R. Moses Isserles cited above.⁸⁰⁶ Closer to our specific topic, Asher Meir has dedicated two interesting and compelling entries in his "Jewish Ethicist" column to the questions: *Can Top Level Management*

803 For Friedman, the fact that executives have no right to dispense corporate funds for philanthropic purposes brings the question of their personal responsibilities stronger to the fore: "Of course, the corporate executive is also a person in his own right. As a person, he may have many other responsibilities that he recognizes or assumes voluntarily—to his family, his conscience, his feelings of charity, his church, his clubs, his city, his country. He may feel impelled by these responsibilities to devote part of his income to causes he regards as worthy, to refuse to work for particular corporations, even to leave his job, for example, to join his country's armed forces. If we wish, we may refer to some of these responsibilities as 'social responsibilities.'" But in these respects he is acting as a principal, not an agent; he is spending his own money or time or energy, not the money of his employers or the time or energy he has contracted to devote to their purposes. If these are 'social responsibilities,' they are the social responsibilities of individuals, not of business." Friedman, Milton, *The Social Responsibility of Business is to Increase its Profits*, in: *The New York Times Magazine*, New York, NY, September 13, 1970, available online from: <http://www.umich.edu/~thecore/doc/Friedman.pdf>.

804 bBB 9a.

805 See for instance: Eisenberg, Ronald L., *What the Rabbis Said: 250 Topics from the Talmud*, Santa Barbara, CA, 2010, pp. 67-73; Tamari, Meir, *The Challenge of Wealth*, 1995, pp. 147-216; --, *With All Your Possession. Jewish Ethics and Economic Life*, New York, NY/London, 1987, pp. 242-277; and Kahaner, Larry, *Values, Prosperity, and the Talmud. Business Lessons from the Ancient Rabbis*, Hoboken, NJ, 2003, pp. 203-216.

806 See p. 200, fn. 796.

*Unilaterally Give Away Money to [sic] Corporate Dollars to Charity?*⁸⁰⁷ and *When Do We Cross the Line from Good Corporate Citizenship to Irresponsible Management?*⁸⁰⁸ The argument of both columns is entirely based on the Shulchan Arukh and medieval responsa,⁸⁰⁹ thereby not providing fruitful talmudic traditions and insights for the purposes of this thesis.

However, a further paper of Meir offers the interesting suggestion that the status of corporate managers is comparable to the talmudic *Apotropos* (the custodian, guardian, and administrator of the assets of orphaned minors or incapacitated adults).⁸¹⁰ After rejecting the roles of partner (*Shutaf*), agent (*Shaliach*), and employee (*Po'el*) as adequate models of the *halakhic* role that corporate managers fulfill, Meir argues for the *Apotropos* model as follows: "Like the manager, the Apotropos acquires and distributes, builds and destroys, plants and sows and does whatever he considers to be in the interest of the orphans."⁸¹¹ The *Apotropos*, like the manager, is the sole executor; the actual owners are generally disabled from active involvement in the management of the assets. In the case of the Apotropos, the disability is minority or incapacity; in the case of the corporation it is due to the separation of ownership and control which is the essential characteristic of corporate structure."⁸¹² In his ensuing discussion, Meir references two talmudic traditions to argue against the permissibility of custodians to give charity with the assets entrusted to them on the one hand, yet for a certain degree of freedom to do so on the other. However, he does not cite these traditions themselves, and the single-sentence conclusion he draws from their partial reference does not do justice to their depth and wealth of possible implications. Therefore, it should be fruitful to analyze these two talmudic *Sugyot* in their entirety and detail.

807 Available online from <http://www.aish.com/ci/be/48901377.html>.

808 Available online from <http://www.aish.com/ci/be/48891067.html>.

809 Besides a reference to mDem 6,3, a Mishnah analyzed below.

810 Meir, Asher, Value Conflicts in Jewish Business Ethics: Social Versus Fiduciary Responsibility, in: Jewish Law, 1996, <http://www.jlaw.com/Articles/fiduciary.html>. See Menachem Elon's entry Apotropos in the Encyclopedia Judaica for an exposition of the custodian in Jewish law (available online from: http://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0002_0_01191.html).

811 Maimonides, Mishneh Torah, Sefer Mishpatim, Hilkhos Nachalat 11,4; Shulchan Arukh, Choshen Mishpat 290,7.

812 Meir, Asher, op. cit.

Fulfilling Philanthropy

Following a Mishnah teaching when residents may be compelled to contribute to communal building projects, the Gemarah discusses the application of this question to orphans, and thereby presents a case involving *Tzedakah* (צדקה, charity/philanthropy): וא"ר אסי אמר ר' יוחנן הכל לפסי העיר ואפי' מיתמי אבל רבנן לא דרבנן לא צריכי נטירותא (אמר רב פפא לשורא ולפרשאה ולטרזינא אפילו מיתמי אבל רבנן לא צריכי נטירותא כללא דמילתא כל מילתא דאית להו הנאה מיניה אפילו מיתמי רבה רמא צדקה איתמי דבי בר מריון א"ל אביי והתני רב שמואל בר יהודה אין פוסקין צדקה על היתומים אפילו לפדיון שבויים א"ל אנא לאחשובינהו קא עבידנא.⁸¹³ A number of very interesting and important implications for the disposition of *Tzedakah* by custodians results from this *Sugya*. Firstly, R. Assi teaches in the name of R. Yochanan that orphans must contribute to communal structures and services from which they derive a benefit, implying that their guardians are permitted to allocate parts of orphans' funds for these purposes. The three public services explicitly listed by the Gemarah all provide security, and since orphans require human protection, they can be expected to pay for security-enhancing measures.⁸¹⁴ With this requirement as the underlying general principle, the Gemarah suggests that all beneficiaries, even orphans, must contribute to and thereby give something in return for what they derive utility from. Their guardian consequently has the right, and even the obligation, to allocate parts of the orphans' funds as commutative payment for public services which they benefit from but cannot pay for themselves.

Having established this principle, the Talmud turns to whether *Tzedakah* may or must be paid from the funds of orphans. Rabbah seems to set a precedent by taking charitable donations from the orphaned children of Bar Merion, a wealthy man.⁸¹⁵ Yet Abbaye challenges him regarding this practice, citing a teaching that explicitly prohibits levying *Tzedakah*-payments from orphans. This would imply that guardians have no right to engage in philanthropy with the funds of the wards under their custody.

813 bBB 8a: And R. Assi said in the name of R. Yochanan, "All [are required to contribute] to [the repair of] town walls, even orphans, but not the rabbis, because the rabbis do not require protection." Said R. Papa, "For [the repair of] walls, and for horse guards, and for supervisors of the armory even orphans [must contribute], but the rabbis [do not, since] they do not require protection." The general principle of this matter is that everything from which [people] benefit, even orphans [must contribute to, if they are beneficiaries]. Rabbah took a contribution to *Tzedakah* from the orphans of the house of Bar Merion, [whereupon] Abbaye said to him, "Has not R. Shmuel b. Yehudah taught that *Tzedakah* is not to be imposed on orphans [taken from them], even for the redemption of captives?" [Rabbah] responded to him, "I did this in order to make them important [prominent and respected]."

814 Unlike the rabbis, according to bBB 8a, due to their "divine protection." The *ratio legis* of this ruling merits further research.

815 bBB 12b uses "valuable as the field of Mar Marion" as an expression of particularly high value.

At this point our *Sugya* goes on a short yet important tangent to emphasize “even for the redemption of captives” (אפילו לפדיון שבוים), which is telling of the biblical and talmudic conception of philanthropy. Whereas the etymological root of both words “philanthropy” and “charity” stems from meanings of love,⁸¹⁶ the Classical Hebrew word *Tzedaqah* (צדקה) is based on justice and righteousness (צדק). Accordingly, unlike charity and philanthropy, *Tzedaqah* is not (necessarily) a voluntary act based on empathy and compassion, but a *halakhic Mitzvah* that must be fulfilled out of duty, irrespective of sentiments.⁸¹⁷ This becomes evident through the fact that contributing to the redemption of captives, which the Gemarah considers a great *Mitzvah*,⁸¹⁸ is called *Tzedaqah*. While the donation of money is thus also considered a matter of justice and righteousness to be fulfilled even by orphans, deeds of loving kindness (גמילות חסדים) such as visiting the sick (ביקור חולים), comforting mourners (ניחום אבלים), and offering hospitality (הכנסת אורחים), which are perceived by the rabbis to be of the utmost importance as well,⁸¹⁹ are not discussed in the context of an *Apotropos*, however, perhaps because they cannot be fulfilled on behalf of someone else, unlike the donation of financial resources.

Returning to our *Sugya*, Rabbah defends his levying of *Tzedaqah* from orphans against the *Kashya* of Abbaye with a remarkable *Terutz*: “I did this in order to make them important [or prominent].” He thereby accepts that in general, *Tzedaqah* may not be taken from the funds of orphans. If doing so, however, benefits their ward in a material way, Rabbah argues that guardians may allocate funds in their custody for *Tzedaqah* contributions. For instance, such contributions can increase the standing and benefit the reputation of orphans. In this particular case, perhaps Rabbah wants the status of Mar Marion’s orphaned children to match that of their deceased father, who due to his wealth was likely

816 Philanthropy is composed of the Greek *phil* (“loving”) and *anthropos* (“humanity”). Charity stems from the Proto-Indo-European *karo*, which is itself based on *ka* (“to like,” “love,” “desire”). The Latin *caritatem* (“esteem,” “affection”) is used in the Vulgate as the translation of the Greek *agape* (“love”). See <http://www.etymonline.com/>, s.v. Philanthropy and Charity.

817 Although the sentiment of the donor is considered important by the rabbis, as will be discussed below, even someone with no loving desire to give *Tzedaqah* is still *halakhically* obligated to do so.

818 bBB 8b.

819 For rabbinic traditions emphasizing the importance of deeds of loving kindness, see mAv 1,2 and bSot 14a. bBB 9b states that giving a poor man a small coin bestows six blessings, whereas giving him words of comfort bestows eleven. bSuk 49b teaches that *Gemilut Chasadim* are superior to *Tzedaqah* in the following three respects: the latter can only be fulfilled with money, whereas the former both by a person himself as well as his money; the latter can be given only to the poor, but the former to the wealthy as well; the latter can be given only to the living, the former, however, can be given both to the living and the deceased. See also the entry *Gemilut Chasadim* in Hurvitz, Mitchell M./Karesh, Sara E., *Encyclopedia of Judaism*, New York, NY, 2006, p. 170.

to have been a prominent donor to charitable causes. Irrespective of what the underlying reason may be, what emerges clearly from this *Sugya* is that guardians may allocate funds under their custody if and only if doing so either provides a future benefit to the orphans or counts as a commutative payment for benefits already received.

A second talmudic passage relevant to our question deals with cases of incapacity not due to being a minor (as is the case with orphans), but due to insanity and absence: ואמר רב חסדא אמר מר עוקבא מי שנשתטה בית דין יורדין לנכסיו וזנין ומפרנסין את אשתו ובניו ובנותיו ודבר אחר א"ל רבינא לרב אשי מ"ש מהא דתניא מי שהלך למדינת הים ואשתו טובעת מזונות בית דין יורדין לנכסיו וזנין ומפרנסין את אשתו אבל לא בניו ובנותיו ולא דבר אחר א"ל ולא שאני לך בין יוצא לדעת ליוצא שלא לדעת מאי דבר אחר רב חסדא: (דבר אחר) "other thing" is: אמר זה תכשיט רב יוסף אמר צדקה מ"ד תכשיט כ"ש צדקה מ"ד צדקה אבל תכשיט יהבינן לה דלא אמר זה תכשיט רב יוסף אמר צדקה מ"ד תכשיט כ"ש צדקה מ"ד צדקה אבל תכשיט יהבינן לה דלא ניהא ליה דתיגוול.⁸²⁰ In order to understand the meaning and implications of this *Sugya*, its context must be taken into account. Tractate *Ketubot* deals mainly with marital rights and obligations, the Mishnah preceding the above passage rules that a husband is obligated to maintain his wife,⁸²² and the prior Gemarah discusses the husband's duty to provide his spouse with an honorable funeral. Given these marital obligations, our *Sugya* deals with the question of what occurs when a husband is no longer capable of fulfilling them himself. The first case is one in which the husband loses his sanity, thereby unintentionally becoming incapacitated. The *Beit Din* then becomes the guardian of his estate and provides for his wife and children and for the "other thing." A case in which the husband becomes

820 bKet 48a: And R. Chisda said in the name of Mar Ukba, "He who becomes insane, the *Beit Din* [rabbinic court] descends into his property [i.e., takes possession of his estate], and provides food and maintains his wife, and his sons, and his daughters, and anything else [lit. other thing]." Said Ravina to R. Ashi, "Why is this different from [the following] which has been taught, 'He who goes to a country [beyond] the sea [i.e., departs indefinitely] and his wife claims [maintenance] for food, the *Beit Din* descends into his property and provides food and maintains his wife, but not his sons nor his daughters, and neither anything else [lit. another thing].'" [R. Ashi] responded to him, "And do you not differentiate between someone who departs deliberately and someone who departs unknowingly?!"

821 Ibid.: What is [meant by] "anything else?" R Chisda responded, "This [refers to] cosmetics." R. Yosef responded, "*Tzedakah*." He who says cosmetics, all the more so *Tzedakah*. He who says *Tzedakah* [limits his restriction to this], but cosmetics should be given to her because [the husband] would not be pleased if she loses her comeliness.

822 mKet 4.4. While parts of talmudic marital law can seem patriarchal by contemporary standards, it presented a progressive voice compared to the common gender inequality of its time by codifying specific, far-reaching, and binding womens' rights, alongside obligations for their spouses. For a critical and honest perspective on how the talmudic rabbis fostered gender equality alongside their patriarchal tendencies, see Hauptman, Judith, *Rereading the Rabbis: A Woman's Voice*, Boulder, CO, 1998.

incapacitated to fulfill his obligations because he departs indefinitely is different, however, as R. Ashi notes. Here, the incapacity is caused intentionally, and in such a case a wife must first make a maintenance claim, whereupon the *Beit Din* becomes the guardian of her husband's estate to provide for her but not for her husband's children nor for the "other thing."

The Gemarah then inquires into the nature of this thing first being included and then excluded from maintenance payments of the seized estate. Now something very interesting occurs in the Stammaitic conclusion of our *Sugya* interpreting the *Machloket* between R. Chisda and R. Yosef. Whereas their opinions could hold for both the דבר אחר ("the other thing") that is first included in the insanity case and then excluded by the Baraita dealing with the absence case,⁸²³ the anonymous *Kal vaChomer* ("a fortiori argument") concluding the *Sugya* can only apply to the absence case, and hence to the excluded דבר אחר.⁸²⁴ This reasoning leaves us with three different opinions: for R. Chisda, a *Beit Din* taking custody of a man's estate due to his insanity must support and maintain his wife and children, and must pay for cosmetics, whereas when the husband becomes incapacitated due to his voluntary departure, the *Beit Din* may only seize his property when his wife files a maintenance claim, and may only support her from the estate, not however the husband's children nor the acquisition of cosmetics. R. Yosef agrees with R. Chisda's opinion, while adding that the *Beit Din* in the insanity case must pay for *Tzedakah* contributions from the husband's estate, and in the absence case may not pay for these. For the final, anonymous opinion of our *Sugya*, the *Beit Din* in the absence case may either pay for cosmetics only (in addition to providing for the wife's basic needs), and hence not for *Tzedakah* or for both *Tzedakah* and cosmetics (again, in addition to providing for the wife's basic needs).

823 R. Chisda would then be specifying his own teaching (related in the name of Mar Ukba) that when a husband becomes insane, the *Beit Din* must not only maintain his wife and children, but pay for cosmetics as well, whereas in the case of absence, R. Chisda excludes any payment besides those to the departed husband's wife, including those for cosmetics. R. Yosef, on the other hand, would then hold that in the insanity case, *Tzedakah* may and must be paid from the husband's estate, whereas *Tzedakah* may not be levied from the estate of a husband who becomes incapacitated due to his absence.

824 For otherwise the second half of the argument would make no sense: "He who says cosmetics, all the more so *Tzedakah*." This could both mean that if the *Beit Din* is obligated to pay for a vanity item such as cosmetics, how much more so is it obligated to fulfill the commandment of *Tzedakah* from the estate, or conversely, if the *Beit Din* is prohibited from taking from a man's estate for his own wife's needs and desires, it consequently has no right to make *Tzedakah* contributions from his estate either. Yet "he who says *Tzedakah*, but cosmetics should be given to her" can only be understood as meaning that *Tzedakah* is excluded, whereas cosmetics should nonetheless be included. The אכל cannot logically mean anything else.

The preceding discussion has a number of interesting and important implications. Firstly, there is a difference between intentional and involuntary incapacitation. In the latter case, custodians must assess what the person suffering incapacity would have done if he still controlled his property. For the father of a family, this would most likely be supporting the basic needs and enjoyment of his wife and children, as well as fulfilling *Tzedakah* obligations.⁸²⁵ In this case, the custodian is hence not just permitted but required to make charitable donations from an estate entrusted to him, in addition to providing and caring for the immediate dependants of the incapacitated husband.

The case of intentional incapacitation however is different. Here, the husband could have left instructions regarding the disposition of the property he leaves behind, particularly stating that he wishes his wife and family to be provided for and *Tzedakah* payments to be made from his estate. Since he failed to leave such instructions, it can be inferred that he did not wish to make them. Therefore, only the wife of the departed husband may be supported from his estate, because he has a legal obligation to care for her based on the *Ketubah* (the *halakhic* marriage contract), whereas his children have no such legal claims and therefore may not be supported. Likewise, if the husband had wished for charitable contributions to be made from the property he leaves behind or if he had wished for his wife to be cared for over and above his legal obligations,⁸²⁶ he could have left instructions for this to be done. Therefore, in the absence of such instructions, a custodian is prohibited from contributing to *Tzedakah* from the departed husband's estate. Furthermore, whereas the first *Sugya* analyzed in this section makes the permissibility of *Tzedakah* contributions contingent on a benefit received, the second *Sugya* hinges this permissibility on expressed or assumed desires. Conversely, custodians may not give *Tzedakah* from the assets entrusted to them when neither the condition of benefit nor of desire is given.

Where a desire to contribute to *Tzedakah* is expressed, albeit without an explicit measure, the trustee should thus donate as much as he assumes his beneficiary would have given if he had the capacity to do so himself, and if he cannot make any reasonable assumptions about desired measures then he should give an average amount. This last principle is reflected by and follows from the

825 The fact that the Gemarah cites both the opinion of R. Chisda and of R. Yosef indicates that paying for both cosmetics and *Tzedakah* from an incapacitated husband's estate has merit.

826 According to the standard terms of the *Ketubah*, a husband must provide food, clothing, and sexual intercourse for his wife. Additionally, he must purchase medicine for her if she requires it, ransom her when she is taking captive, and offer her a home that befits her status. For a list of talmudic sources on the mutual rights and obligations of spouses, see the entry Husband and Wife in the Jewish Encyclopedia, available online at: <http://www.jewishencyclopedia.com/view.jsp?letter=H&artid=986>.

following Mishnah, which teaches that an agent instructed to tithe produce⁸²⁷ should give as much as is intended by his principal, and if the agent does not know how much this is, he should give an average measure: האומר לשלוחו צא ותרום, תרום כדעתו של בעל הבית. אם אינו יודע דעתו של בעל הבית--תרום בבינונית, אחד מהמישים. פחת עשרה או הוסיף עשרה, תרומתו תרומה; אם נתכוון להוסיף אפילו אחת, אין תרומתו תרומה.⁸²⁸ Although this Mishnah deals with a case in which an agent tithes for a principal, as opposed to a custodian donating to *Tzedakah* for a minor or incapacitated adult, it is still relevant to our question, because a custodian receiving explicit instructions to make charitable contributions effectively becomes an agent as well. The agent is obligated to fulfill the desired tithing measure of the owner. If he does not know the agent's desired measure, he should give the average measure, although the tithing is valid even if he gives the parsimonious or generous measure instead. However, if the agent deviates but one measure of the principal's desires, the tithe is not accepted. Hence, in the absence of explicit instructions as to how much *Terumah* should be donated for an owner, it must be reasoned what he would have done if he had acted himself.⁸²⁹ Philanthropy, or better yet social justice, thereby becomes the fulfillment of principals' expressed or assumed desires mediated by agents and trustees.

Compensatory and Costless Philanthropy

Yet even when a principal/beneficiary wants his agent or trustee to engage in or abstain from *Tzedakah* on his behalf, there is a homiletic and a *halakhic* tradition that qualifies this desire. Firstly, a Midrash warns of engaging in *Tzedakah* with funds acquired by unscrupulous means: טוב מלא כף נחת טוב מי שהוא עושה צדקה מעוטה:

827 As *Terumah*, a tithe of produce given to the *Kohanim* ("Jewish priests"). The preceding Mishnah deals with *Terumah Gedolah*, a measure of one-fortieth to one-sixtieth, offered to the *Kohanim* as the first tithe of all produce. The laws of *Terumah* are discussed in Tractate Terumot.

828 mTer 4,4: He who says to his agent, "Go and tithe [on my behalf]," [the agent should] tithe according to the mind of the householder [i.e., the principal]. If he does not know the desires of the householder—tithe averagely, one in fifty [two percent]. If [he intended to tithe averagely and yet gave] ten less or ten more, the *Terumah* [counts as] *Terumah* [i.e., is valid]. If he intended to add even one [measure relative to the wishes of the principal], his *Terumah* is not *Terumah* [i.e., is invalid].

829 Effectively, the agent or custodian should try to put himself in the principal or ward's shoes. Maimonides expresses this regarding the tithing through an agent as follows: "[He] [the agent] should separate [*Terumah*] according to the temperament of the owner. If he knows that he is parsimonious, he should separate one sixtieth. If he was generous, he should separate one fortieth. If he does not know his temperament, he should make the average separation, one fiftieth." In: Mishneh Torah, Sefer Zeraim, Hilkhot Terumot, 4,7.

משלו ממי שהוא גוזל וחומס ועושק ועושה צדקות גדולות משל אחרים מתלא אמר גיפא בחזורין ומפלא לבישיא ורעות רוח רעותיה מיתקרי בר מצוותא.⁸³⁰ Social justice and philanthropy should thereby not be financed by unjust and misanthropic activities, nor should it be instrumentalized as a mere means to improve a reputation. Commenting on this Midrash, Hershey Friedman notes that “many people and firms which are deceptive and dishonest assume that by being philanthropic they can compensate for their misdeeds. Indeed, many of our largest philanthropic foundations were founded by ‘robber barons.’”⁸³¹ The means of financing *Tzedakah* and the intentions for engaging in it should hence be reflected, and cannot be whitewashed with largesse.

Secondly, there is a *halakhic* dictum that might be invoked to engage in philanthropy even without the consent of principals and beneficiaries: כופין מדת סדום על (lit. “forcing regarding the character trait of Sodom”) forbids denying someone a costless benefit.⁸³² As noted, the Mishnah categorizes the character trait of someone who says “what is mine is mine and what is yours is yours” (שלי שליך ושלך שלך) as the average person but continues to state that some call this the trait of Sodom (ויש אומרים זו מדת סדום).⁸³³ This is hence a homiletic critique of an excessively self-interested concern with private property rights, and it translates into a number of *halakhic* norms throughout the Talmud. For instance, Rabbah rules that a man who buys a field adjacent to the estate of his father-in-law can, when the latter dies, force the other heirs to give him a share of the estate next to the field he already owns, because he benefits from having a contiguous and larger field, and this benefit costs the other heirs nothing.⁸³⁴ And R. Zeira argues

830 EcclR 4,6: “Better is a handful of contentment” [Eccl 4,6]—Better is the person who gives a little *Tzedakah* from his own possessions than the person who steals, robs, and oppresses [the poor] and gives much *Tzedakah* from the possessions of others. A proverb states, “She prostitutes herself for apples and distributes them among the sick.” “And a striving after the wind” [Eccl 4,6]—his striving to be called a philanthropist [lit. a son of *Mitzvoth*].

Translation based on Rabinowitz, L., *Midrash Rabbah, Ruth and Ecclesiastes*, London/Bournemouth, 1939/1951, p. 115.

831 Friedman, Hershey H., *Ethical Behavior in Business: A Hierarchical Approach from the Talmud*, in: *Journal of Business Ethics*, Vol. 4. 1985, pp. 117-129, available online: <http://academic.brooklyn.cuny.edu/economic/friedman/hierarchy.html>.

832 For studies of this concept, see Tamari, Meir, *The Challenge of Wealth*, pp. 137-142; Lichtenstein, Aharon, *Does Judaism Recognize an Ethic Independent of Halakhah?*, in: *Leaves of Faith: The World of Jewish Learning*, New York, NY/Jerusalem, 2004, pp. 44-47; Kirschenbaum, Aaron, *Equity in Jewish Law: Halakhic Perspectives in Law. Formalism and Flexibility in Jewish Civil Law*, New York, NY/Jerusalem, 1991, pp. 196ff.

833 mAv 5,10.

834 bBB 12b. R. Yosef disagrees with Rabbah, stating that perhaps the field is a particularly valuable part of the estate, and the *Halakhah* follows his opinion. However, in the ensuing Gemarah, R. Yosef applies the principle of the character trait of Sodom to another case, showing that he accepts its legitimacy.

with R. Elai whether the owner of a courtyard can prevent residents from installing a certain window, although doing so denies them a benefit that costs him nothing. The Gemarah proceeds to state that both agree that one may be forced regarding the character trait of Sodom, but that in this case the owner of the courtyard might suffer a loss of privacy, and hence may not be restrained to protest.⁸³⁵ These cases teach that when an owner can grant a benefit to someone without incurring a loss or cost, he may be forced to do so against his will. This implies that corporate philanthropy becomes a binding obligation when it can be engaged in at no cost, in addition to the duty of all individuals to pursue charitable activities on their personal accounts.⁸³⁶

5.2.3. *Implications for the Management of Corporate Philanthropy*

The preceding discussion leaves us with organizational and individual implications concerning corporate philanthropy with a higher degree of abstraction for the former. Regarding the question of whether corporate managers may allocate organizational resources to philanthropic causes, three talmudic traditions were analyzed. Before drawing premature conclusions from the passages dealing with custodians,⁸³⁷ Asher Meir's suggestion that shareholders are incapacitated in a similar manner as the underaged, the insane, and the absent must be analyzed. Meir pins the parallel incapacity of shareholders to their general disability of being actively involved in the management of the corporation's assets. Yet this analogy uncritically accepts the status quo of lacking shareholder involvement in corporate philanthropy, and thereby perpetuates a state of affairs that the invoked talmudic traditions themselves indicate is suboptimal. The Gemarah records an argument regarding the allocation of orphans' funds and a disagreement about the disposition of incapacitated husbands' estates, while indicating that above all a trustee must act in the best interest of his beneficiary. This shows that ideally, the orphans could express their wishes themselves and the husband would have never become incapacitated. Yet while orphans cannot revive their parents, and the family of an insane or departed husband might be powerless to bring him back, corporate management *can* effectuate a reversal of their shareholders' silence regarding whether and how they themselves wish for corporate funds to

835 bBB 59a. Cf. bBB 168a and bKet 103a for further invocations of the *Middat S'dom* principle.

836 As a reflection of how serious the Talmud takes the responsibility of everyone to contribute to philanthropy, bGit 7a teaches that even a poor person living off charity is obligated to give *Tzedakah*.

837 bBB 8a, bKet 48a.

be invested into philanthropic causes. Whereas the plight of the dead is (most likely) irreversible, and that of the insane and departed more often than not is as well, the current incapacity of shareholders to influence their corporations' philanthropic approach is structural, brought about by the fact that ownership of corporations is highly dispersed⁸³⁸ but more importantly by the lack of governance processes enabling stockholders to participate in the philanthropic decision-making of their corporations.

Two phenomenon are now affecting this latter reason for shareholder incapacity. Firstly, the burgeoning socially responsible investment sector pools individual investors who care about corporate ethics in general and philanthropy in particular into collective funds with substantial holdings.⁸³⁹ By effectively making an institutional investor who takes an expressed stand on philanthropy their agent in a corporate democracy, shareholders can more effectively signal to a management team that when it engages in philanthropy it does so with the backing of its principals.⁸⁴⁰ Secondly, information technology and social media enable a greater

838 For instance, the Exxon Mobil Corp. reports that it had nearly half a million shareholders at the beginning of 2010, and the General Electric Co. then had nearly 600,000 registered shareholders. Because many shares are held by brokers and other institutions on behalf of stockholders, the actual number of individual shareholders could be in the millions. See: Ogg, Jon C., Proof that Apple Stock is Very Under-Owned, at: 24/7 Wall St., <http://247wallst.com/2010/10/29/proof-that-apple-stock-is-very-under-owned-aapl-msft-xom-ge-iah-qqq-xxl-ql-d-iyw/2/>. The fact that this story makes the argument that Apple Inc. has a relatively small number of shareholders with approximately 30,000 at the end of 2009 shows that a high degree of dispersion of corporate ownership has become the norm.

839 According to one estimate, socially responsible investing (SRI) now encompasses over 3 trillion USD of the 25.2 trillion investment marketplace (Forum for Sustainable and Responsible Investment, Socially Responsible Investment Facts, <http://ussif.org/resources/sriguide/srifacts.cfm>). Research in the U.K. estimates that 85% of local investors are planning to invest into ethical funds (Milner, Mark, Increasing Numbers of Investors Turn To Ethical Products, in: The Guardian, London, February 11, 2008, <http://www.guardian.co.uk/money/2008/feb/11/ethicalproducts>). For an ethical fund directory of the U.K., see http://www.ethicalinvestors.co.uk/fund_directory.php. One of the criteria along which this directory rates the investment choices of the available funds is whether they take corporate contributions to charity into account. As a sidenote, a subsegment of the SRI movement is the faith-based investment sector, with funds such as the Ave Maria Catholic Values Fund and the booming Islamic (Sharia) banking sector. For studies of funds investing according to principles of *Halakhah*, see the following two papers cited above: Schwartz, Mark, The Development of a Jewish Mutual Fund: Criteria and Challenges, International Association for Business and Society Conference, Victoria, B.C., June 30, 2002; Schwartz, Mark S./Tamari, Meir/Schwab, Daniel, Ethical Investing from a Jewish Perspective, in: Business and Society Review, Vol. 112, Issue 1, 2007, pp. 137-161. Republished in a collection issued by The Arab Financial Forum: Convergence: New Directions in Islamic Finance?, pp. 76-82.

840 Ironically, the growth of SRI vehicles might contribute to a decrease in corporate philanthropy, because when a corporation has no or few explicitly ethical institutional investors, it signals ex negativo to its management that it has less of a license to engage in charitable activities than it might have otherwise assumed.

degree of shareholder advocacy and activism by providing a public platform to express individual opinions and to rally around common interests, including philanthropic ones.⁸⁴¹ For instance, a logistics corporation such as DHL could ask its stockholders in an online poll whether they agree to the company donating its transportation capacities to deliver aid shipments in the wake of a humanitarian disaster, and an online petition demanding that Apple allows charitable donations to be made directly from its iPhone has already collected over forty-thousand signatures.⁸⁴²

Yet although the link between contemporary corporate philanthropy and the above two talmudic passages by means of the incapacity criteria can and perhaps should be broken, managers will nonetheless have to continue using their own judgment when making philanthropic decisions on behalf of their dispersed and mostly uninvolved shareholders. While how to allocate and spend philanthropic budgets is not the most relevant question for top management, to say the least, corporate philanthropy is a contemporary, practical, and hence relevant concern. To this end, a number of interesting and relevant principles can be extracted from the passages analyzed above. In the case regarding orphans, the Talmud teaches the principle that “everything from which [a] benefit [is derived], even orphans must contribute to.”⁸⁴³ One of the examples given is that since orphans benefit from the security provided by city walls, they must contribute to their construction and maintenance. Accordingly, executives could argue that it is justified to allocate corporate funds to pay for public services on which the corporation

841 David Rubenstein, co-founder and managing director of the global investment firm Carlyle Group, recently noted at a conference that “[e]mployees and shareholders could use Facebook to rally support against an acquisition.” (Wessel, Rhea, Carlyle’s Rubenstein Predicts Social Media Activism, in: Dealbook, The New York Times, March 1, 2011, <http://dealbook.nytimes.com/2011/03/01/carlyles-rubenstein-reflects-on-social-media-activism/>). The same possibility applies to philanthropic policies and issues. Rubenstein donates much to philanthropy from his personal wealth, subscribing to The Giving Pledge initiative launched by Bill Gates and Warren Buffet to encourage “the world’s wealthiest individuals and families to dedicate the majority of their wealth to philanthropy” (<http://givingpledge.org/>). Such individual commitments also reflect the power of top managers to make significant contributions to charities from their personal accounts in addition to the organizational philanthropic opportunities available at their corporations.

842 See Apple: Support Our Great Nonprofits, <http://www.thepetitionsite.com/1/iphone-nonprofit-donations/>. While participation in this petition is not limited to Apple’s owners, an online shareholder petition demanding that the technology company engage in philanthropy at least as much as its competitors could potentially arise as well. For a critique of Apple’s philanthropy policy, see Stehle, Vincent, Apple’s Disdain for Philanthropy Is Rotten for Charities and Society, in: The Chronicle of Philanthropy, January 9, 2011, <http://philanthropy.com/article/Apple-s-Disdain-for/125818/>.

843 bBB 8a.

depends, such as education, health care, security, and infrastructure.⁸⁴⁴ Yet such an allocation would not count as philanthropy but rather as commutative justice. The Gemarah then proceeds to forbid a custodian from making contributions to *Tzedakah* on behalf of orphans. If we view managers as custodians, shareholders as minors, and *Tzedakah* as philanthropy, this prohibition implies that managers may not make philanthropic contributions with the corporate resources owned by shareholders.⁸⁴⁵ Now if the Talmud forbids a trustee from fulfilling a positive commandment (which *Tzedakah* is) on behalf of his beneficiary without consent, one can argue that how much more so a manager requires shareholder consent to legitimate philanthropic activities, since philanthropy is a voluntary act in contemporary society.

However, Rabbah *does* permit *Tzedakah* contributions to be taken from orphans, and he justifies this practice through the future reputational benefits they will receive there from. Consequently, philanthropic contributions may be donated without consent of the party to whom the respective funds belong if and only if this leads to substantial benefits for that party. This implies both that philanthropy done to benefit its donor still counts as philanthropy,⁸⁴⁶ and that as long as philanthropy is an investment with clear benefits for the corporation, managers may engage in it without consulting shareholders.⁸⁴⁷ The management of the global financial services firm JPMorgan Chase and of the retailing giant REWE Group for instance applied these implications remarkably well. The bank organizes an international running contest under the name “JPMorgan Chase Corporate Challenge” in which hundreds of thousands of employees from many of the world’s largest corporations form teams to compete against each other,

844 The taxes paid by corporations and private shareholders mostly already go towards funding these public services, particularly in Europe. Yet these taxes could also be viewed as payment for the governmental and legal framework required to decrease transaction costs and increase business stability, thereby justifying a separate and further disbursement for additional public services benefited from.

845 Of course, this neither prohibits managers to contribute their personal resources to charity, nor to encourage employees and customers to donate theirs. The point made by the Talmud is only that *Tzedakah* may not be given with the assets of someone who has not consented to the donation.

846 In fact, LevR (34,10) teaches that the blessing of *Tzedakah* is greater for the person giving it than for the one receiving, which makes the benefit for donors an essential component of charity. Also, bGit 61a states that helping the poor brings peace to the world, and bBB 9a teaches that *Tzedakah* leads to peace, quiet and confidence, thereby codifying further intrinsic benefits of charity.

847 This is of course a tautological conclusion, because managers in principle have the authority to engage in any (legal) activity that will improve the performance of the corporation they are leading. When doing good becomes good business, philanthropy fundamentally becomes an investment like any other, albeit one with auxiliary social and ecological benefits.

promoting fitness while contributing significant funds to various charitable causes.⁸⁴⁸ While this event itself is not profitable,⁸⁴⁹ none of JPMorgan's shareholders are likely to argue for its discontinuation, primarily because it most likely contributes to reputational benefits, relationship building, employee loyalty, and team spirit for the bank. And REWE in some of its retail branches recently introduced a collecting scheme in which customers were given a pack of animal stickers for every 10 EUR spent. These stickers could then be collected and ordered in an album, which the retailer sold for 2.5 EUR, twenty percent of which was donated to the World Wildlife Fund (WWF) for animal protection programs.⁸⁵⁰ Now this is a case of corporate philanthropy in which Rowe's managers, according to Rabbah, may engage without the explicit consent of their shareholders, for the funds donated to the WWF in this scheme are compensated by new revenues five times their size⁸⁵¹ and by the reputational benefits of associating the retailer's brand with one of the world's most prominent charitable organizations.⁸⁵² Engaging in non-profit philanthropy with corporate resources, on the other hand, is not something the Talmud seems to give license for. This is supported with a further tradition that limits the amount of *Tzedakah* a person may give so as to prevent him from falling into poverty himself.⁸⁵³ By decreasing a company's profitability through non-profit philanthropy, in theory at least, managers dent

848 In the Frankfurt race alone, nearly 70,000 runners from almost 3,000 corporations and smaller organizations participated in the competition, making it the largest running event in Europe (<http://www.bild.de/regional/frankfurt/frankfurt-regional/68-500-beschaefigte-bei-europas-groesstem-18384956.bild.html>). Over the past three years, nearly 3m USD have been donated to various non-profit organizations via the JP Morgan Chase Corporate Challenge from the registration revenues (<http://www.jpmorganchasecc.com/features.php#charity>). This number does not include the additional funds being donated by the participating teams directly.

849 The event's official website states that operating expenses exceed registration revenues (<http://www.jpmorganchasecc.com/faq.php#enter11>).

850 <http://www.bedrohte-natur.de/tierischer-sammelspas-mit-wwf-stickern-rew-e-und-wwf-starten-sticker-aktion/>.

851 The two and a half euros in additional revenues from the album sales for every fifty eurocents donated. The actual revenue impact was likely greater than this through sales uplift phenomenon such as children nagging their parents to buy at REWE and increase their spending to earn additional card packs.

852 Some of these reputational benefits might be lost by arousing suspicions that the entire collecting campaign is but a scheme to turn children into promotional tools by inducing them to nag their parents into additional consumption. Harvard Business School ethics professor Joe Badaracco makes an insightful and dialectical point that could be interpreted as a critique of this campaign model: "On the question of advertising to young kids, I'm inclined to say that it's fine so long as it doesn't work very well" (In: Bakan, Joel, op. cit., p. 125). Even if manipulating children is not the motivation of a charitable campaign, the possibility of arousing suspicion as a motivating factor might be sufficient to abstain from such activities. The Talmud teaches that one should not give charity when it might arouse suspicions (bChag 5a).

853 bKet 16b, 50a, bAr 28a.

corporate profits and valuations and ultimately might endanger the independent existence of the company itself.⁸⁵⁴

Does this imply that without the consent of their shareholders, corporate managers may engage in corporate philanthropy if and only if it constitutes either a commutative payment for a benefit already received or serves as an investment to generate a new one? The second passage discussed in the preceding section seems to indicate otherwise. Whereas the talmudic orphan case teaches that benefits received in the past or future are a legitimate reason for a custodian to expend his ward's funds without explicit consent, the case of the incapacitated husband stresses the condition of fulfilling assumed desires.⁸⁵⁵ The differentiation between intentional and involuntary incapacitation discussed by the passage dealing with the latter case brings the issue of interest-fulfillment to the fore. Similar to how a husband who departs indefinitely without leaving instructions for his family to be supported from the property he leaves behind indicates *ex negativo* that he does not intend to provide for them, shareholders who have not expressed a desire for corporate funds to be expended on philanthropy indicate that they do not intend for any of their capital invested in the corporation to be spent on charitable purposes.⁸⁵⁶ Conversely, when shareholders have expressed a desire for philanthropic engagement, for instance by demanding that ten percent of corporate profits be donated to hunger relief and educational grants, management is responsible to fulfill this desire. Either way, although expressed desires can prevent engagement in philanthropy, they cannot change legal responsibilities of the corporation: similar to how the husband who leaves his family must in any case still support his wife⁸⁵⁷ (although *Tzedakah* may not be levied from his estate), a corporation must adhere to legal and cultural norms regarding the support of stakeholders with which it has entered into a contractual relationship yet may otherwise not engage in voluntary philanthropy against the volition of its shareholders.

854 For example, the much-noted voluntary benefits Aaron Feuerstein gave the employees of his Malden Mills textile factory after it burned down in 1995 were a grand philanthropic gesture (which Feuerstein attributed to Jewish values and for which he was given much recognition, for instance from President Clinton) – yet it cost the factory 25m USD, forced Feuerstein to give up his position as CEO, and brought the entire company into bankruptcy. See Leung, Rebecca, *The Mensch of Malden Mills*, February 11th, 2009, on: CBS News 60 Minutes, <http://www.cbsnews.com/stories/2003/07/03/60minutes/main561656.shtml>.

855 Of course, the orphan case can also be read as teaching that a custodian should try to fulfill the desires of his ward, given that most people would welcome receiving benefits, which Rabbah attempts to achieve for the orphans by donating to *Tzedakah* on their behalf.

856 This assumption hinges on the possibility of shareholders to make their desire for their corporation to engage in philanthropy heard by management, and SRIs and social media might be increasingly enabling this.

857 With whom he entered into a legal contract before marriage.

Because shareholders are mostly involuntarily incapacitated from making their voices heard by management,⁸⁵⁸ contemporary corporate practice has more in common with the case of the husband who goes mad than the one who leaves voluntarily. This puts management in a similar position as the *Beit Din* which has to assume what the husband would have wished for if he were still sane and which must then vicariously fulfill his desires, also regarding corporate philanthropy. Similar to the agent of the above Mishnah who has to assess the character and intentions of his principal when tithing, executives can strive to understand what the philanthropic preferences of their shareholders are. As noted, a company in which ethical investment funds have a majority stake likely has a greater license to engage in philanthropy. Similar to the case of the tithing agent, any directions given by the principal must be followed meticulously, whereas every assumed preference has more leeway. Another implication of the incapacitated husband remaining obligated to care for his wife and family, an obligation which only he has, might be that when a corporation is in a unique position to bestow philanthropic benefits which no other organization or individual can, it is responsible to do so.⁸⁵⁹ Corporate philanthropy thereby becomes “kosher” if and only if it is a reflection of expressed or likely desires or the unique capabilities of those paying for it.

Yet even when shareholders express a desire for their corporation to engage in or refrain from philanthropy, managers can take further considerations into account. When philanthropy can be engaged in at no cost, management might be obligated to do so even without the consent or against the will of shareholders. Based on the call to fight the character trait of Sodom, a refusal to bestow costless philanthropic benefits makes the person doing so a misanthropic dog-in-the-manger that may be restrained. For instance, food companies could provide their excess supply to the hungry and real estate funds may offer shelter for the

858 Many shareholders would likely appreciate a higher degree of shareholder democracy, yet dispersed ownership and lack of engagement platforms prevent their voice from being heard.

859 This unique capability is one of the key criteria Michael Porter demands of strategic philanthropy. In describing Cisco’s Networking Academy, an educational program run by one of the world’s largest IT and communications corporations, Porter admires that Cisco has “used its unique assets and expertise, along with its worldwide presence, to create a program that no other educational institution, government agency, foundation, or corporate donor could have designed as well or expanded as rapidly.” Porter, Michael E./Kramer R., *The Competitive Advantage of Corporate Philanthropy*, pp. 12f. Based on the case of Rabbah and the orphans discussed above, the Shulchan Arukh establishes two criteria for when charity may be given with orphans’ assets: when it gives the orphans a good name; or when it is for “urgent needs which the youngsters are particularly obligated in,” e.g., if they have poor relatives in an emergency. Cited by Meir, Asher, *Can Top Level Management Unilaterally Give Away Corporate Dollars to Charity?*, based on Yoreh De’ah, ch. 248.

homeless with capacity they do not intend to rent out.⁸⁶⁰ Because of philanthropy's business benefits, such endeavors may in fact be permissible under the "benefit granted" principle with which Rabbah legitimizes his *Tzedakah* contributions from orphans' funds.

Finally, the Midrash on Ecclesiastes warns of engaging in philanthropy as a whitewashing compensatory instrument. Rather than accumulating funds through theft, robbery, and oppression, and striving after the reputation of a great philanthropist, the rabbis urge giving less charity but with property that is rightfully one's own. The application to corporate philanthropy is clear. The means with which charitable funds are generated matter at least as much as the funds themselves, and corporations should hence strive to integrate high ethical standards into their business itself rather than viewing their operations as something to be compensated for with charitable largesse.⁸⁶¹ For instance, this might imply that McDonald's should provide children's meals that do not contribute to obesity and heart disease as well as cut down on the amount of packaging they are wrapped in rather than (or in addition to) running a charity for hospitalized children and branding itself as a "green" company.⁸⁶²

860 Of course, such philanthropic efforts can in fact cost the corporation, not just administrative expenses (which can be shouldered by employees) but reputational or litigation costs as well (e.g., when the homeless shelter becomes a crime scene or when the distributed food perishes and thereby causes poisonings). Also, there may be opportunity costs which have not been accounted for, such as the rent that could be generated on the real-estate currently lying dormant.

861 Peter Ulrich contrasts his ideal of integrative economic ethics (integrative Wirtschaftsethik) with charitable economic ethics to argue for a corporate ethic that understands business itself as an opportunity to do good, rather than viewing ethics as something peripheral to profit generation, to be dealt with *ex post* of business operations. Two further forms of economic ethics are criticized by Ulrich as well: instrumental ethics and compensatory ethics. Both of these can be motives for corporate philanthropy as well, due to its noted benefit-generating and whitewashing qualities. (Ulrich, Peter, *Integrative Wirtschaftsethik. Grundfragen einer lebensdienlichen Ökonomie*, Bern, 1997). In fact, the rabbis viewed business as the prime form of charity, because it can enable people to no longer depend on charity. For instance, one tradition teaches that lending money is greater than performing charity, and that the person forming a partnership is greater than all (bShab 63a). Cf. Maimonides' eight levels of charity, *Mishneh Torah*, Sefer Zeraim, Hilkhoh Matanot Aniyyim, 10,7-14.

862 Currently, the McDonald's "happy meals" for children contain food contributing to obesity and heart disease: burgers and fried chicken, french fries, and sodas (although the french fries can be replaced with a salad or fruit yoghurt, and the soda can be replaced with milk or fruit juice). And the amount of packaging this food is offered in can be striking. Yet McDonald's is rebranding itself as a "green" company (see Liebrich, Silvia, *Öko-Strategie von McDonald's: Grün allein genügt nicht*, in: *Süddeutsche Zeitung*, Munich, November 23rd 2009: <http://www.sueddeutsche.de/wirtschaft/eko-strategie-von-mcdonalds-gruen-allein-genuegt-nicht-1.150589>) and runs a global charity helping hospitalized children (Ronald McDonald House Charities, called McDonald's Kinderhilfe in Germany).

Yet the Midrash can also be interpreted as an encouragement for managers to invest their own resources into philanthropy rather than allocating those of the corporation: “Better is the person who gives a little *Tzedakah* from his own possessions than the person who ... gives much *Tzedakah* from the possessions of others.” Read with this omission, the Midrash not just condemns those who donate to *Tzedakah* with means earned unscrupulously but also elevates those donating their own resources rather than those of others. This would imply that executives and managers should focus their philanthropic aspirations on the social justice they can contribute to with their own pay packages rather than with or at least in addition to corporate funds, and the deeds of loving-kindness they can perform on their own instead of company time. Due to the often remarkable means and capabilities of corporate managers, it is likely that their financial, social, and cultural power implies substantial philanthropic responsibilities. Corporate philanthropy, even when it is permissible, should thereby not be understood as a substitute for personal philanthropy.

In conclusion, the talmudic perspective on corporate philanthropy developed above urges a dialectical indivisibility of management, on a number of fronts. First of all, the fundamental duties to pursue social justice and loving-kindness urge indivisibility by connecting individuals, organizations, and society to the needs of the poor and destitute. Yet managers may not allocate money for philanthropic purposes if doing so separates them from the interests of their shareholders. Nonetheless, they are simultaneously obligated to remain connected with the benefits that society bestows upon the corporation as well as with the benefits that the corporation can bestow on society and to fulfill the responsibilities resulting there from. Also, personal philanthropic duties are not to be divided by possible organizational ones, as if the more a corporation engages in philanthropy the less its managers must do so on their own account and time. Perhaps most importantly, personal and organizational integrity call for philanthropic goals integrated into a corporation’s core *raison d’être* itself, thereby creating an indivisible and virtuous link simultaneously benefiting corporate stakeholders alongside society as a whole simply by doing business.

6 Ethics Taxonomy Dimension 5: Environment

6.1 Issues 9 and 10: Resource Efficiency and Pollution

6.1.1. *The Mutual Dependency of the Corporation and the Environment*

Just as a corporation is part of the economy but must also engage its surrounding society, so too is it required to deal with ecology. This means that corporations should not only examine the interaction with their social environment but with their natural one as well. For all corporations depend on nature, either directly as a factor of production (e.g., petroleum for ExxonMobil, water for Danone Group's Evian, leather for LVMH's Louis Vuitton manufactories and grapes for its Moët & Chandon wineries), or indirectly to support operations (e.g., energy for Google's servers, food for Nike's cafeteria, and paper for Deutsche Bank's customer service). This corporate dependency on natural resources, which contributes to their scarcity, leads to our first issue of ecological management ethics: environmental resource efficiency. While this issue asks what and how much a corporation may take from nature, our second issue asks how much pollution a corporation may give to it. As Malte Faber and Thomas Petersen note, the mechanism of joint production implies that producing intended goods can also lead to the production of bads.⁸⁶³ Amongst these bads are pollutants that harm air, water, or soil, thereby threatening the natural foundation upon which life and business depend.⁸⁶⁴ Combined, resource scarcity and pollution are the locus of the environmental

863 Faber, Malte/Petersen, Thomas, Verantwortung und das Problem der Kuppelproduktion. Reflexionen über die Grundlagen der Umweltpolitik, University of Heidelberg Department of Economics Discussion Paper Series, No. 411, Heidelberg, August 2004, p. 7, <http://www.uni-heidelberg.de/md/awi/forschung/dp411.pdf>. For further ecological economics studies relating to pollution and resource efficiency by Malte Faber, see Umweltschutz und Technologiewandel, Heidelberg, 1986, Entropie, Umweltschutz und Rohstoffverbrauch: eine naturwissenschaftlich ökonomische Untersuchung, Berlin, 1983/85, Umweltschutz und Input-Output-Analyse: mit zwei Fallstudien aus der Wassergüterwirtschaft, Tübingen, 1983. See also Faber, Malte/Manstetten, Reiner/Proops, John, Ecological Economics: Concepts and Methods, Cheltenham, Northampton, MA, 1998.

864 For a list of the common pollutants emitted by industrial activity, see Sell, Nancy J, Industrial Pollution Control: Issues and Techniques, New York, NY, 1992, pp. 1-25.

discourse.⁸⁶⁵ And it is these two issues through which corporations contribute to environmental problems such as global warming, ozone depletion, deforestation and desertification, declining biodiversity, acid rain, and toxic wastes.⁸⁶⁶

The above mutual dependencies and impacts of corporations on nature give rise to the fundamental dilemma of environmental management: corporations need nature to sustain themselves, yet this need can threaten the sustainability of nature itself.⁸⁶⁷

865 These two issues are reflected in all key points that emerged from the 1992 UN Conference on Environment and Development (known informally as the Earth Summit): scrutinizing patterns of production of toxic components, seeking alternative sources of energy to replace the use of fossil fuels, reducing “vehicle emissions, congestion in cities, and the health problems caused by polluted air and smog,” increasing “awareness of and concern over the growing scarcity of water.” (<http://www.un.org/geninfo/bp/enviro.html>.) In corporate practice, these two issues are reflected for instance by the concerns of the protest movement accusing Coca-Cola’s Indian operations of ground water depletion (i.e., resource inefficiency) and pollution (see http://environment.about.com/od/waterpollution/a/groundwater_ind.htm). Coca-Cola launched an official response countering these allegations, striving to maintain a reputation of environmental responsibility (see http://coke.in/water_management/water_management_approach2water.aspx).

866 To name most of the symptoms of ecological degradation which the industrial development of the past two centuries has been linked to, as cited by Shrivastava, Paul, *The Role of Corporations in Achieving Ecological Sustainability*, in: *The Academy of Management Review*, Vol. 20, No. 4, 1995, p. 936. For a publication on the scientific consensus regarding climate change, see the following National Academies Report: *Understanding and Responding to Climate Change. Highlights of National Academies Reports, 2008 Edition*, http://americasclimatechoices.org/climate_change_2008_final.pdf. The report (on p. 2) finds that “[m]ost scientists agree that the warming in recent decades has been caused primarily by human activities that have increased the amount of greenhouse gases in the atmosphere ... Greenhouse gases, such as carbon dioxide, have increased significantly since the Industrial Revolution, mostly from the burning of fossil fuels for energy, industrial processes, and transportation. Carbon dioxide levels are at their highest in at least 650,000 years and continue to rise.” Environmental impact is not just an industrial and corporate but a human issue as well. See the following terrific study for information about the impact humans have had on the environment throughout their history: Goudie, Andrew, *The Human Impact On the Natural Environment: Past, Present, and Future*, Malden, MA/Oxford, 1981/2006.

867 This interrelationship is reflected by a report for the UN which estimates that the world’s top 3,000 companies would have to pay 2.2tn USD to compensate for their use and damage of the environment, constituting a third of their total profits (cited in Jowitz, Juliette, *World’s Top Firms Cause \$2.2tn of Environmental Damage, Report Estimates*, February 18th, 2010, in: *The Guardian*, <http://www.guardian.co.uk/environment/2010/feb/18/worlds-top-firms-environmental-damage>). The interrelationship between economic and environmental sustainability is also reflected by the term “sustainability” itself, the German equivalent of which (*Nachhaltigkeit*) was coined by Johann von Carlowitz in connection with forestry, to designate a level of timber exploitation at which woods can regenerate (Schmidt, Mario, *Hannß Carl von Carlowitz und seine “Sylvicultura Oeconomica,” Institut für Industrial Ecology, Pforzheim, 2007*, <http://umwelt.hs-pforzheim.de/sonstiges/historisches/carlowitz-titel-inhalt/>). The term sustainability rose to prominence and was widened from the ecological and economic domain to include social considerations as well by the Brundtland Report, which coined the term “sustainable development” to describe “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” This development calls for economic growth to be calibrated against social and environmental concerns. See *Our Common Future: Report of the World Commission on Environment and Development, Chapter 2: Towards Sustainable Development, 1987*, <http://www.un-documents.net/ocf-02.htm#1>.

Some would argue that there is in fact no collision between corporate and environmental interests: the duty of managers is to act in the best interests of the corporation, and they can fulfill this duty by cutting costs through improved resource efficiency and by generating revenues through pollution markets.⁸⁶⁸ Even Milton Friedman, the most vocal and prominent critic of managers pursuing any interests besides those of shareholders, acknowledges a certain legitimacy of environmental considerations when he rejects that corporate executives have a responsibility “to make expenditures on reducing pollution *beyond* the amount that is in the best interests of the corporation or that is *required* by law in order to contribute to the social objective of improving the environment.”⁸⁶⁹ This implies that reducing pollution and abiding by environmental regulation certainly can be in the best interest of a corporation.⁸⁷⁰ As a result of this possible alignment between economic and ecological interests, as well as the increasing public expectation of environmentally responsible corporate conduct, a paradigm shift towards a green(er) economy is taking place. CEOs are putting environmental issues on their agenda,⁸⁷¹ companies are finding ways to create value through ecological

868 This latter business benefit requires an active market for emissions trading, which enables companies polluting below a specified level to sell emissions permits to other companies. Of course, decreasing pollution can not just generate revenues but also cut costs when a company’s existing pollution levels require it to purchase emission permits.

869 Friedman, Milton, *The Social Responsibility of Business is to Increase its Profits*, in: *The New York Times Magazine*, September 13th, 1970, <http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html>. Emphases in quotation added.

870 Friedman does not make explicit why pollution reduction can be in the best interest of a corporation. One reason could be that environmental concerns were already becoming more prevalent across society, and failing to acknowledge societal expectations can become costly for a corporation, for instance through consumer boycotts or governmental regulation. Political and regulatory pressures on managers to take environmental interests into account increased with the foundation of governmental agencies such as the U.S. Environmental Protection Agency (EPA) in 1970 (the same year that Friedman published his above article), the formation of NGOs such as the World Wildlife Fund, Greenpeace, and Friends of the Earth, the establishment of green political parties such as Germany’s Die Grünen in 1980, the convening of transnational initiatives such as the Brundtland Commission (which published the famous “Our Common Future” report cited above), and the noted 1992 UN Conference on Environment and Development (the Earth Summit). Simultaneously, a growing public concern regarding environmental efficiency and pollution emerged—particularly in the wake of the 1970s oil crises, which brought the dependency on and scarcity of natural resources to the fore, and disasters such as the 1984 Bhopal toxic gas leak and the 1986 Chernobyl nuclear plant explosion.

871 For instance, Peter Brabeck-Letmathe, former CEO and current Chairman of Nestlé, stated in 2009: “We see our environmental performance increasingly as an important strategic element for competitive differentiation.” (http://www.foodengineeringmag.com/Articles/Article_Rotation/BNP_GUID_9-5-2006_A_1000000000000836015.) The previous CEO of Wal-Mart noted in 2005 that “[b]eing a good steward of the environment and our communities, and being an efficient and profitable business, are not mutually exclusive. In fact, they are one and the same.” (http://www.greenervanston.org/business_sense.php.) Norbert Reithofer, Chair-

sustainability,⁸⁷² corporate environmental departments are reaching unprecedented levels of organizational power,⁸⁷³ corporate reporting of environmental performance metrics is becoming increasingly commonplace,⁸⁷⁴ and a wealth of publications aim to help managers increase their financial results through improved ecological sustainability.⁸⁷⁵ More than ever, corporate managers are witnessing a convergence of ecology and economy.

Yet despite this increasing harmonization of economic and environmental goals, the fundamental management challenge of determining the point at which legitimate use of nature ends and its myopic abuse begins nonetheless remains. For the alignment of corporate and ecological interests does not answer what

man of the BMW board, explained his company's decision to pull out of Formula 1 racing in 2009 as follows: "Premium will increasingly be defined in terms of sustainability and environmental compatibility." (<http://www.philharthing.net/quotes-corner/quotes-corner-3bus.htm>.) And, as noted above, the former CEO of the BP Group, John Browne, prominently rebranded BP in 2000 as a "green" company that stands for "beyond petroleum." While such statements and actions are frequently accused of constituting "greenwash," they nonetheless reflect the growing importance of corporations to at least appear environmentally responsible.

872 The McKinsey Sustainability and Resource Productivity Practice, which helps clients add value through sustainability initiatives (and is hence itself an example of how environmental concerns can improve the economic bottom-line), finds that value is created through sustainability via three levers: Growth (e.g., Siemens generating billions of euros in sales with its "Environmental Portfolio" products that contribute to decreasing customers' ecological footprints), Return on Capital (e.g., Wal-Mart saving billions of USD across its value chain by reducing supplier packaging), and Risk Management (e.g., Nestlé safeguarding water quality by making water efficiency a central focus).

Such sustainability initiatives are increasingly prevalent in corporate practice. A McKinsey global survey of executives finds that "[m]any companies are actively integrating sustainability principles into their businesses ... and they are doing so by pursuing goals that go far beyond earlier concern for reputation management—for example, saving energy, developing green products, and retaining and motivating employees, all of which help companies capture value through growth and return on capital." Bonini, Sheila/Görner, Stephan, *The Business of Sustainability: McKinsey Global Survey Results*, in: McKinsey Quarterly, Chicago, IL, October 2011.

873 Hoffman, Andrew J., *From Heresy to Dogma: An Institutional History of Corporate Environmentalism*, Stanford, CA, 2001, p. 13.

874 The development of sustainability reporting standards such as the Global Reporting Initiative and the Dow Jones Sustainability Index are increasing the prevalence of environmental reports alongside financial ones. For an applied example, see IBM's 2010 environmental report: http://www.ibm.com/ibm/environment/annual/IBMEnvReport_2010.pdf.

875 See for instance, Dunphy, Dexter, *Organizational Change for Corporate Sustainability*, London, 2002; Rosen, Christine Meisner, *Environmental Strategy and Competitive Advantage*, in: *California Management Review*, Vol. 43, Issue 3, 2001, pp. 8-15; Porter, Michael E./van der Linde, Claas, *Green and Competitive: Ending the Stalemate*, in: *Harvard Business Review*, Boston, MA, September-October 1995. See also the following Business Roundtable Institute for Corporate Ethics publication: Freeman, R. Edward/York, Jeffrey G./Stewart, Lisa, *Environment, Ethics, and Business*, Charlottesville, VA, 2008, http://www.corporateethics.org/pdf/environment_ethics.pdf.

their relative valuation should be. This leaves questions such as the following unanswered: is the natural environment simply the handmaiden of managers to be protected when it is profitable to do so and to be disregarded when it is not? Or could natural conservation be an end in itself over which business interests may not be prioritized? And if a certain instrumentalization of nature for business purposes is legitimate, at which point does it become irresponsible? These questions will now be studied in the Talmud.

6.1.2. *Humanity as both Ruler and Guardian of Nature*

Many publications have examined Jewish environmental ethics⁸⁷⁶ and a few have studied the implications of these ethics for business.⁸⁷⁷ In light of this wealth of scholarly material, which bases itself on a large number of concepts and traditions spanning millennia, it can be hard to see the wood for the trees. Nonetheless, there seems to be a golden thread running through nearly all these works, and unsurprisingly it is a dialectical one that nature can and should be instrumentalized for human purposes but only in an efficient, edifying, and sustainable manner. To present this common theme, a framework based on the famous exposition by R. Joseph B. Soloveitchik of the biblical accounts of humanity's genesis lends itself particularly well. In his *hashkafic* ("philosophical") essay *The Lonely Man*

876 See for instance the following books: Benstein, Jeremy, *The Way Into Judaism and the Environment*, Woodstock, VT, 2006; Tirosh-Samuelson, Hava, *Judaism and Ecology: Created World and Revealed World*, Boston, MA, 2002; Yaffe, Martin D. (ed.), *Judaism and Environmental Ethics: A Reader*, Lanham, MD, 2001; Waskow, Arthur (ed.), *Torah of the Earth: Exploring 4,000 Years of Ecology in Jewish Thought*, Woodstock, VT, 2000; Hütterman, Aloys, *The Ecological Message of the Torah*, Atlanta, GA, 1999. For an extensive literature review of Jewish environmental ethics published in scholarly journals, see Vogel, David, *How Green is Judaism? Exploring Jewish Environmental Ethics*, in: *Business Ethics Quarterly*, Vol. 11, Issue 2, 2001, p. 349f., fn. 4.

877 The central works of the Jewish business ethics literature relating to the environment are the following: Friedman, Hershey H./Klein, Yehuda L., *Respect for God's World: The Biblical and Rabbinic Foundations of Environmentalism*, in: *International Journal of Business and Globalisation*, Vol. 4, No. 2, 2010, pp. 192-200; Lieberman, Yehoshua, *Responsibility of the Firm to the Environment*, in: Levine, Aaron/Pava, Moses (eds.), *Jewish Business Ethics. The Firm and Its Stakeholders*, Northvale, NJ/Jerusalem, 1999, pp. 147-174; the chapter on "Balancing the Environment and Profits" in: Kahaner, Larry, *Values, Prosperity, and the Talmud. Business Lessons from the Ancient Rabbis*, Hoboken, NJ, 2003, pp. 123-142; and Vogel, David, *op. cit.*, pp. 349-363. Unfortunately, both the general and the business-specific works on Jewish environmental ethics in the vast majority of cases lack rigorous analyses of original source-texts and their context, thereby failing to extract the complex messages contained within them, and in not only a few cases misrepresenting their meaning and intertextual relationship.

of Faith,⁸⁷⁸ Soloveitchik finds a contradiction in the nature of human beings and a dialectical tension in the manner in which they should relate to the natural environment based on the two biblical accounts of creation.⁸⁷⁹ Whereas the first account portrays Adam as a divine, communal being with a mandate to rule over and subdue the earth, the second paints a picture of a solitary Adam emerging from the dust of the earth with the duty to work and protect the Garden of Eden.⁸⁸⁰ Based on this discrepancy, Soloveitchik characterizes a dichotomous quality of human beings: “While Adam the first wants to reclaim himself from a closed-in, non-reflective, natural existence by setting himself up as a dignified majestic being capable of ruling his environment, Adam the second sees his *separateness* from nature and his existential uniqueness not in dignity or majesty but in something else. There is, in his opinion, another mode of existence through which man can find his own self, namely, the redemptive”⁸⁸¹ Thereby, whereas “Adam the first” is a master over nature and should control it, “Adam the second” is a servant who should refrain from causing error or evil within it.⁸⁸² These two creation narratives hence establish two different modes in which human beings can and should relate to their natural environment: domination and subjugation on the one hand, cultivation and preservation on the other. The dialectic of these two relational poles will now be used as an interpretative framework to first examine the talmudic perception of humanity’s standing vis-à-vis nature and then to study the rights and duties resulting therefrom.

878 Soloveitchik, Joseph B., *The Lonely Man of Faith*, first published in: *Tradition: A Journal of Orthodox Thought*, Vol. 7, No. 2, 1965, republished: Jerusalem, 2011.

879 The first account is found in Gen 1,26-29 and the second in Gen 2,7-17. Between these two narratives, Soloveitchik points out four major discrepancies: 1) Adam the first is created in the image of God (בְּצֶלֶם אֱלֹהִים), while Adam the second is fashioned from the dust of the ground (עָפָר מִן-הָאֲדָמָה), after which God breathes the breath of life (נְשָׁמַת חַיִּים) into his nostrils. 2) Adam the first receives the mandate to have dominion over all creation (וַרְדּוֹ בְּדָגַת הַיָּם, וּבְעוֹף הַשָּׁמַיִם, וּבְכָל-הָאָרֶץ, וּבְכָל-הָאֲרָץ) and to “fill the earth and subdue it” (וּלְמַלֵּא אֶת-הָאָרֶץ, וּלְכַבְשׁוּהָ), whereas Adam the second receives the duty to cultivate (לְעַבְדָּהּ) and protect (וּלְשַׁמְרָהּ) the Garden of Eden. 3) Adam the first is created simultaneously with Eve (בְּרֵא אֶתֶם), whereas Adam the second emerges alone, with Eve created subsequently (לֹא-טוֹב הָיִית הָאָדָם). 4) In the first account, only “Elokim” appears as the Name of God, whereas in the second account, “Elokim” is used in conjunction with the Tetragrammaton (YHWH), reflecting both might and love.

880 Cf. Ps 8,6-7 and 146,3-4 for a further instance of this dialectical view on humanity.

881 Soloveitchik, op. cit., p. 18.

882 Soloveitchik does not make this explicit, but the redemptive, serving quality of Adam the second is also reflected in the imperative “to cultivate” (לְעַבְדָּהּ), which derives from the same root as “to serve” (לְעַבְדוֹ). Also, Adam the second is embedded in the Garden of Eden narrative, which symbolizes the human capacity to abuse nature for “evil” purposes.

The Standing of Humanity in Nature

The dialectic between Adam the first and Adam the second is reflected in a number of talmudic teachings regarding the standing of humanity vis-à-vis its natural environment. A Tosefta encapsulates the position that humans can be viewed as both the summit as well as the nadir of creation: ת"ר אדם נברא בערב שבת ומפני מה שלא יהו המינים אומרים שותף היה לו להקדוש ברוך הוא במעשה בראשית דבר אחר שאם תזוה דעתו עליו אומר לו יתוש קדמך במעשה בראשית דבר אחר כדי שיכנס למצוה מיד דבר אחר כדי שיכנס לסעודה מיד משל למלך בשר ודם שבנה פלטרין ושיכללן והתקין סעודה ואחר כך הכניס אורחין.⁸⁸³ This fascinating tradition springs from the question of why man was created last of all at creation. The preceding four answers reflect the complexity of the human condition. Firstly, Adam is a part of creation and therefore not on par with its cause. Secondly, even within creation, Adam should refrain from becoming prideful about his position, given that the lowliest of insects preceded him. Thirdly, the fact that Adam was created on the sixth day so that he could immediately fulfill a divine commandment both reflects an anthropocentric and theocentric worldview—for here all of nature revolves around humanity, while humanity revolves around the divine. Finally, the fourth answer presents nature as a banquet, prepared ahead of Adam's creation so that it would be ready for him to feast on.⁸⁸⁴

The above four answers seem to be grouped into two perspectives, and these in turn appear to be symmetrical. Whereas the first two answers emphasize the humility with which Adam the second should relate to his environment, the last two reflect the majesty of Adam the first. Within these two groupings, the respective first answer (i.e., number one and three) deals with the relationship between humanity and God, and the second answer (i.e., number two and four) deals with the relationship between humanity and nature. Accordingly, while Adam the second is reminded of his inferiority vis-à-vis both the divine and natural domains through the first two answers teaching God's supremacy and

883 tSan 8,7-9, cited in bSan 38a: The rabbis taught [in a Baraita], because of what was Adam created on the eve of Shabbat [i.e., last, on the sixth day of Creation]? So that those attacking the Torah cannot say, "the Holy One blessed be He had a partner in [His] act of Creation." Another answer [lit. thing]: So that if his [Adam's] mind becomes prideful, one can say to him "the gnat preceded you in the act of creation." Another answer: So that he could enter immediately into a commandment [i.e., the hallowing of the Shabbat]. Another answer: So that he could enter immediately into the banquet. This is analogous to a king of flesh and blood who built palaces and furnished them and prepared a banquet and subsequently brought in guests.

884 The Tosefta (ibid.) supports this reading of nature as humanity's banquet by concluding with Prov 9,1-3: Wisdom built her house (הקמות, בנתה ביתה) ... she has prepared her meat, she has mingled her wine, she has also set her table (ערכה שלחנה) אף, ערכה יניה; אף, ערכה טבתה, מטכה יניה; אף, ערכה שלחנה) She has sent forth her maidens, she calls, on top of the highest places of the city (על גפי, יקרא). (מרימי קרת).

nature's primacy, the latter two answers urge Adam the first to view himself as the focal point around which all of creation revolves and to view nature as being served on a silver platter for his benefit and enjoyment.

A Midrash indicates that these opposing positions follow from the duality of humans resulting from their constitution as both spiritual and physical beings.⁸⁸⁵ Resh Laqish interprets the opening of Genesis, which portrays the spirit of God as hovering over the waters while the earth was still unformed and void (, וְהָאָרֶץ) (הִיְתָה תֵהוּ וְבֵהוּ, וְחֹשֶׁךְ, עַל-פְּנֵי תְהוֹם; וְרוּחַ אֱלֹהִים, מְרַחֶפֶת עַל-פְּנֵי הַמַּיִם)⁸⁸⁶ to mean that when humans act meritoriously they are told that (based on their spirituality) they “preceded all the works of creation,” whereas if they do not, they are told that (based on their physicality) “a gnat preceded you, a snail preceded you.”⁸⁸⁷ The primacy of humanity's spirituality is thus counterweighed by the fact that its physicality came last. Humans are thereby simultaneously superior, equal, and inferior to creation, as is also shown by a tradition teaching that God apportioned the entire world to humanity, but always remains the Master of them both.⁸⁸⁸

The following Mishnah features the perhaps starkest reminder of the reasons why the relationship of humans with God and nature should imbue them with both dignity and humility: עקביה בן מהללאל אומר, הסתכל בשלושה דברים, ואין אתה בא ידי עבירה--דע מאיין באת, ולאיינ אתה הולך, ולפני מי אתה עתיד ליתן דין והשבון: מאיין באת, מליחה סרוחה. ולאיינ אתה הולך, למקום רימה ותולעה. ולפני מי אתה עתיד ליתן דין והשבון, לפני מלך מלכי המלכים הקדוש ברוך הוא.⁸⁸⁹ The reason given by Akavyah b. Mahalel to meditate on the smallness of oneself in relationship to God and nature also contains the essence of human greatness: the power to distinguish right from wrong, to pursue the good and abstain from the bad.

The dialectical standing of humanity is also reflected in teachings surrounding the citation of the above Tosefta in the Bavli. The preceding Mishnah warns of giving false testimony since it might lead to innocent bloodshed and then

885 This duality is also reflected in the name Adam (אָדָם) itself, which alludes to both earth (אָדָמָה) and similarity to God (אֱלֹהִים לְעֵלְיוֹן), as most famously interpreted by the *Shelah* haKodesh. Adam's combined three Hebrew letters can also be understood as a fusion of the spiritual realm, symbolized by the א, and the physical realm, symbolized by the ט as well as by דם (blood). For the interpretative meaning of the Hebrew alphabet based on traditional Jewish sources, see Munk, Michael L, *The Wisdom in the Hebrew Alphabet*, Brooklyn, NY, 1983/2005.

886 Gen 1,2.

887 LevR 14,1.

888 bRH 31a.

889 mAv 3,1: Akavyah b. Mahalel says, “Think of three things, and you will not come into the hands of sin—know from where you come, to where you are going, and before Whom you are destined to be judged and to account. From where you did come, from a putrid drop. And where you are going, to a place of dust, maggots and worms. And before whom you are destined to be judged and to account, before the Supreme King, the Holy One blessed be He.”

continues to explain the severity of murder: לפיכך נברא אדם יחידי ללמדך שכל המאבד נפש אחת מישראל מעלה עליו הכתוב כאילו איבד עולם מלא וכל המקיים נפש אחת מישראל מעלה עליו הכתוב כאילו קיים עולם מלא ומפני שלום הבריות שלא יאמר אדם לחבירו אבא גדול מאביך ושלא יהו המינים אומרים הרבה רשויות בשמים ולהגיד גדולתו של הקב"ה שאדם טובע כמה מטבעות בחותם אחד כולן דומין זה לזה ומלך מלכי המלכים הקב"ה טבע כל אדם בחותמו של אדם הראשון ואין אחד מהן דומה לחבירו לפיכך כל אחד ואחד חייב לומר בשבילי נברא העולם.⁸⁹⁰ Again, we find the uniqueness of human life and humanity as the purpose of creation juxtaposed to exaltations of God and warnings of haughtiness. Similar to the dialectical stance of the Talmud regarding wealth, with accumulation encouraged alongside moderation, the talmudic perspective of humanity's standing in creation promotes an awareness of the exalted position humans enjoy within nature while tempering the haughtiness and irresponsibility this awareness can lead to vis-à-vis their environment as constituted by the divine, social, and natural realms.

The teaching almost immediately following the citation of our above Tosefta in bSan also reflects this dialectical stance, now within the narrative of Adam the second: א"ר יוחנן בר חנינא שתיים עשרה שעות הוי היום שעה ראשונה הוצבר עפרו שניה נעשה גולם שלישי נמתחו אבריו רביעית נזרקה בו נשמה חמישית עמד על רגליו ששית קרא שמות שביעית נזדווגה לו חוה שמינית עלו למטה שנים וירדו ארבעה תשיעית נצטווה שלא לאכול מן האילן עשירית סרה אחת עשרה גידון שתיים עשרה נטרד והלך לו שנאמר אדם ביקר בל ילין.⁸⁹¹ Here, Adam's rise and fall is related frame by frame: from the humbling beginnings as dust and a shapeless mass of mud, via the proud upright stance, the taxonomical control over animals, human companionship, and procreation, to his being commanded not to eat from the Tree of Knowledge, failing to comply, and being expelled from paradise, with his immortality lost like an animal. Human

890 mSan 4,3: Because of this Adam [i.e., man] was created alone, to teach you that all who destroy a single soul from Israel, Scripture looks upon it as if an entire world has been destroyed. And all who sustain a single soul from Israel, Scripture looks upon it as if an entire world has been sustained. And because of peace [amongst] creation [was Adam created alone], so that no man should say to his fellow "my father is greater than you father." And so that those attacking the Torah cannot say "there are many ruling powers in the Heavens." And to relate the greatness of the Holy One blessed be He, for if a man shapes a number of coins from one mould, all of them resemble each other, yet the King of the kings of kings the Holy One blessed be He shapes every man from the mould of the first man [Adam], and not one of them resembles his fellow. Because of this every single [person] is obligated to say, "for my sake the world was created."

891 bSan 38b: R. Yochanan bar Chanina said, "The day had twelve hours. [In the] first hour, his [Adam's] dust was collected. Second, a *Golem* was made. Third, his limbs were extended. Fourth, a soul was infused [lit. thrown] into him. Fifth, he stood on his feet. Sixth, he called [i.e., gave] [the animals] names. Seventh, Eve became his mate. Eight, they went up into bed as two and descended as four. Ninth, he was commanded not to eat from the tree. Tenth, he sinned. Eleventh, he was judged. Twelfth, he was expelled and left [Eden], as it is written [Ps 49,13]: 'For man in honor does not rest [he is like the animals that perish].'"

beings thereby have a fluid stance within nature—they come from a lower form than animals, rise above them, but can also fall to their level.⁸⁹² This hierarchical fluidity vis-à-vis nature is supported by the ensuing teaching of the Gemarah: אמר רמי בר חמא אין היה רעה שולטת באדם אלא אם כן נדמה לו כבהמה שנאמר נמשל כבהמות נדמו.⁸⁹³ Accordingly, only when human beings do not behave brutishly are they superior to beasts. Otherwise, they not only forsake their majesty, but fall under the dominion of the natural realm. The dignified standing of humanity in creation is hence fragile and conditional.⁸⁹⁴ Rather than necessarily implying a greater importance of humans,⁸⁹⁵ this standing translates into two relational poles towards the natural environment: utilization and perpetuation.

Environmental Utilization and Perpetuation in the Bible

The Talmud grants humans license to utilize nature, but instructs them to do so in an economical and edifying manner, i.e., a manner that avoids inefficient instrumentalization while improving humans morally, intellectually, and emotionally. Furthermore, the hallowed utility offered by the natural environment is to be perpetuated, both in the negative by refraining from harming nature's goodness and in the positive by contributing to a greener planet and the preservation of natural diversity.⁸⁹⁶ These two poles are already present in many biblical commandments. For instance, a mother-bird should not be taken from the nest along with her offspring. Rather, only the eggs or young may be taken, while the mother must be let go. Those complying with this commandment are promised that they will be well and that they will prolong their days (למען ייטב לה, והארקת גימם).⁸⁹⁷

892 Note that the dialectical view of the Talmud regarding the stance of humanity in nature is hence not just found between Adam the first and Adam the second but within these two narratives as well.

893 bSan loc. cit.: Said Rami b. Chama, "An evil beast has no dominion over man unless he appears to it as a brute [lit. animal], as it is written [Ps loc. cit.]: "... he is like the animals that perish."

894 Cf. GenR 8,12. Interpreting the injunction in Gen 1,28 for humans to "rule over the fish of the sea" (וירדו בקנה הים), R. Chanina teaches that humanity will rule if it has merit, and will descend if it does not (אם זכה רדו ואם לאו ירדו).

895 GenR 13,3 teaches that three things are of equal importance: earth, humans, and rain. The Midrash explains this with mutual dependency: "without earth, there is no rain, and without rain, the earth cannot endure, and without either, humans cannot exist." And as EcclR 7,13 and the story of Choni haMe'agel in bTaan 23a teach (see below), both the earth and rain depend on humans as well.

896 Note the reflection of Adam the first in the pole of edificatory utilization (ruling over and subduing earth in the image of God) and of Adam the second in the pole of utility perpetuation (cultivating and protecting the earth).

897 Dtn 22,6-7. Also note the further fascinating norms regarding the interaction between humans and nature in the remaining 22nd chapter of Dtn.

Utilizing nature by taking eggs and young birds is thereby permitted to humanity but only in a manner that does not endanger the perpetuation of bird species⁸⁹⁸ and that has an uplifting effect on humans benefiting from them.

Perhaps the most famous biblical verses teaching the poles of utilization, edification, and perpetuation are the following:⁸⁹⁹

כי-תצור אֶל-עיר יָמִים רַבִּים לְהִלָּחֵם עָלֶיהָ לְתַפְשָׁהּ, לֹא-תִשְׁחִית אֶת-עֵצָהּ לְגָדְחַ עָלֶיהָ גְרִזָּן--כִּי מִמֶּנּוּ תֹאכַל, וְאִתּוֹ לֹא תִכְרַת: כִּי הָאָדָם עֵץ הַשָּׂדֶה, לָבֵא מִפְּנֵיךָ בַמִּצּוֹר.
 רַק עֵץ אֲשֶׁר-תִּדְעַ, כִּי-לֹא-עֵץ מֵאָכֵל הוּא--אִתּוֹ תִשְׁחִית, וְכַרְתָּ; וּבְנִיתָ מִצּוֹר, עַל-הָעִיר אֲשֶׁר-הוּא עֹשֶׂה עִמָּךְ מִלְחָמָה--עַד רִדְתָּהּ.

Juxtaposed to the prohibition of destroying fruit trees is the permission to utilize them as a food source. The rhetorical question of whether trees are like man demands respect for them as innocent bystanders to armed human conflicts and the command not to chop them down calls for the edifying quality of restraint in the most challenging of circumstances. Furthermore, the second verse in fact permits destruction, or more precisely utilization, of non-fruit bearing trees for military purposes, but forbids this same destruction once the state of war ends (indicated by “*until it falls*”) when building bulwarks becomes useless. Similar to how hallowing the Shabbat is the flipside of being productive during the work week, refraining from misappropriating nature for a useless purpose is the flipside of utilizing it for a fitting one.⁹⁰⁰ The essential message of these teachings is hence that utility may be derived by instrumentalizing nature but only in a respectful and in an economical, i.e., efficient manner that preserves and hence perpetuates as much of nature’s utility as possible.

898 That the obligations to preserve nature and prevent excessive harm to it are inherent in the above Deuteronomical commandment becomes evident in the commentary of Nachmanides (Dtn loc. cit.), who states that although the Torah permits ritual slaughtering for food, it prohibits a destructive act which can cause the extinction of an entire species, and killing the mother and offspring on one day is viewed as such an act.

899 Dtn 20,19-20: When you besiege a city many days, to wage war against it to capture it, you may not destroy its trees by wielding an axe against them—for from them you may eat, but you may not cut them down; for is the tree of the field man, that you should come and besiege it? Only the trees of which you know that they are not trees for food—these you may destroy, and cut down, [so] that you may build a bulwark [from them] against the city that wages war with you—until it [the city] falls.

900 Incidentally, the thirty-nine categories of activities prohibited on the Shabbat (ליט אבות מלאכות) all relate to the instrumentalization of nature (e.g., planting, slaughtering, igniting a fire). Even the prohibition of transferring between domains is connected to a biblical narrative of nature’s manipulation, i.e., a man executed for gathering sticks on Shabbat (Num 15,32; see bShab 96b). Hence, the Shabbat involves a cessation of the instrumentalization of the natural environment, while this instrumentalization is conversely encouraged during the workweek.

This dialectic is also inherent in many further biblical teachings: neither oxen nor sheep may be slaughtered on the same day as their offspring (supporting the perpetuation of the species, while nevertheless allowing that the two may be slaughtered on separate days.⁹⁰¹ Slaughtering and eating animals is ideally only a sacrificial act performed in holy places, but since humans desire meat and cannot always come to a place designated by God, humans may eat (certain) animals, albeit only after they are slaughtered ritually, promulgating an appreciation of eating meat as a privilege bestowed by divine grace.⁹⁰² Animals must be slaughtered before they are eaten, implying that they may be eaten, but only in a sanctified manner, their carcasses may be sold, teaching that nature may be profited from, but a young goat may not be cooked in its mother's milk, perhaps urging respect for nature and compassion with animals.⁹⁰³ Land may and must be cultivated agriculturally, but it should lie fallow in the Sabbatical Year (*Shmitah*).⁹⁰⁴ After the Great Flood, God delivers all creatures of the earth, sky, and seas into human hands (וְעַל כָּל-חַיַּת הָאָרֶץ, וְעַל כָּל-עוֹף הַשָּׁמַיִם; בְּכֹל אֲשֶׁר תִּרְמֹשׁ) (הַחַיָּוִת וְהַבְּהֵמָה וְכָל-דְּגַי הַיָּם, בְּיָדְכֶם נִתְּנוּ וּמִיּוֹרְאֵכֶם וְחַתְּכֶם, יִהְיֶה, עַל כָּל-חַיַּת הָאָרֶץ, וְעַל כָּל-עוֹף הַשָּׁמַיִם) and permits humans to eat freely from all of creation (בְּכֹל-רְמֵשׁ אֲשֶׁר הוּא-חַי, לָכֶם יִהְיֶה לְאֹכְלָהּ: כִּי־רֹקַע עֵשׂוֹב, נִתְּנָה לָכֶם אֶת-כָּל) (בְּכֹל-רְמֵשׁ אֲשֶׁר הוּא-חַי, לָכֶם יִהְיֶה לְאֹכְלָהּ: כִּי־רֹקַע עֵשׂוֹב, נִתְּנָה לָכֶם אֶת-כָּל), but prohibits eating animals alive with their blood.⁹⁰⁵ An ox and donkey may not be used for plowing together, urging respect for their relative strength, while implying that they may be used separately.⁹⁰⁶ An ox may not be muzzled while working in the field, indicating that it may be used in a manner that is not cruel.⁹⁰⁷ And work animals have the equal right to enjoy the Shabbat's rest as humans, implying that they may be utilized for productive purposes on all other days of the week.⁹⁰⁸

901 Lev 22,28.

902 Dtn 12,20-22. These are also the biblical sources for *Shechitah*, “ritual slaughter,” according to *Halakhah*. Besides the human desire for meat and the impracticality of only eating in holy places, the Torah legitimizes eating animal flesh with the fact that animals naturally eat each other as well.

903 Dtn 14,21.

904 Lev 25,1-5.

905 Gen 9,2-4. Cf. Lev 19,26. The prohibition of eating flesh from a living animal is also one of the seven Noachide laws, based on an interpretation of Gen 2,16 (the verse in the narrative of Adam the second in which God states that humans shall surely eat from all trees of the garden, (מִכָּל עֵץ-הַגָּן, אָכַל תֹּאכַל) in tAZ 9,4, as cited and discussed in bSan 56a-57a.

906 Dtn 22,10.

907 Dtn 25,4.

908 Ex 20,10; Dtn 5,14. Cf. mAZ 1,6.

What these biblical traditions have in common is that they permit the utilization of nature but only in a sustainable and edifying manner.⁹⁰⁹ These two poles reflect the dialectic between Adam the first and Adam the second, the majestic ruler, and the humble guardian of creation. And these poles are in turn reflected by numerous talmudic traditions, forming what can be termed a “utilization imperative” and “perpetuation responsibility”.

The Utilization Imperative

The utilization imperative demands that humans benefit from nature. It is epitomized by the final teachings of yQid: ר' חזקיה רבי כהן בשם רב אסור לדור בעיר שאין לא רופא ולא מרחץ ולא ב"ד מכין וחובשין. אמר ר' יוסי בי ר' בון אף אסור לדור בעיר שאין בה גינוניתא של ירק. רבי חזקיה ר' כהן בשם רב עתיד אדם ליתן דין וחשבון על כל שראת עינו ולא אכל.⁹¹⁰ ר' לעזר חשש להדא שמועתא ומצמיה ליה פריטין ואכיל בהון מכל מילה חדא בשתא. Here we first find the imperatives to only live in a city that utilizes, controls, and cultivates nature whether manifested by the practice of medicine, the use of water in public baths, or the agricultural cultivation of vegetables. Furthermore, the *Sugya* makes the remarkable postulation that there is a responsibility to eat that which the eye beholds, thereby urging humans to benefit from the fruits of creation.

Yet the utilization imperative is not categorical but rather granted on two conditions. First of all, nature must be utilized economically. This implies both achieving a given aim with the least possible resources, as well as using given

909 Of course, slaughtering an animal and its offspring on the same day or taking a mother-bird along with her young might not endanger their respective species' sustainability, but through these norms the Bible institutes a sustainability mindset that urges humans to view themselves as nature's stewards. Also, the edifying qualities of these commandments need not be the reason for their codification, as the protection and care of nature could be an end in itself, but the edificatory qualities remain nonetheless.

910 yQid 4,9 66b [Venice and Krotoshin Editions]: R. Chizkiyah, R. Cohen [taught] in the name of Rav, “It is forbidden to live in a town that neither has a doctor, nor a bath, nor a court that can punish and imprison.” Said R. Yossi b. R. Bun, “It is also forbidden to live in a town that does not have vegetable gardens.” R. Chizkiyah, R. Cohen [taught] in the name of Rav, “In the future, humans will be called to account for all that their eyes beheld but of which they did not eat.” R. Le'azar adhered to this teaching especially stringently and collected coins in order to eat from everything once a year. [Piotrkow Edition: yQid 4,12 66d]

resources to achieve the highest possible utility.⁹¹¹ Secondly, nature must be utilized in a manner that contributes to the edification of humanity, particularly through the development of character qualities such as gratefulness, appreciation, compassion, and eagerness to learn. These conditions legitimizing the utilization of the natural environment will now be studied in turn.

a) Economic Utilization

The obligation to instrumentalize nature economically is best expressed by the talmudic applications of the biblical verses discussed above that regulate the use of trees during times of war. Perhaps because the Talmud invokes these verses with a concept it calls *בל תשחית* (*Bal Tashchit*, “do not destroy”), the secondary literature has largely missed the deeper meaning of this concept. For nearly all scholars present the *Bal Tashchit* concept as primarily prohibiting the destruction of natural resources,⁹¹² whereas the essence of the concept is rather their economical utilization.⁹¹³ This essence becomes evident in the multi-faceted talmudic applications of *Bal Tashchit*, which extend their biblical foundation to cases beyond trees and war. For instance, when R. Huna tears his silk garments to test his son’s compliance with the commandment of honoring one’s parents, the ob-

911 This sense of economical rationality follows from the widely accepted definition of the science of economics postulated by Lionel Robbins: “Economics is the science which studies human behavior as a relationship between given ends and scarce means which have alternative uses.” (Robbins, Lionel, *An Essay on the Nature and Significance of Economic Science*, London, 1932, p. 16.) To illustrate the application of this definition to our purposes, take the example of the biblical prohibition to destroy fruit trees in war, as presented above. For the given end of military construction, using the fruit trees as a means would be uneconomical because their destruction incurs the opportunity cost of their alternative use, i.e., nourishment. This cost is absent with trees that do not bear fruit, which is why they are the preferable, i.e. more economical means for military ends. Simultaneously, utilizing fruit trees to construct a bulwark does not extract their maximum utility, because it instrumentalizes them only as timber while wasting their fruits.

912 See for instance Schwartz, Eilon, *Bal Tashchit: A Jewish Environmental Precept*, in: *Environmental Ethics*, Issue 18, 1997, pp. 355-374; David, Nir, *A Critical Examination of the Jewish Environmental Law of Bal Tashchit ‘Do Not Destroy’*, in: *Georgetown International Environmental Law Review*, Vol. 18, Issue 335, 2005-2006, pp. 335-354; see also the doctoral thesis of Wolff, K.A., *Bal Tashchit: the Jewish Prohibition Against Needless Destruction*, Leiden University, Faculty of Medicine, Leiden, 2009. As already becomes evident from their titles, nearly all studies on *Bal Tashchit* present the concept as a prohibition of destruction, thereby neglecting the dialectical flipside of this prohibition, i.e., the utilization imperative. *Bal Tashchit* is by far the most frequently studied concept in the Jewish environmental ethics literature.

913 This becomes evident in the Deuteronomical verses as the basis of the concept. The prohibition of destroying fruit trees for military purposes bases on the fact that they may be utilized for nourishment instead, and that the wood of non-fruit-bearing trees lends itself to military purposes equally well.

jection is raised: והא קעבר משום בל תשחית.⁹¹⁴ The Gemarah responds to this with: דעבד ליה בפומביני.⁹¹⁵ This *Kashya* implies that destroying any use value can be subsumed under the *Bal Tashchit* prohibition, the *Terutz* accordingly defends R. Huna's tearing as an action that did not depreciate the potential value of the garment (because it can be sowed back together again along its seams). Thereby, the Talmud prohibits instrumentalizing items in a manner that precludes their future utilization,⁹¹⁶ when the aim of the instrumentalization could be achieved more economically.⁹¹⁷ This is also supported by the following application of *Bal Tashchit*: אמר רב זוטרא האי מאן דמיכסי שרגא דמשחא ומגלי נפטא קעבר משום בל תשחית.⁹¹⁸ The covering or uncovering of these lamps causes them to burn oil at an increased rate, a utilization of natural resources that is inefficient because consumption is increased without adding value for the consumer.⁹¹⁹

Economizing the instrumentalization of nature hence calls for both efficiency and effectiveness. This is reflected by a further talmudic appearance of the *Bal Tashchit* concept: ואמר רב חסדא האי מאן דאפשר ליה למיכל נהמא דשערי ואכל דחיטי קעבר משום בל תשחית ואמר רב פפא האי מאן דאפשר למישתי שיכרא ושתי חמרא עובר משום בל תשחית ולא מילתא היא בל תשחית דגופא עדיף.⁹²⁰ Whereas the minority opinions hold

914 bQid 32a: But he transgressed *Bal Tashchit*!
Cf. bBer 62b, where R. Yossi b. R. Chanina teaches that whoever treats garments contemptuously will ultimately not derive any benefit from them.

915 Ibid.: He tore it [the silk garment] along the seams.

916 This is supported by a teaching in bBQ 91b which states that destroying garments transgresses the prohibition of *Bal Tashchit* because an irretrievable loss is caused, whereas injuring oneself might perhaps not transgress the prohibition because nature can heal bodily wounds.

917 In this case, R. Huna could likely have fulfilled the aim of testing his son without using the destruction of his clothing as a means. Yet this is not a case of needless destruction, which as noted *Bal Tashchit* in the secondary literature is often portrayed as regulating. For R. Huna had the need of testing his son's pioussness. It is however a case of uneconomical utilization. That the Talmud frowns upon such utilization is also supported by bTam 29a-29b, ruling that wood from grape vines and olive trees may not be used as pilings for the Temple altar, and by Yo 43b/44b, teaching that the Torah's concern for Israel's resources is the reason why gold pans are not used for daily sacrifices. Two explicit condemnations of waste are also found in Tractate Chullin: in bChul 91a, Jacob is lauded for returning to retrieve earthenware jugs that he had forgotten, and bChul 105b teaches that those who step on bread crumbs will fall into poverty.

918 bShab 67b: R. Zutra said, "He who covers an oil lamp or uncovers a *Naphtha* [lamp] transgresses because of *Bal Tashchit*."

919 According to a minority opinion codified in mShab 2,6, efficiency considerations even override the prohibition against extinguishing lights on Shabbat, with R. Yossi permitting doing so in order to spare a lamp, oil, or wick. For the majority opinion, however, the edifying quality of Shabbat observance outweighs the importance of resource efficiency.

920 bShab 140b: And R. Chisda said, "Whoever can eat barley but eats wheat transgresses the prohibition of *Bal Tashchit*." R. Papa said, "Whoever can drink beer but drinks wine transgresses the prohibition of *Bal Tashchit*." But this is not true, for *Bal Tashchit* applied to [one's own] body, stands higher.

that *Bal Tashchit* implies an obligation to maintain a frugal diet, the Talmud rejects this view and on the contrary holds that denying oneself nutritional pleasures constitutes a violation of *Bal Tashchit*, perhaps because the experience of a greater pleasure was destroyed. Thereby, an economic utilization of nature does not just imply minimizing costs to pursue a given end but maximizing the benefit derived from natural resources as well.

This utility-maximization logic is also found in a passage that presents perhaps the most explicit legitimatization of nature’s instrumentalization for business purposes. Commenting on the *Seifa* (conclusion) of the Mishnah teaching that injuring oneself and cutting down one’s own plants is forbidden,⁹²¹ the Gemarah presents the following *Sugya*:⁹²²

A	Rav said, “A palm tree bearing [at least] one <i>Kav</i> [a dry measure] of fruit is forbidden to be cut down.”	אמר רב דיקלא דטען קבא אסור למקצציה
B	An objection was raised [from the following Mishnah, mShevi 9,10]: How many [olives] should there be on an olive tree that it may not be cut down? A quarter [of a <i>Kav</i>].	מיתיבי כמה יהא בזית ולא יקצצו רובע
C	Olive trees are different because they are more important [and hence already a quarter of the measure for palm trees prevents them from being cut down].	שאני זיתים דחשיבי
D	R. Chanina said, “Shibchat my son did not pass away except for having cut down a fig tree before its time.”	א"ר חנינא לא שכיב שיבחת ברי אלא דקץ תאינתא בלא זמנה
E	Ravina said, “But if it were more valuable [for another purpose than its fruit, cutting it down would be] permitted.”	אמר רבינא ואם היה מעולה בדמים מותר
F	It was similarly taught, “Only the trees of which you know,” [Dtn 20,20] implies [that] fruit-bearing trees [may be felled]. “... that they	תניא נמי הכי רק עץ אשר תדע זה אילן מאכל כי לא עץ מאכל הוא זה אילן סרק וכי מאחר

921 mBQ 8,4.

922 bBQ 91b-92a.

	<p>שסופו לרבות כל דבר מה ת"ל כי לא עץ מאכל להקדים סרק למאכל יכול אפילו מעולה בדמים ת"ל רק</p>
<p>G [A field laborer of] Shmuel brought him dates. He [ate them] and tasted the flavor of wine. He said to him, "What is this?" He [the laborer] responded, "Between the grape vines stand [the date trees]." [Shmuel] said, "Since they are weakening the wine, bring me all of the roots [of the date trees] tomorrow." R. Chisda saw palms amongst his vines, [and] said [to his workers], "Remove them with their roots. Vines can acquire palms, but palms cannot acquire vines."</p>	<p>שמואל אייתי ליה אריסיה תמרי אכיל טעים בהו טעמא דחמרא א"ל מאי האי א"ל ביני גופני קיימי אמר מכחשי בחמרא כולי האי למחר אייתי לי מקורייהו רב חסדא חזא תאלי בי גופני אמר ליה לאריסיה עקרינהו גופני קני דקלי לא קני גופני</p>

This fascinating *Sugya* shows that while the wasteful destruction of natural resources is condemned by the Talmud, a purposeful destruction is permitted because it adds value. While sections A to D emphasize the importance of preserving the utility of nature's fruits, sections E to G introduce utilitarian considerations that qualify this preservation. Sections A and B at first glance demand protection of fruit-bearing trees, but conversely permit cutting them down below a certain measure of fruitfulness. Simultaneously, the fact that the threshold at which a fruit-bearing tree may no longer be cut down is lower for olives, because "they are more important," postulates the economizing perspective that it is the value of a tree's utilization that should be taken into account. The radical view postulated in section D that destroying a fruit tree can cost a human life seems to emphasize the preservationist stance, yet the "before its time" indicates that there are legitimate occasions to cut down fruit trees. Ravina's logic in section E argues that one such instance is when they can be utilized for a purpose that is financially more valuable than their fruit. Section F

attempts to support this reasoning from the biblical source of *Bal Tashchit* and the two concluding sections present utilitarian reasoning: one of nature's gifts may be destroyed if doing so increases the value of another (wine is improved by removing date trees because the more valuable vines are strengthened through the removal of the less valuable palms). An increase in the value of agricultural cultivation thus legitimizes natural destruction that is otherwise condemned. The procession of this *Sugya* hence both warns of destroying natural goods and condones doing so to add value. Economic utilization of the natural environment by maximizing benefit and minimizing waste is thereby encouraged and demanded by the Talmud.

b) Edificatory Utilization

The second condition qualifying the talmudic utilization imperative is that the instrumentalization of nature ought to have an edifying effect on humans. According to the Talmud, a boor is not permitted to eat meat.⁹²³ This edificatory demand is also reflected particularly well by the commandment to say blessings before eating or when viewing nature's goods. Commenting on a Mishnah teaching what blessings are to be said before eating fruit, vegetables and bread,⁹²⁴ the Gemarah teaches: א"ר חגיגא בר פפא כל הנהנה מן העוה"ז בלא ברכה כאילו גזול להקב"ה וכנסת ישראל.⁹²⁵ Accordingly, there is a *Berakhah* ("blessing") for nearly every enjoyment of nature, even for the occasion of seeing seas, rivers, deserts,⁹²⁶ or a fruit tree in bloom.⁹²⁷ Water is used for ritual washing and cleansing,⁹²⁸ and as noted above the Talmud encourages saying at least one hundred blessings per day.⁹²⁹ A touching passage features a parable which R. Yitzchak tells R. Nachman when the latter asks to be blessed by the former: after eating the sweet fruits of a tree, drinking the cool water of the stream flowing beneath it, and resting in its shade, a man is at a loss of words on how to bless the tree, because it already

923 bPes 49b.

924 mBer 6,1.

925 bBer 35b: Said R. Chanina b. Papa, "Enjoying this world without [first saying] a blessing is like robbing the Holy One blessed be He, and the community [lit. assembly] of Israel."

Cf. Ibid. 35a, which teaches that it is forbidden to enjoy anything in the world without first saying a blessing and failing to do so constitutes sacrilege.

926 Ibid. 54a.

927 Ibid. 43b.

928 Regarding the ritual washing of the hands before meals, see: Ibid. 53b; bShab 62b. For the use of water in the *Mikveh*, see for instance bSot 4b; bNid 2b/3b; bPes 16a.

929 bMen 43b.

provides everything he could wish for. Therefore, the man recites the blessing to the tree that all the shoots planted from it “should be like you.”⁹³⁰

The concept of reciting blessings upon nature’s goods can have an edifying effect on people by imbuing them with gratitude for God’s graciousness with an appreciation for nature’s goods and with an awareness of the connection between the self and the divine, natural and social realms.⁹³¹ Simultaneously, the encouragement of reciting blessings implicitly encourages the utilization of nature.⁹³² The beauty of nature and the importance of its utilization and appreciation is also dialectically propounded by the following Mishnah: רבי יעקוב אומר, המהלך בדרך, ושונה, ומפסיק משנתו ואומר מה נאה אילן זה, מה נאה ניר זה--מעלין עליו כאילו הוא מתחייב בנפשו.⁹³³ The warning of admiring nature and its agricultural utilization while learning Torah implicitly encourages this admiration on other occasions.

Another way in which nature can be utilized for edification is by observing and studying it. The sages teach that even the minutest parts of creation have a purpose.⁹³⁴ Consequently, one can and should learn from the natural realm, for instance by observing animals, which is strikingly taught by the following passage: אמר רבי יוחנן: אילמלא לא ניתנה תורה היינו למידין צניעות מחתול, וגזל מנמלה, ועריות מיונה. דרך ארץ מתרנגול - שמפייס ואחר כך בועל.⁹³⁵ The interaction with fauna thereby provides an opportunity to imbue humans with virtuous character traits. This is also touchingly demonstrated by a Midrash which teaches that the reason why Moses and David were chosen to become leaders was because they showed exemplary compassion and consideration towards the animals they were herding.⁹³⁶

930 bTaan 5b-6a. Accordingly, the blessing of R. Yitzchak for R. Nachman is that his offspring may be like him.

931 This edificatory appreciation and awareness of nature is also fostered by biblical traditions such as Ps 104; Isa 40,26; Amos 5,8; Job 38-41.

932 This is reflected particularly well by the holiday of Sukkot, the observance of which (based on Lev 23,40) involves the taking and blessing of four natural species (ארבעת המינים) to celebrate the harvest. In fact, Sukkot is also referred to as *הג האסיף*, i.e., the holiday of ingathering, further reflecting the imperative to cultivate and utilize nature and the connection of this imperative to edificatory practices.

933 mAv 3,9: R. Ya’akov says, “He who walks on the road while learning [Torah], and interrupts his learning and says, ‘How pleasant is that tree, how pleasant is that ploughed field’—Scripture considers him as if he is liable for his soul.”

934 bShab 77b, GenR 10,7.

935 bEr 100b: R. Yochanan said, “If the Torah had not been given, we could have learned modesty from the cat, [the prohibition of] robbery from the ant [i.e., being industrious and self-sufficient rather than robbing others of the fruits of their labor], the [prohibition of] sexual immorality from the dove, good manners from the rooster, who first coaxes and then mates.” Cf. Prov 6,6 and The Song of Creation (פרק שירה) for further instances in which the Jewish tradition urges emulating natural virtues, integrating them into the human character.

936 ExR 2,2. Cf. bNed 50a, where R. Akiva is praised for his treatment of animals as a shepherd.

This tradition epitomizes the view that nature can and should be utilized (just as a shepherd instrumentalizes his herd) but only in an edificatory manner (in this case by imbuing oneself with leadership traits through a humane treatment of animals).⁹³⁷ Such a view is also implied in the Mishnah teaching that, although absolving her of liability, R. Akiva finds that a woman who uncovers her hair in public in order to anoint herself with oil (i.e., a gift of nature) that had spilled onto the ground from someone else's pitcher injures herself. The value of edification can hence outweigh the importance of utilization.⁹³⁸

This possible tension between utilization and edification is reflected in two striking narratives featuring Yehudah haNasi. In the first, he is punished for having failed to show compassion for an animal that was taken in to slaughter, and is later rewarded for learning from this mistake: ע"י מעשה באו מאי היא דהווא עגלא דהו קא ממטו ליה לשהיטה אזל תליא לרישיה בכנפיה דרבי וקא בכי אמר ליה זיל לכך נוצרת אמרי הואיל ולא קא מרחם ליתו עליה יסורין וע"י מעשה הלכו יומא חד הוה קא כנשא אמתיה דרבי ביתא הוה שדיא בני כרכושתא וקא כנשא להו אמר לה שבקינהו כתיב ורחמי על כל מעשיו אמרי הואיל ומרחם נרחם עליה.⁹³⁹ Thereby, even though benefiting from animals is permitted and encouraged (as symbolized by ritual slaughter), one may only do so in a humane and hence edifying manner.

A further narrative featuring Yehudah haNasi shows a dilemma resulting from the utilization imperative's condition of edification. After R. Pinchas b. Yair chides him for owning white mules, because they can inflict irreversible damage and injury, the Gemarah reports: אמר ליה מזבנינא להו אמר ליה ולפני עור לא תתן מכשול מפקרנא להו מפתת היוזא עקרנא להו איכא צער בעלי חיים קטיילנא להו איכא בל תשחית.⁹⁴⁰ Yehudah

937 This view is also reflected in biblical traditions, such as Jacob building huts for his animals to care for them like children (Gen 33,13/17); Abraham using animals and a tamarisk tree to seal a covenant and thereby building interpersonal trust (Gen 21,27/33); animals are prohibited to work on Shabbat (Ex 20,10, cf. bShab 128b); and one is prohibited to eat before one's animals have (bBer 40b, based on Dtn 11,5).

938 mBQ 8,4.

939 bBM 85a: "They [sufferings] came to him [R. Yehudah haNasi] through a certain incident." What [was this incident]? A calf was being taken in for slaughter, when it fled and hid its head under Rabbi's skirt, and cried out [in terror]. [Yehuda haNasi] said to him, "Go, for this you were created." They said [in the Heavens], "Since he has no pity, let us bring suffering upon him." "And [the sufferings departed through an incident]" —one day, Rabbi's maidservant was sweeping the house, [and] seeing some young weasels lying there, she intended to sweep them away. "Let them be," he said to her, "it is written [Ps 145,9], 'the Lord is good to all, and His tender mercies are over all His works.'" Said they [in the Heavens], "Since he is compassionate, let us be compassionate to him."

940 bChul 7b: [R. Yehudah haNasi] said to [R. Pinchas b. Yair], "I will sell them [the mules]." [R. Pinhas b. Yair] replied, "Before a blind person you shall not place a stumbling block" [Lev 19,14]. "I will abandon them." "You will [thereby] increase the harm they cause." "I will cut their hooves." "This would constitute suffering of living creatures." "I will kill them." "There is the prohibition of *Bal Tashchit*."

haNasi's ownership of mules indicates that he is instrumentalizing nature, but the requirement to do so in an edifying manner precludes causing harm to others and the animals through this utilization. Furthermore, the condition that nature be used economically prevents killing the mules, both because their life would go to waste and because the aim of R. Yehudah haNasi, i.e., for R. Pinhas b. Yair to dine with him, might be achieved with a less bloody and costly means. The fact that eating the (unkosher) mules is not an option also reflects the edification condition of the utilization imperative, because the dietary laws of *Kashrut* demand restraint regarding the instrumentalization of animals for nourishment. The simultaneous values of edification through and utilization of nature are also reflected by an *aggadic* Midrash which on the one hand seems to urge empathy with nature by teaching that when a fruit-bearing tree is cut down (בשעה שכורתין את עץ האילן שהוא) a voice travels from one end of the earth to the other without being heard (הקול יוצא מסוף העולם ועד סופו ואין הקול נשמע), but on the other hand it appears to postulate that the destruction of nature is also a natural occurrence by comparing the felled fruit-tree with a snake shedding its skin, a woman losing her virginity, an infant leaving its mother's womb, and the soul leaving the body.⁹⁴¹

A striking narrative makes the point that what might seem to be a waste of nature's goods can in fact still fulfill the utilization imperative by achieving edification. The Gemarah relates as one of R. Huna's good deeds (מילי מעלייתא דהוה) his practice of sending agents to the market on the eve of Shabbat to purchase all remaining perishable vegetables and to throw them into the river (וכל) (ירקא דהוה פייש להו לגינאי זבין ליה ושדי ליה לנהרא).⁹⁴² Unsurprisingly, the Gemarah questions this seeming waste of natural goods, asking why R. Huna did not distribute the food to the poor, to which the response is offered that the poor would then begin to rely on this free distribution and would consequently no longer purchase in the market (דסמכא דעתייהו ולא אתו למיזבן). Asking why R. Huna did not feed the vegetables to animals, the Gemarah suggests that he holds it to be inappropriate to give "human food" to animals (מאכל אדם אין מאכילין לבהמה). Finally, the Gemarah asks if perhaps R. Huna should have simply abstained from purchasing vegetables. To this, the response is offered that then the gardeners would cultivate less produce in the future (במצאת מכשילן לעתיד לבא). This narrative opens with a striking praise of R. Huna for an action that seems to directly violate the imperatives derived from the principle of *Bal Tashchit*: to utilize nature and to avoid destroying it. Questions asking why the food was not given to the poor or to animals imply that something useful could have been done with

941 PirRE 34 (ששה קול). The felling of a fruit tree is also compared to the divorce of a husband and wife.

942 bTaan 20b.

the vegetables, instead of destroying their use value by throwing them into the river. The final question implies that if nothing useful can be done with the produce, then perhaps R. Huna should not have purchased it.

The praise of R. Huna's practice reflects the edifying condition by urging natural produce to be used for good deeds even if that paradoxically means discarding them. The first response offered implies that nature's goods may be destroyed, at least when these goods would perish and go to waste anyway, to ensure that the poor do not rely on free handouts and thereby might lack food on a Shabbat before which there is no excess supply of vegetables available.⁹⁴³ This can hence be viewed as an answer showing that the utilization of nature need not be straightforward: as with date trees that may be destroyed to improve wine, vegetables may be discarded to improve the predicament of the poor (albeit in a quite mediated manner). The second answer implies a hierarchy within creation between the human and the animal domains. Perhaps this is a reflection of an edifying perspective that urges humans to appreciate their majestic position in creation, and which views it as a denigration for food fit for human consumption to be fed to animals. Prohibiting animals to eat like humans urges humans not to eat like animals. The third answer suggests that R. Huna did a good deed, i.e., an edifying deed by proactively destroying nature's goods rather than letting them perish, because thereby he increases demand of current and promotes the preservation of future agricultural output or at least the willingness of growers to abundantly supply the market.⁹⁴⁴ This is also a clear encouragement of agricultural cultivation and commercialization, and thereby of nature's utilization. The narrative reflects the economizing conditions of the utilization imperative as well, asserting that the triple benefits of throwing vegetables into the water are of greater use than letting the produce perish in the market and more important than a fundamentalist, categorical prohibition of destroying nature's goods.

Reconnecting the two conditions of the utilization imperative to R. Soloveitchik's exposition, Adam the first economizes by extracting benefits from his natural environment efficiently, while Adam the second edifies by ensuring this extraction remains humane.

943 As *Rashi* (bTaan loc. cit., s.v. דסמכא דעתיהו) explains: what at first might appear to be a callous measure to increase the poor's incentive to earn a living instead of relying on social welfare, according to this interpretation, is done to protect them from future scarcity.

944 *Rashi* (Ibid., s.v. אין מאכילין לבהמה) makes the point that R. Huna's practice did in fact not cause any destruction of nature's utility, because throwing food into a river enables people living downstream to gather and consume it, which is preferred to its consumption by animals. These people downstream will not, however, come to rely on R. Huna's gifts, because the location to which the river current leads the vegetables cannot be predicted.

The Perpetuation Responsibility

Whereas the utilization imperative urges that which and how humans should *take* from their natural environment, the perpetuation responsibility demands that and regulates what humans *give* back to it. The Bible views God as the landlord of all creation⁹⁴⁵ and everything within creation as very good.⁹⁴⁶ Consequently, human beings are responsible for stewardship of the Earth that perpetuates this goodness. This is reflected touchingly in the following Midrash: בשעה שברא הקב"ה את אדם הראשון נטלו והחזירו על כל אילני גן עדן ואמר לו ראה מעשי כמה נאים ומשובחים הן וכל מה שבראתי בשבילך בראתי תן דעתך שלא תקלקל ותחריב את עולמי שאם קלקלת אין מי שיתקן אהריך.⁹⁴⁷ Both poles of Adam, Adam the first and second, become apparent in this teaching. The world was created for humanity (Adam as majestic ruler), and humanity is responsible to perpetuate the “pleasure and glory” of creation by taking care of it (Adam as humble guardian).

Of course, the perpetuation responsibility and the utilization imperative are not entirely mutually exclusive, because the latter includes the obligation to perpetuate utility by refraining from the destruction of use value. But the perpetuation responsibility goes beyond this negative injunction by demanding that humans actively contribute to the goodness of the natural environment. This is best reflected in a beautiful talmudic narrative featuring Choni haMe’agel, who at first epitomizes the mastery of Adam the first over nature. Having been asked to pray for rainfall, Choni’s prayers are at first unsuccessful. He then calls out to God that he will not move from the circle which he has drawn around himself until God has mercy on His children, whereupon the rain begins to drop down gently. Choni objects that it was not this type of rainfall which he had requested but rather rain that could fill wells, cisterns, and caves. Thereupon, the rain comes down in torrents, evoking fear in the people that the world will be destroyed. Choni then calls out that it was also not this type of rain which he had requested but rather rains of goodwill, blessing, and pleasantness (לא כך שאלתי אלא גשמי רצון) (ברכה ונדבה).⁹⁴⁸ Because the people still have to seek refuge from the rainfall, they ask Choni to request its cessation, which he does. The Talmud then reports:

945 See for instance Lev 25,23 and Ps 24,1.

946 Gen 1,31.

947 EcclR 7,13: In the hour when the Holy One blessed be He created the first man [Adam], He took him and led him to all the trees [in the] Garden of Eden. And He said to him, “See My creations, how pleasant and glorious they are. And all that I have created, for you I have created [it]. Be mindful that you do not spoil and destroy My world, for if you spoil it, there is no one to clean [lit. fix it] up after you.”

948 bTaan 23a.

מיד נשבה הרוח ונתפזרו העבים וזרחה החמה ויצאו העם לשדה והביאו להם כמהין ופטריות.⁹⁴⁹ The story up to this point epitomizes human dominion over nature, from Choni's mastery of the weather to the people's utilization of fungi.⁹⁵⁰ Note also how this human mastery, because it is mediated through God, precludes an idolization of nature itself as divinity. Yet the continuation of the narrative makes it clear that the Talmud demands a responsible handling of this dominion.

First, Shimon b. Shetach sends word that he would curse Choni for his actions, because they could cause a desecration of the "name of the Heavens" (נמצא שם שמים מתחלל). Yet Shimon b. Shetach spares Choni because he realizes that he has a special relationship to God, comparing him to a petulant child who makes excessive demands of his father yet is nonetheless indulged: אבא הוליכני לרהצני בהמין שטפני בצונן תן לי אגוזים שקדים אפרסקים ורמונים ונותן לו.⁹⁵¹ The Talmud then continues with a remarkable narrative teaching that the stance of Adam the first viewing himself as the guest of honor at the banquet of creation served by God personally must be balanced with the stance of Adam the second who humbly protects nature and works to perpetuate its goodness: יומא חד הוה אזל באורחא חזייה לההוא גברא דהוה נטע חרובא אמר ליה האי עד כמה שנין טעין אמר ליה עד שבעין שנין אמר ליה פשיטא לך דחיית שבעין שנין אמר ליה האי גברא עלמא בחרובא אשכחתיא כי היכי דשתלי לי אבהתי שתלי נמי לבראי יתיב קא כריך ריפתא אתא ליה שינתא נים אהדרא ליה משוניתא איכסי מעינא ונים שבעין שנין כי קם חזייה לההוא גברא דהוה קא מלקט מינייהו אמר ליה את הוא דשתלתיא א"ל בר בריה אנא אמר ליה שמע מינה דניימי שבעין שנין חזא לחמריה דאתיילידא ליה רמכי רמכי.⁹⁵² The narrative concludes with Choni becoming distressed that no one in his home or in the house of study recognizes him and that they do not believe him to be Choni, and he therefore prays for divine mercy that he may die, whereupon he passes away.

949 Ibid.: Immediately the wind came up and dispersed the clouds, and the sun [began to] shine, and the people went out into the field and brought back truffles and mushrooms.

950 This human dominion is of course put into perspective by the dependency of people on natural weather conditions.

951 Ibid.: "Father, bathe me in hot water, float me in cool water, give me nuts, almonds, apricots and pomegranates," and it is given to him.

952 Ibid.: One day, he [Choni] was travelling down the road and saw a man planting a carob tree. He said to him, "How much time until [this tree] bears fruit?" [The man] said to him, "Up to seventy years." He [Choni] said to him, "Is it clear to you that you will live [another] seventy years?" He responded to him [Choni], "This man found a world containing [grown] carob trees. Just as my forefathers planted [them] for me, so too, I plant [them] for my children." [Choni] sat down to consume bread, and tiredness overcame him, [and] he fell asleep. A bay of rocks formed around him, [and] he became hidden from sight, and he slept for seventy years. When he arose, he saw that same man picking [fruit] from [the carob tree he had planted]. He [Choni] said to him, "Are you the man who planted [this tree]?" He responded to him [Choni], "I am the son of his son [his grandson]." He [Choni] said to him, "From this I learn that I have slept for seventy years." He saw that his mare [i.e., female donkey] had given birth to generations of offspring.

This remarkable narrative portraying Choni's epiphany of sustainability can be likened to a brief *Bildungsroman*, in which Adam the first learns to complement his worldview with that of Adam the second. Humanity is on the one hand portrayed as controlling its natural environment, being able to bring about rain and death. Yet the Talmud simultaneously emphasizes that this control is mediated through God, nature's ultimate Master. The majesty of humanity's dominion over creation is thereby counterbalanced by its dependency on the Creator. Furthermore, the subjugation of the natural environment must be complemented with its protection and cultivation. In a striking parallel to the wording of the Brundlandt Report, the *Sugya* urges humans of one generation to care for the needs of the next by contributing to the sustainability and hence perpetuation of nature's fullness. This stance is also reflected by a striking Midrash in which R. Yochanan b. Zakkai teaches that "if you have a sapling in your hand, and someone announces to you that the Messiah has come, stay and complete the planting, and then go out to greet the Messiah."⁹⁵³

The logical flipside of being responsible for perpetuating and contributing to the fullness of the natural environment is the prohibition of polluting it. This is already indicated by biblical traditions, such as the following prophetic verse: *הַמַּעַט מִכֶּם, הַמְרַעָה הַטּוֹב תִּרְעוּ, וְיָתֵר מִרְעֵיכֶם, תִּרְמָסוּ בְּרִגְלֵיכֶם; וּמִשְׁקוּעֵ-מַיִם תִּשְׁתּוּ--וְאֵת הַקֵּמֶט מִכֶּם, הַמְרַעָה הַטּוֹב תִּרְעוּ, וְיָתֵר מִרְעֵיכֶם, תִּרְמָסוּ בְּרִגְלֵיכֶם; הַנּוֹתְרִים, בְּרִגְלֵיכֶם תִּרְפְּשׁוּן*⁹⁵⁴ This verse clearly permits the utilization of nature, but criticizes a lacking appreciation of this utilization, as well as of the pollution following (from) it. Also, Deuteronomy requires soldiers to carry a spade along with their weapons to cover up their urine and excrement.⁹⁵⁵ Tractate Bava Qamma continues this concern for causing harm through waste products. For instance, two Mishnayot clearly indicate that people are responsible for damage caused by their waste disposal: *הַשּׁוֹפֵךְ מַיִם בְּרֵה"ר וְהוֹזֵק בְּהֵן אַחַר חַיִּיב בְּנִזְקוֹ הַמְצַנִּיעַ אֵת הַקּוֹץ וְאֵת הַזְּכוּכִית וְהַגּוֹדֵר אֶת גִּדְרוֹ בְּקוֹצִים וְגֵדֵר שֶׁנִּפְלַל לְרֵה"ר וְהוֹזֵק בְּהֵן אַחֲרָיִם חַיִּיב בְּנִזְקוֹ הַמּוֹצִיא אֶת תְּבֵנוֹ וְקָשׁוּ לְרֵה"ר לְזוֹבְלִים וְהוֹזֵק בְּהֵן אַחַר חַיִּיב בְּנִזְקוֹ וְכֹל הַקּוֹדֵם בְּהֵן זָכֵה רֶשֶׁב"ג אֹמֵר כֹּל הַמְקַלְקֵלִין בְּרֵה"ר וְהוֹיָקוּ חַיִּיבֵין לְשֵׁלֶם וְכֹל הַקּוֹדֵם בְּהֵן*⁹⁵⁶ The following Mishnah teaches:

953 AvRN A 31b.

954 Ez 34,18: Is it not enough for you to feed from the good pasture, must you also trample with your feet what is left from your grazing? And [is it not enough for you] to drink from the clear waters, must you also foul what is left with your feet?

955 Dtn 23,14-15.

956 mBQ 3,3: He who pours water into the public domain and causes damage with it is liable for his damage. If he hides thorns or broken glass, or makes a fence of thorns, or, if a fence falls onto the public domain, and damage results therefrom to another [person], he is liable for the damage.

זכה ההופך את הגלל ברה"ר והוזק בהן אחר חייב בנוקו.⁹⁵⁷ These *halakhic* norms institute a responsibility not to dispose of waste products in a manner that preclude the perpetuation of a safe public space. These injunctions are also reflected by the following narrative already presented in this book's section on societal expectations: ת"ר לא יסקל אדם מרשותו לרה"ר מעשה באדם אחד שהיה מסקל מרשותו לרה"ר ומצאו חסיד אחד אמר לו ריקה מפני מה אתה מסקל מרשות שאינה שלך לרשות שלך לגלג עליו לימים נצרך למכור שדהו והיה מהלך באותו רה"ר ונכשל באותן אבנים אמר יפה אמר לי אותו חסיד מפני מה אתה מסקל מרשות שאינה שלך לרשות שלך.⁹⁵⁸ This narrative not just demands taking responsibility for the disposal of refuse, but urges a paradigm shift in the perception of private and public space. That implies treating the public domain in a manner that does not harm the utility that can be derived there from. Such a view is also expressed in a popular saying cited by Rava: "Into the well from which you have once drunk water, do not throw stones."⁹⁵⁹ And a Tosefta teaches that someone who steals from the public is liable to provide restitution, warning that theft from the public is more severe than from an individual, because unlike the latter, not everyone in the public can be appeased and restituted.⁹⁶⁰ Given that nature can be viewed as a public good, diminishing its utility may be considered a most serious form of theft. All of these traditions propound a perpetuation responsibility, asking of humans to fulfill the utilization imperative in a manner that preserves, protects, and perpetuates the goodness of their natural environment.

957 Ibid. 3,4: He who removes his straw and stubble onto the public domain to be formed into manure, and damage results to another [person], there is liability for the damage and whoever seizes them first acquires them. R. Shimon b. Gamliel said, "All who create a nuisance [lit. spoil, note the parallel wording to EcclR 7,13] in the public domain and cause damage are liable to pay and all who seize them first acquire them." And one who turns up manure that had been lying in the public domain and damage results therefrom to another [person], he is liable for the damage.

958 tBQ 11,10; bBQ 50b: Our rabbis taught, A person should not remove stones from his domain onto the public domain. A story of a certain man who removed stones from his grounds onto the public grounds when a pious man found him [doing so] and said to him, "Fool, why do you remove stones from the domain which is not yours onto the domain which is yours?" The man laughed at him. Some days later he had to sell his field and he was walking on that public domain when he stumbled over those stones. [He] said, "Beautifully did that pious man say to me, 'why do you remove stones from the domain which is not yours onto the domain which is yours?'"

Cf. tBQ 2,13.

959 bBQ 92b.

960 tBQ 10,14.

6.1.3. *Implications for Environmental Management*

Whereas the talmudic perspective on the management ethics of indivisibility developed in this thesis is generally more normative than descriptive,⁹⁶¹ ecological indivisibility is an inevitability; for managers depend on natural resources, and the natural environment depends on managers.

Nature provides the substances necessary for the endurance, growth, and health of corporations, which in turn have a significant impact on environmental sustainability. This indivisibility between economy and ecology already becomes evident through the etymology of the two terms which both contain the prefix derived from *oikos*, the ancient Greek word for “household.” Malte Faber and Reiner Manstetten explain this common root as follows: “On the one hand the Earth is the *oikos* of ecology, the total of all natural communities with all their structural relationships, but on the other hand it is also the *oikos* of the economy, the total of all that humans produce and distribute according to their wishes, needs and interests.”⁹⁶² Yet the continuation of Faber’s and Manstetten’s exposition also points to the fact that while civilization and nature are indivisible, humanity has a separate standing within the world: “Only humans have the power to lay claim to the Earth in the unique manner that we observe in technology and economics today.”⁹⁶³

The special human capability to rule over the natural environment through reason was and remains a central enabler of the unprecedented levels of prosperity, longevity, and innovation enjoyed by an ever larger share of humanity. Yet this capability’s force must be tempered by the responsibilities resulting from the fact that humans share an indivisible household with nature. Otherwise, progress can become destructive, not just in the environmental realm but in the social one as well. Adorno and Horkheimer dialectically observe that the forces of nature can only be mastered without breaking them: “Jeder Versuch, den Naturzwang zu brechen, indem Natur gebrochen wird, gerät nur um so tiefer in

961 For instance, indivisibility from civil societal concerns, or the salaries of average workers, or the predicament of those suffering from corporate misconduct are talmudic aspirational ideals that can nonetheless be disregarded by managers.

962 Faber, Malte/Manstetten, Reiner, *Philosophical Basics of Ecology and Economy*, London/New York, NY, 2010, p. 20f. Faber and Manstetten explain that consequently the ancient Greek term *oikonomia* (“economy”) is the *nomos* (“law”) of the *oikos* as an economic structure, whereas the etymological meaning of the nineteenth century term ecology is the *logos* (“relations,” “order”) of the *oikos* as a natural structure.

963 Op. cit., p. 21.

den Naturzwang hinein.”⁹⁶⁴ The resulting challenge is to achieve emancipation from being at nature’s mercy, while having mercy on nature.

The Talmud shares this dual view of the indivisibility between the human and natural realms. It perceives humanity as having emerged from earth and dust, both one with and preceded by all of creation. Yet it simultaneously portrays human beings as having the power and license to rule over and subdue the Earth and all that it contains through their unique connection to and resemblance of God. This dialectical standing of humanity vis-à-vis its natural environment is the foundation of talmudic environmental ethics, and the essential responsibilities resulting there from are dialectical as well: utilize natural resources economically, and for the common good, while protecting, preserving, and perpetuating nature’s utility. The implications of these highly relevant responsibilities, applicable to corporate management with little abstraction, are now derived in turn.

Implications of the Utilization Imperative

From a talmudic perspective, managers need not have any qualms about instrumentalizing nature for business purposes, for by doing so they are fulfilling the biblical and talmudic utilization imperative, which urges humans to instrumentalize and benefit from their natural environment. Yet this imperative is granted under the dual condition that it be fulfilled economically and for the common good.

The economizing condition demands both an efficient and a value-adding utilization of nature. The efficiency criteria means that the natural resources consumed to pursue a given end should be minimized. The classic biblical example is that when building defensive structures for military purposes fruit-bearing trees should be spared and barren ones utilized instead, because using the former wastes their fruits. In corporate practice, such a perspective calls for resource efficiency not just in the sense of minimizing waste within an existing resource mix, but for pursuing a more efficient mix in and of itself. For instance, the British retailer Sainsbury’s has developed supermarkets that use less conventional and more recycled building materials, heat themselves with biomass boilers, reuse excavated soil, utilize renewable energy, extract natural light, and harvest rainwater. As a result, each supermarket cuts overall energy consumption

⁹⁶⁴ Adorno, Theodor W./Horkheimer, Max, *Dialektik der Aufklärung. Philosophische Fragmente*, Frankfurt a. M., 1969/2009, p. 19.

by a third and reduces its water usage by sixty percent, which of course translates into running expense savings as well.⁹⁶⁵ This case hence achieves both the talmudic ideals of cost and resource efficiency.⁹⁶⁶

Yet for the Talmud, economizing the utilization of nature does not just mean minimizing waste but maximizing value as well. Both efficiency and effectiveness are thereby important, i.e., resource productivity is encouraged alongside efficiency. Accordingly, a fruit-bearing tree may be cut down for purposes that have a higher value than the fruits themselves. This perspective can be interpreted as an encouragement of marketing nature, i.e., of utilizing environmental products to improve top line economic performance. In fact, a recent McKinsey survey shows that corporations are increasingly using environmental sustainability to “improve processes, pursue growth, and add value rather than focusing on reputation alone.”⁹⁶⁷ Environmental management may thus not separate sustainability from core strategy but should rather make the two indivisible from each other instead. The booming industries of natural cosmetics, eco-clothing, organic foods and beverages, and renewable energies are prime examples of such environmental value-added marketing. But also any conventional instrumentalization of natural resources for business purposes that produces more value than it consumes seems legitimated by the economizing perspective, under the condition that neither the edificatory nor the perpetuation responsibilities are impinged upon.

The edificatory condition by which the utilization imperative is granted demands that humans improve themselves morally, intellectually, and emotionally through their interaction with nature. According to the Talmud, the instrumentalization of nature can and should imbue humans with character traits such as gratitude, curiosity, compassion, and respect, and with feelings of awe, inspiration, and love. This carries a number of implications for corporate practice. For instance, if a corporation deals with animals along its value chain, it should do so in a respectful manner that is considerate of their needs, after first ensuring that plants or synthetic materials cannot be used instead. The talmudic demand to

965 Department for Business Innovation & Skills, *Practical Resource Efficiency Savings—Case Studies*, London, 2009, p. 30f., <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/10-782-practical-resource-efficiency-case-studies>.

966 There are of course also many cases in which environmental and cost benefits are not as neatly aligned, which can result in significant talmudic management dilemmas, given that the values of cost and resource efficiency then clash.

967 McKinsey Sustainability and Resource Productivity Practice, *The Business of Sustainability: McKinsey Global Survey Results*, in: *McKinsey Quarterly*, Chicago, IL, October 2011, https://www.mckinseyquarterly.com/Energy_Resources_Materials/Environment/The_business_of_sustainability_McKinsey_Global_Survey_results_2867.

learn from nature can be met by mimicking natural processes in corporate operations. As Joel Makower asserts, “companies have to be as effective as nature in their industrial processes. The forest is the perfect model for companies, because there is no such thing as waste.”⁹⁶⁸ And the talmudic advice to be grateful for and to appreciate nature can be followed by measures such as bringing flora and fauna into corporate offices,⁹⁶⁹ communicating vivid descriptions of the natural products and resources used by corporate operations, and by supporting communities located near these products and resources. Similar to how saying blessings, caring for animals, and learning from nature can benefit an individual, so too can a corporation and its reputation gain when the edifying potential of ecology is harnessed.

Implications of the Perpetuation Responsibility

The Talmud views all of nature as good, and charges humans with protecting, preserving, augmenting, and hence perpetuating this goodness. The dialectical flipside of humanity’s power to rule the Earth is its responsibility to safeguard it. This responsibility is embodied in the positive by the injunction to contribute to the utility of the natural environment for current and future generations, and in the negative by the prohibition to detract from this utility. Applied to corporate practice, managers are thereby responsible to ensure that the benefits their organization derives from the natural environment are extracted sustainably, and that their operations do not preclude others from enjoying these benefits as well. For example, the consumer products giant Kimberly-Clark came under intense criticism for sourcing wood from whole, old-growth trees in endangered forests instead of from leftovers of the lumber production process.⁹⁷⁰ Conversely, corporations such as Nestlé, McDonald’s, and Unilever are lauded for pledging to source their palm oil from sources certified as sustainable by the Roundtable

968 Quoted in Kahaner, Larry, op. cit., p. 129.

969 As the Commerzbank has done in its Frankfurt skyscraper, which contains trees between certain floors, creating a forest-like atmosphere. Google has a “dog policy,” which it explains on its website as follows: “Google’s affection for our canine friends is an integral facet of our corporate culture.” <http://investor.google.com/corporate/code-of-conduct.html#II>.

970 Greenpeace, New Evidence of Kimberly-Clark’s Shocking Mismanagement of Forest Resources, 2008, <http://www.greenpeace.org/usa/en/news-and-blogs/news/new-evidence-of-kimberly-clark/>. The matter has since been resolved with the development of a new sustainability policy at Kimberly-Clark.

on Sustainable Palm Oil.⁹⁷¹ In both these cases, the demand is to use resources in a manner that enables their regeneration. The Talmud goes a step further with its narratives encouraging the planting of trees. A manager can put this higher standard into practice by not just refraining from consuming resources at a faster rate than their growth, but by actively cultivating and replenishing the natural resources used by his corporation, for instance by planting two trees for each one cut down.⁹⁷² Thereby, managers can and should actively perpetuate the benefits that can be derived from the natural environment.

Conversely, the talmudic prohibition to detract from environmental utility demands that humans preserve the goodness nature bestows upon them (“into the well from which you have drunk, do not throw any stones”). Humanity would suffer as would businesses without clean air, a temperate climate, clear water, fertile soil, clean public spaces, healthy flora, and fauna etc. These goods must hence be perpetuated by preserving and protecting them. As a result, corporations should be mindful of the waste products and pollution they are producing, and take effective steps to minimize them or at least to compensate for them. Many are already doing so: the concept of industrial symbiosis is enabling the waste or byproducts of one company to be utilized as the raw materials for another;⁹⁷³ the Deutsche Post has introduced a product line enabling the abatement of CO₂ emissions;⁹⁷⁴ and BASF is finding alternatives to chemicals that can neither be recycled nor disposed of without causing harmful pollution.⁹⁷⁵ Such measures enable corporations to utilize the natural environment while perpetuating its potential to provide benefits in the future.

Corporations depend on and control the natural environment, which in turn depends on and controls corporations. Managers have the power and responsibility to shape this indivisible relationship into a mutually beneficial one. A good success case of such environmental indivisibility is the transformation of Interface, the world’s biggest carpet-tile maker, into a paragon of sustainable utilization. Its late leader Ray Anderson is dubbed “America’s greenest businessman” for reducing emissions, water usage, and waste, while saving costs through production redesign and capturing new growth opportunities with the develop-

971 EarthTalk, YUM! Brands Under Fire for Palm Oil Sourcing, 2011, <http://business-ethics.com/2011/07/11/1257-yum-brands-under-fire-for-palm-oil-sourcing/>.

972 The additional cost of this measure might be outweighed by the resulting reputational benefits.

973 For case studies of this process, see http://www.wrap.org.uk/industrial_symbiosis/case_studies.html.

974 Called GoGreen, http://www.deutschepost.de/dpag?xmlFile=link1020868_1020860.

975 <http://www.basf.com/group/corporate/en/sustainability/dialogue/in-dialogue-with-politics/European-chemicals-policy/index>.

ment of a sustainability product line.⁹⁷⁶ Anderson thereby established an indivisible bond of mutual benefit between business and the environment. Such a bond can contribute to the urgently needed separation of economic growth from environmental exploitation.⁹⁷⁷

976 Ray Anderson. The Carpet-Tile Philosopher, in: The Economist, Sept. 10th 2011, <http://www.economist.com/node/21528583>.

977 Faber and Petersen note the importance of such a separation. Given population growth in emerging countries and the ensuing increase in demand for goods and services, it will be difficult to maintain the natural environment with the current capitalist dynamic: "Wenn sich Wirtschaftswachstum und Umweltbeanspruchung nicht entkoppeln lassen, dann könnte es sein, dass Marx mit seiner Voraussage des Zusammenbruchs der kapitalistischen Gesellschaft doch noch Recht bekommt, wenn auch in einer ganz anderen Weise als er dachte." Faber, Malte/Petersen, Thomas, Karl Marx: Herakles oder Sisyphos, Heidelberg, 2012, p. 35. This paper is one of the bases of the following book: Petersen, Thomas/Faber, Malte, Karl Marx und die Philosophie der Wirtschaft. Bestandsaufnahme – Überprüfung – Neubewertung, Freiburg, 2013.

7 Ethics Taxonomy Dimension 6: Value Chain

7.1 Issues 11 and 12: Employment Rights and Labor Practices

7.1.1. *The Inescapable Dilemma of Human Resource Management*

Employment rights and labor practices are an essential component of the value chain in two main respects.⁹⁷⁸ Firstly, labor adds value *along* the chain, for neither a corporation's primary business activities nor its support activities can function without people working in them.⁹⁷⁹ Secondly, the management of "human resources" is itself an activity *within* the value chain.⁹⁸⁰ This separate activity is a core responsibility of all corporations because managing employees is essential for business performance.⁹⁸¹ Due to these key reasons, employment issues can be best categorized in the "value chain" dimension of our ethics taxonomy.⁹⁸²

978 The term and concept of the value chain was coined and introduced by Michael Porter in his management classic, *Competitive Advantage: Creating and Sustaining Superior Performance*, New York, NY, 1985. In Porter's words (op. cit., p. 36), "[e]very firm is a collection of activities that are performed to design, produce, market, deliver, and support its product. All these activities can be represented using a value chain." While financial, infrastructural, and natural resources are required for value creation as well, its primary enabler are in many respects human resources.

979 Porter differentiates between primary activities (e.g., production, marketing and sales, services), and support activities (e.g., human resource management, research and development, procurement), op. cit., p. 37.

980 Ibid.

981 In fact, Marx views the extraction of surplus value from labor power as the essential capitalistic mechanism of value creation: "Um aus dem Verbrauch einer Ware Wert herauszuziehn, müßte unser Geldbesitzer so glücklich sein, innerhalb der Zirkulationssphäre, auf dem Markt, eine Ware zu entdecken, deren Gebrauchswert selbst die eigentümliche Beschaffenheit besäße, Quelle von Wert zu sein, deren wirklicher Verbrauch also selbst Vergegenständlichung von Arbeit wäre, daher Wertschöpfung. [Note that the German word for value chain is *Wertschöpfungskette*; nk.] Und der Geldbesitzer findet auf dem Markt eine solche spezifische Ware vor – das Arbeitsvermögen oder die Arbeitskraft." Marx, Karl, *Das Kapital I*, MEW, Bd. 23, p. 181.

982 Although the value chain of course also gives rise to issues in other business areas, e.g., supplier and distributor relations, and although other chapters in this thesis, e.g., corporate philosophy and fraud, can also be applied to employment issues.

The term “human resource management” (HRM)⁹⁸³ itself reflects the primary ethical dilemma regarding employment rights and labor practices: how to manage the frequently conflicting demands between treating organizational employees as humans and using them as resources. The philosophical foundation of this conflict is the tension between Kant’s categorical imperative, prohibiting the instrumentalization of humanity as a mere means rather than also as an end in itself,⁹⁸⁴ and John Locke’s private property right, permitting the control of workers and the appropriation of the fruits of their labor.⁹⁸⁵ The resulting dilemma essentially expresses itself in management practice through the dual duty of both extracting value from laborers and delivering it to them. Underlying these demands is the tension between leveraging employees as resources and providing for them as humans, as manifested by the following two opposing perspectives.

On the one hand, managers can view workers under their control as machinery, an analogy already offered at the outset of the Industrial Revolution by Adam Smith: “A man educated at the expense of much labor and time to any of those employments which require extraordinary dexterity and skill, may be compared to one of those expensive machines.”⁹⁸⁶ Smith’s analogy, which he likely viewed as complimenting skilled workers, correctly observes the economic similarity between hiring machinery and hiring people for productive purposes. Both are contracted to reap a return by means of their labor power.

Yet unlike machines, people possess inviolable dignity and rights, have thoughts and feelings, express hopes and fears, and associate with family, friends, and society. The wide-spread desperation of wage laborers during the Industrial Revolution epitomizes the devastating effects of extracting labor power from humans, particularly children, as if they were cheap equipment. These effects led to widespread critiques from Friedrich Engels⁹⁸⁷ to Charlie

983 The corporate HR function manages activities such as recruiting, employee rights, staffing, training, and development, reward systems, and outplacement (Jackson, John H./Mathis, Robert L., *Human Resource Management*, 13th ed., Mason, OH, 2010, p. 6).

984 One of the five formulations of Kant’s categorical imperative reads: “Handle so, daß du die Menschheit, sowohl in deiner Person, als in der Person eines jeden andern, jederzeit zugleich als Zweck, niemals bloß als Mittel brauchest.” Kant, Immanuel, *Grundlegung zur Metaphysik der Sitten*, Wiesbaden, 1785/1856, BA 67, p. 61.

985 Locke, John, *Two Treatises of Government*, Bk. 2, Ch. 5, Sec. 28, New Haven, CT, 1689/2003, p. 80: “Thus the grass my horse has bit, the turfs my servant has cut, and the ore I have digged in any place, where I have a right to them in common with others, become my property, without the assignation or consent of any body.”

986 Smith, Adam, *WoN*, p. 62f.

987 One of Engels’ first and most important works (*Die Lage der Arbeitenden Klasse in England*, Leipzig, 1845) was actually written as a result of his dismay at the condition of the working class in Victorian England during the beginning of the Industrial Revolution.

Chaplin⁹⁸⁸ that industrialization leads to dehumanization. Under Taylorism, attempts at institutionalizing “scientific management” may have led companies to deal with both blue- and white-collar workers as if they were, as one commentator notes, “cog in the machinery.”⁹⁸⁹ While such an approach has the merit of transforming management into an applied scientific discipline, it runs the risk of alienating managers from the “subjects” under their charge.⁹⁹⁰ People in general simply do not want to be treated as lifeless robots, as resources that are hired, used, and replaced at will. Perhaps a greater concern for the “human” in HRM might have been able to prevent at least some of the thirty-six attempted suicides, fourteen of which fatal, in the Chinese workforce of the electronic component maker Foxconn⁹⁹¹

988 In his 1936 masterpiece *Modern Times*, Chaplin plays an assembly-line worker who runs amok after being driven to increasing levels of efficiency and productivity by factory management.

989 Rose, Ellen, *Improving Public Sector Productivity. Concepts and Practices*, Thousand Oaks, CA, 1993, p. 139. Rose makes the controversial point that the engineering background of early management thinkers such as Henri Fayol and Frederick Winslow Taylor contributed to their mechanistic perspective on how to deal with employees.

990 A central thesis in the following work by leading management scholar Henry Mintzberg: *Managers Not MBAs. A Hard Look at the Soft Practice of Managing and Management Development*, San Francisco, CA, 2004/2005.

991 A report from an undercover team of Chinese investigators accused Foxconn of inhumane management practices at its Longhua (South-East China) plant, which produces and assembles devices for western corporations such as Apple, Intel, Motorola, and Hewlett-Packard: “The facilities at Foxconn are fine, but the management is poor,” revealed Zhu Guangbing, who organized the investigation. ‘Hundreds of people work in the workshops but they are not allowed to talk to each other. If you talk, you get a black mark in your record and you get shouted at by your manager. You can also be fined.’ He said Foxconn had lost tens of thousands of workers during the financial crisis and had been stretched to the breaking point by the volume of new orders, as products such as the iPad enjoyed monumental success. ‘The machines keep moving and the staff have to keep up. The workers need practice to become really efficient, and with a heavy churn of new staff, they cannot adapt. In the past three months, the factory has been losing 50,000 staff a month because workers are burning out,’ he said. ‘Even the engineers and the training staff have had to man the production line,’ he added. ‘Because Foxconn has had a large number of big orders, the workers are reduced to repeating exactly the same hand movement for months on end. The workers we have spoken to say that their hands continue to twitch at night, or that when they are walking down the street they cannot help but mimic the motion. They are never able to relax their minds,’ he said ... Lin Fengxiang, a 23-year-old villager from Maoming, Guangdong, said: ‘I know why all those people jumped. In here, nobody gives a damn about you. Too bad I’ve already got one foot on this boat. It’s hard to get off now.’”

Reported by: *The Telegraph*, *Inside Foxconn’s Suicide Factory*, May 27th 2010, <http://www.telegraph.co.uk/finance/china-business/7773011/A-look-inside-the-Foxconn-suicide-factory.html>.

Labor practices at Foxconn might have improved since this report, as Apple’s new CEO Tim Cook visited local factories and agreed to a cost-sharing scheme to improve their working conditions. See for instance: Ruwitsch, John, *Apple to Share Costs on Improving Foxconn Factories*, in: *Huffington Post*, May 10th, http://www.huffingtonpost.com/2012/05/10/apple-foxconn-factory-improvements_n_1505243.html.

and of the sixty suicides, with many more attempted, amongst France Télécom employees.⁹⁹² Extracting productivity from workers as if they were machines can in such extreme cases ultimately render them as lifeless as the latter.

Accordingly, most corporations realize that they cannot achieve their organizational goals, at least not longer-term ones, when the disparity between what is taken from and what is given to workers appears to be excessive. Management cannot achieve its aims without addressing human needs of workers.⁹⁹³ In times of the so-called “War for Talent,” a term used to describe increasingly intense competition in recruiting and retaining a skilled and talented workforce, companies cannot afford a negative employer reputation.⁹⁹⁴ As a result, corporations are increasingly offering their employees benefits and perks that address desires such as autonomy, care, and sociability.⁹⁹⁵

Such ‘humane’ treatment is conceptually neither a new phenomenon nor one that is reserved exclusively for knowledge workers. Under the heading of U.S. welfare capitalism, corporations in the late nineteenth century began to offer their employees benefits such as health-care, pensions, and leisure facilities.⁹⁹⁶

992 A series of restructuring programs at the telecoms giant following its partial privatization had left employees struggling to cope with the rapid rate of change and increasing performance demands. Some of the workers left suicide notes explicitly linking their death to unbearable job pressure. One blamed “management by terror” and wrote: “I am committing suicide because of my work at France Télécom. That’s the only reason.” Cited from the original French in the following textbook, written before further suicides in 2011: Wilton, Nick, *An Introduction to Human Resource Management*, 2010, London, p. 425.

993 Even at suicide-stricken Foxconn, the plants offer swimming pools, tennis courts, and clubs for chess, calligraphy, mountain climbing and fishing, as noted in the above Telegraph report.

994 Axelrod, Beth et al., *The War for Talent*, Cambridge, MA, 2001. The importance of establishing a positive employer reputation is further augmented by the speed at which information spreads on the Internet. A growing number of websites enable employees to publicly rate their employers.

995 For instance, the Internet giant Google is famous for offering its employees a striking range of high-end cafeterias and entertainment facilities free of charge. The company also encourages employees to award a cash bonus to a colleague, and, as noted, to bring their dogs to work (see <http://www.google.com/about/corporate/company/culture.html>, and <http://money.cnn.com/magazines/fortune/bestcompanies/2011/snapshots/4.html>). The business software firm SAS offers its employees on-site healthcare and childcare, car cleaning and beauty salons (see <http://money.cnn.com/magazines/fortune/bestcompanies/2011/snapshots/1.html>). McKinsey, as noted, offers its consultants the option of taking extra time off for personal pursuits at reduced pay (see Metz, Carolin, McKinsey Personal Time. Drei Monate Auszeit für den Berater, August 4th 2011, <http://www.e-fellows.net/JOBS-EVENTS/Partnerunternehmen/Partner-im-Karriere-Netzwerk11/McKinsey-Personal-Time>).

996 For a catalogue of early welfare benefits provided by U.S. corporations, see the following seminal work: Brandes, Stuart, *American Welfare Capitalism. 1880-1940*, Chicago, IL, 1976/1984. A critical commentator notes that these benefits were an attempt by U.S. corporations to counter the threat of increasing unionization and regulation by establishing a “human face” of capitalism (Tone, Andrea, *The Business of Benevolence: Industrial Paternalism in Progressive America*, Ithaca, NY, 1997, pp. 99-140).

Soon thereafter, the human relations movement led to a shift in management practices emphasizing softer interpersonal skills.⁹⁹⁷ Mostly, such changes did not occur for charitable reasons,⁹⁹⁸ but they fostered a more humane workplace nonetheless. These developments marked a corporate paradigm shift from primarily using employees as resources to also investing in them as assets and human capital.⁹⁹⁹ Employers increasingly realized that it is unsustainable to extract and monetize a person's productivity without affirming and replenishing his humanity.

This oftentimes feasible alignment of employer and employee interests amounts to a synthesis of the above conflict between using people as resources and treating them as humans. Yet even in the fortunate cases where such a synthesis is actualized in practice, the inescapable dilemma of human resource

997 According to the movement's founder, the social psychologist Elton Mayo, managers require more social than technical skills, such as leading polite and cordial conversations with subordinates, instituting employee development programs, and providing recognition for good performance. See: Staehle, Wolfgang H., *Managementwissen in der Betriebswirtschaftslehre – Geschichte eines Diffusionsprozesses*, in: Wunderer, Rolf (ed.), *BWL als Management- und Führungslehre*, Stuttgart, 1995, p. 9.

998 The threat of state intervention, socialism, labor unions, and strikes likely compelled business owners and managers to improve their treatment of employees. Furthermore, the positive effect on employee productivity and loyalty of policies such as Henry Ford's famous five-dollar workday showed that the interests of employers and employees could become better aligned.

999 Thomas Davenport, a management consultant, notes that while the worker as asset perspective is an improvement over the earlier paradigm viewing workers as "grist for industrial mills," the asset analogy nonetheless perpetuates the idea that workers can be compared to machinery controlled by management. Instead, Davenport suggests viewing workers as "human investors," who allocate their human capital and reap a return therefrom. Davenport, Thomas O., *Human Capital. What It Is and Why People Invest It*, San Francisco, CA, 1999, pp. 4ff. Corporate accounting standards might contribute to the conventional resource-based rather than asset-based perspective. Whereas property and equipment appear as assets on balance sheets, human resources appear only as a compensation expense on the income and cash flow statements. It is therefore much easier to measure the cost of employees than their value. This creates an incentive to minimize labor expenses due to their direct negative effect on the bottom line, rather than focusing on the positive contributions of employees. The problems arising therefrom have been discussed for decades under the heading of "human resource accounting." For instance, one study noted over four decades ago: "[T]he conventional accounting practice of assigning all human resource costs to the expense category introduces distortions into the commonly employed short-term measures of organizational efficiency. When a firm, in effect, invests by building human capabilities faster than they are being consumed, conventional accounting practice understates net income. Conversely, if employee resources and favorable external relationships are being liquidated more rapidly than they are being created, profits are overstated." Pyle, William C., *Human Resource Accounting*, in: *Financial Analysts Journal*, September-October 1970, p. 69. These accounting practices can be easily connected to organizational downsizing and training budget cuts, for such measures immediately decrease expenses and hence directly contribute to profits, whereas retaining and developing people cuts into profits with the upside only noticeable at a later point and even then being harder to measure.

management remains intact, for an organization's interests can often only be furthered through an occasional and ongoing clash with those of its employees. Three leading business school professors describe this challenging reality with the following stark words: "Each day, in the course of executing and communicating HR decisions, managers have the potential to change, shape, redirect, and fundamentally alter the course of other people's lives ... For each HR practice, there are winners and there are losers: those who get the job, or receive a portfolio of benefits, and those who do not. It is therefore a reality of organizational life that managers engage in acts that harm people."¹⁰⁰⁰

Due to this explosive interaction, the development of human resource policies is a highly sensitive and controversial issue to which much attention is paid across the public, social, and private sectors. Shareholders, regulators, unions, workers, customers, the media, local communities, and other interest groups weigh in, often with clashing stances, on the process of determining how and to whose benefit the power managers have over employees is exerted. This fosters a discourse on the legitimate rights of corporate employees vis-à-vis their employers and managers and on the appropriate rights of employers and managers vis-à-vis their employees. In negotiating a consensus regarding these questions, no single interest group can unilaterally dictate terms of the employment agreement.¹⁰⁰¹ As the groundbreaking work on human resource theory and practice warns: "Unless [HRM] policies are influenced by all stakeholders, the enterprise will fail to meet the needs of these stakeholders in the long run and it will fail as an institution."¹⁰⁰² If the talmudic sages were a corporate stakeholder, what would they advise regarding the formulation of these policies?

1000 Grant, Adam M./Margolis, Joshua D./Molinsky, Andrew L., *Expanding Ethical Standards of HRM: Necessary Evils and the Multiple Dimensions of Impact*, in: Campbell, Tom et al. (eds.), *Human Resource Management. Ethics and Employment*, Oxford, 2007, p. 237.

This outstanding article is one of a growing number of contributions that study HRM theory and practice from an ethical perspective. For further contributions, see: Wooten, Kevin C., *Ethical Dilemmas in Human Resource Management: An Application of a Multidimensional Framework, a Unifying Taxonomy, and Applicable Codes*, in: *Human Resource Management Review*, Vol. 11, Issues 1-2, Spring-Summer 2001, pp. 159-175; Winstanley, Diana/Woodall, Jean, *Ethical Issues in Contemporary Human Resource Management*, London, 2000.

1001 Nonetheless, there is a consensus in the academic literature that the bargaining power of employers and management exceeds that of any other stakeholder, including that of employees.

1002 Beer, Michael et al., *Managing Human Assets*, New York, NY/London, 1984, p. 15. This work is still widely cited today.

7.1.2. *The Mutual Rights and Responsibilities of Talmudic Employment Ethics*

Alongside the issue of fraudulent business conduct, the employer-employee relationship is the most intensively studied topic in the field of Jewish business ethics.¹⁰⁰³ Each and every contribution essentially finds that Jewish traditions perceive the employment relationship as consisting of mutual rights and obligations yet simultaneously accord special protection and benefits to workers.¹⁰⁰⁴

1003 There is a significant number of studies focusing exclusively on the employer-employee relationship from a Jewish perspective. See, for instance: Van Buren III, Harry J./Greenwood, Michelle, The Genesis of Employment Ethics, in: *Journal of Business Ethics*, Vol. 117, Issue 4, 2013, pp. 707-719. Cohn, Gordon/Friedman, Hershey H., Improving Employer-Employee Relationships: A Biblical and Talmudic Perspective on Human Resource Management, in: *Management Decision*, Vol. 40, Issue 10, 2002, pp. 955-961; Gamoran, Hillel, *Talmud for Everyday Living. Employer-Employee Relations*, New York, NY, 2001. Shilem Warhaftig has published prolifically on the topic, amongst others in the following two works: *תשובות בדיני פעלים*, Jerusalem, 1992; *דיני עבודה במשפט העברי*, Jerusalem, 1964. There are also a number of papers published on particular issues within the employer-employee relationship, such as downsizing and performance appraisal: Carver, Robert H., If the River Stopped: A Talmudic Perspective on Downsizing, in: *Journal of Business Ethics*, Vol. 50, 2004, pp. 137-147; Van Buren III, Harry J., Acting More Generously Than the Law Requires: The Issue of Employee Layoffs in *Halakhah*, in: *Journal of Business Ethics*, Vol. 19, Issue 4, 1999, pp. 335-343; Levine, Aaron, Performance Appraisal and *Halakhah*, in: Hazon Nahum. *Studies in Jewish Law, Thought, and History Presented to Dr. Norman Lamm on the Occasion of his Seventieth Birthday*, New York, NY, 1997. Furthermore, none of the general works in the Jewish business ethics literature fail to study the employer-employee relationship as well. See, for instance: Tamari, Meir, With all Your Possessions, chapter 6; The Challenge of Wealth, pp. 106-122; Schnall, David J., The Employee as Corporate Stakeholder: Exploring the Relationship Between Jewish Tradition and Contemporary Business Ethics, in: Levine, Aaron/Pava, Moses (eds.), *Jewish Business Ethics. The Firm and Its Stakeholders*, chapter 3; Levine, Aaron, Moral Issues of the Marketplace in Jewish Law, chapter 4; Case Studies in Jewish Business Ethics, chapter 5; Meir, Asher, The Jewish Ethicist. *Everyday Ethics for Business and Life*, pp. 175-210; Kahaner, Larry, Values, Prosperity, and the Talmud. *Business Lessons from the Ancient Rabbis*, chapters 3 and 4.

1004 Tamari expresses this notion as follows: "Since workers are not simply factors of production, Judaism provides special protection over and above those laws regarding contracts of hiring and leasing ... Contrary to some free-market theory, workers and employers are not equal economically ... Nevertheless, since in Judaism justice is symmetrical, employees and employers, corporate and single businesses, alike have both rights and obligations." (The Challenge of Wealth, pp. 109f.) Kahaner similarly notes: "To the Talmudic rabbis, the relationship between employee and employer is tantamount to a contract between two independent parties, each with specific rights and obligations to the other ... The Talmudic rabbis spent more time discussing an employer's obligations and responsibilities than those of their employees, given the business owner's often superior economic position. The rabbis made certain, though, that workers clearly understood their accountability to the company as well." (Values, Prosperity, and the Talmud, p. 45f.) In the same vein, Asher Meir sees two prominent themes in Jewish sources regarding employer-employee relations: "One theme is the fundamental interdependence of the two sides, and the responsibility of employer and employee alike to fulfill their side of the employment bargain in a responsible fashion ... Alongside this consideration is the recognition that despite the ostensibly equal status of employer and employee in the bargain, the hired employee is never quite the equal of the boss." (The Jewish Ethicist, p. 175.)

This concept of lopsided mutuality is already inherent in the codes. For instance, Maimonides concludes the Mishneh Torah's section on the laws of *Sekhirut* ("hiring and leasing") with the following *Halakhah*: כדרך שמוזהר בעל הבית שלא יגזול שכר עני, ולא יעכבנו--כך העני מוזהר שלא יגזול מלאכת בעל הבית, ויבטל מעט בכאן ומעט בכאן ומוציא כל היום במארה, אלא חייב לדקדק על עצמו בזמן מלאכה, שהרי הקפידו חכמים על ברכה רביעית של ברכת המזון שלא יברך אותה.¹⁰⁰⁵ This ruling thus portrays the employer-employee relationship as one of mutual obligations as well, warning employers not to steal the wages owed to their workers while simultaneously presenting employees as being in the weakened position of a "poor person," a position from which they must nonetheless work diligently and avoid allocating the time during which their labor is hired to purposes other than those they are being paid for, including the performance of ritual commandments. The employment relationship should thereby add value for both its parties. This mutuality necessitates exchange. Employers and employees thus transact into a trade relationship in which each side gives and takes in return. The right of one party to receive a benefit from the other corresponds to the responsibility of the latter to give accordingly, for which he may legitimately claim a corresponding benefit from the former. Given such a transactional dynamic, this section aims to analyze and understand what and how exactly, according to the Talmud, employers and employees should trade with each other.

As a whole, the substantial body of secondary literature on Jewish employment ethics already offers a comprehensive view of the mutual rights and responsibilities of this trade relationship. Yet similar to academic studies of the Jewish perspective on fraud or the natural environment, the individual works within this body offer varying arguments, approaches, scopes, frameworks, sources, and emphases. Amidst this wealth of material, it is difficult from a talmudic perspective to discern and extract what exactly corporate employers and employees should trade with each other.¹⁰⁰⁶ In this context, developing an integrated, holistic, synthesizing per-

1005 Mishneh Torah, Sefer Mishpatim, Hilkhot Sekhirut, 13,10: Just as the employer [lit. householder] is warned not to steal the wage of the poor person nor to withhold it, so too the poor person is warned not to steal the work of the employer and to idle a little here and a little there, spending the whole day in deceit. Rather, he [the employee] is obligated to be precise with himself regarding work time, and this is why the sages restricted [workers] from reciting the fourth blessing of the grace after meals.

Maimonides concludes this section with a *Halakhah* (13,11) obligating employees to work with all their strength (וכן חייב לעבוד בכל כוחו).

1006 Of the above-noted works, only those of Gamoran and Kahaner base themselves exclusively on the Talmud, but do not derive implications specifically for corporate management. The general works noted above offer neither, basing themselves on all eras of Jewish tradition, from the Bible to contemporary responsa, and being more relevant for the formulation of macroeconomic labor policies and the conduct of individual business owners rather than corporations.

spective with an exclusive focus on talmudic sources and their biblical foundation seems to be a valuable endeavor, particularly given the fact that existing contributions to English language literature suffer from the drawbacks that they often do not differentiate between the various categories of workers in the Jewish tradition, and they neither present sources in the original language nor in their entirety.

The second contribution that this section aims to make is to develop a categorization of the various employment rights and responsibilities into theoretical trade categories. Rather than just separately listing what individual expectations employers and employees can legitimately have towards each other, an integrated theory is proposed to examine the links between and interrelations of these expectations. Accordingly, this section argues that the Talmud presents essentially four employer rights that can be conceptualized as being traded for four corresponding talmudic employee rights, and this exchange of rights and responsibilities is dealt with by means of the following four agreements.

Four Employment Agreements

Both the Bible and the Talmud know two forms of employment: that of the indentured servant, and that of the hired worker.¹⁰⁰⁷ A hired worker is called a פועל (*Po'el*) or אומן (*Uman*, lit. “artisan”) and an indentured servant an עבד (*Eved*).¹⁰⁰⁸ Within the former category there is a further distinction between the time-worker (שכיר, *Sakhir*) who is hired for certain time periods such as for a day and the piece-worker (קבלן, *Kablan*) who is engaged to complete a specific task such as the construction of a barn.¹⁰⁰⁹

1007 A significant amount of labor demanded by the household was provided by its family members as well, but these were not considered to be employees of the householder.

1008 This thesis translates the term *Eved* as “indentured servant” rather than “slave,” because the word *Eved* derives from the verb עבד (*avad*, “to work”). As the Encyclopedia Judaica notes: “[T]he ‘slave’ is only a worker or servant. The *eved* differs from the hired worker (*sakhir*) in three respects: he receives no wages for his work; he is a member of his master’s household (cf. Gen 24,2; Lev 22,11); and his master exercises *patria potestas* over him; for example, the master may choose a wife for the slave and retains ownership of her (Ex 21,4) and he has proprietary rights in him [Lev 22,11; nk].” (Cohn, Haim Hermann, Slavery, in: Encyclopedia Judaica.) Because *Avadim* were considered members of the household, they were also eligible and obligated to keep the Shabbat (Ex 20,10; 23,12; Dtn 5,14-15) as well as holidays (Dtn 16,11-14; 12,18), to be circumcised (Gen 17,12-13), and were able to inherit their master’s estate (Gen 15,2; Prov 17,2). It was expressly prohibited to kill *Avadim* (Ex 21,20), and a run-away *Eved* was to be treated well and not to be sent back to his master (Dtn 23,16-17). Furthermore, an *Eved* was to be given parting gifts after his liberation (Dtn 15,12-14; bQid 14a-15b).

1009 On this differentiation, see Tosafot, bBM 75b, s.v. השוכר את האומן.

Each of these employment categories entails specific rights and responsibilities for those agreeing to enter into them, where the legitimate demands of the one party correspond to the duties demanded of the other. For instance, the right of the *Po'el* to receive wages in a timely manner translates into an obligation of his employer to pay them so. And the right of the employer to demand labor throughout the time he pays wages means the *Po'el* is obligated to work diligently during this time. Thus, both parties effectively agree to trade specific obligations with one another. Correspondingly, one party gives a certain right in exchange for receiving another. This section argues that across all talmudic categories of workers, there are essentially four such employment agreements.

Firstly, the employer's obligation to provide a job is traded for the employee's obligation to provide labor. In this agreement, the employee's right to work on a specific task is traded for the employer's right to demand this task be completed in return. Secondly, the employer's obligation to pay a fair wage is traded for the employee's obligation to follow the employer's direction. Here, the employee's right to be paid adequately is traded for the employer's right to lead and supervise "his" workers. Thirdly, employers, and employees trade the mutual obligation to release each other from the employment contract when either party desires to end it. In other words, the employee's right to quit is traded, albeit in a lopsided manner, for the employer's right to fire. Fourthly, employer and employees trade the mutual obligation to adhere to contractual stipulations and customary conditions. The right of the one party to demand such adherence is traded for the right of the other to do so as well. These eight rights can thus be theorized as being traded against each other in two groups of four, and as noted each of these rights translates into a corresponding responsibility for the other party of the employment agreement.¹⁰¹⁰

It is important to note that these four agreements are a theoretical construct, aimed at providing a structured framework from which to study the abundance of talmudic sources on employment. The exchanges they conceptualize are, however, not a rabbinic concept supported by these sources themselves, for the sages codify employee and employer rights separately without postulating such a direct and holistic interrelationship between them.

Nonetheless, our four theoretical employment agreements can be interpreted in the talmudic discussion of mBM 6,1, a Mishnah central to the talmudic perspective on employment ethics.¹⁰¹¹ Recall from this book's chapter on executive

1010 E.g., the employer's responsibility to pay fair wages translates into the employee's right to receive them.

1011 bBM 75b-78a.

compensation that this Mishnah's *Reisha* is interpreted by the Gemarah as dealing with a case of deception between a hiring agent and employees.¹⁰¹² In fact, this is only one of three interpretations offered. Another suggests that the opening of the Mishnah is dealing with a case of deception between an employer and his employees.¹⁰¹³ And the Gemarah concludes with the application of the Mishnah's *Seifa* to a case of deception between two business partners.¹⁰¹⁴ Now the first interpretation reflects the second employment agreement trading wages for direction, for the Gemarah teaches that the Mishnah is dealing with a case of wage deception and demands that the hiring agent follows the orders of his principal. The Mishnah itself and its second interpretation reflect the first trade of work for labor, for they deal with cases in which either the employer or the employee reneges on his side of this agreement. Reflected by the second interpretation is hence also the third agreement, exchanging liberty to retract from employment relationships with responsibility when doing so. And the third interpretation of retraction from a business contract reflects the fourth agreement of mutual adherence to contract and custom. These four agreements are now studied in turn.

The First Agreement: Humane Jobs | Diligent Labor

The German word for employer (*Arbeitgeber*) literally means “work giver,” while that for employee (*Arbeitnehmer*) conversely means “work taker.” Semantically, these terms reflect the essential characteristic of all interpersonal employment: one party offers work and the other provides labor. The following section inquires what the talmudic perspective on this trade is, particularly regarding the questions of what kind of work may be supplied by employers and what kind of labor employees should give in return.

Neither the Bible nor the Talmud codify any specific restrictions on types of jobs that may legitimately be given to a *Po'el*.¹⁰¹⁵ There is, however, one

1012 See pp. 154-158.

1013 bBM 76b-77b.

1014 bBM 77b-78a.

1015 Of course, general biblical and talmudic prohibitions that prohibit causing harm, injury, and anguish to others can be applied to the employment relationship as well, thereby restricting types of work that violate these prohibitions. Such an application can be found for instance in a responsum of R. Ben-Zion Uziel, a former Chief Rabbi of Israel: “Both employer and worker require each other. The worker labors more for his own self-interest than for the benefit of his employer. The law, therefore, does not place any special responsibilities on the latter for the worker’s welfare or make him liable for injuries suffered [excepting the responsibility placed upon him by custom]. At the same time, however, the Torah obligates him to make every

talmudic tradition restricting employers from giving their employees work that requires more effort than the job they were originally hired for: ואמר רבא האי מאן דאגר אגורי לעבידתא ושלים עבידתא בפלגא דיומא אי אית ליה עבידתא דניחא מינה יהיב להו א"נ דאגור אגורי לעבידתא ושלים עבידתא בפלגא דיומא אי אית ליה עבידתא דניחא מינה יהיב להו א"נ דכותה מפקד להו דקשה מינה לא מפקד להו.¹⁰¹⁶ Thereby, an employee who completes the specific task he agrees to perform in less time than he has been hired for may only be given additional work if it is less or equally demanding than the original task. Nevertheless, at the point of the initial employment agreement, there are no specific restrictions on the type of jobs for which an employer may hire a *Sakhir*, as noted.

When it comes to the biblical institution and talmudic understanding of the *Eved*, however, there are stringent conditions that must be fulfilled in order for a delegation of work to be legitimate.¹⁰¹⁷ Firstly, the Bible contains general admonitions demanding a humane treatment of indentured servants¹⁰¹⁸ while prohib-

effort to protect his workers from injury; failure to do so makes him liable to the moral crime of 'Thou shalt not spill blood in thy house [Dtn 22,8].'" (Mishpatei Uzziel, part 3: Choshen Mishpat, section 4, cited in: Tamari, Meir, With All Your Possessions, p. 142.) This responsum thus first gives employers a *carte blanche*, within the norms of local custom, to charge their workers with any type of work, and subsequently derives an obligation of employers to avoid injury to their employees from the Bible. A precedent for such a derivation from Dtn 22,8 is found in bBQ 46a, where the deuteronomical verse is used to teach that one may not raise a vicious dog or keep a shaky ladder at home.

- 1016 bBM 77a (cf. tBM 7,6): And Rava said, "If one hired workers to perform [a specific] task [for the entire day], and they complete the [entire] task by midday [the *Halakhah* is as follows]: If he [the employer] has [another] task [he wants performed] that is less strenuous than [the first task], he may give them [this further task for the remainder of the day]; likewise, [if the employer has a task] equal in difficulty to [the first task], he may command them [to perform it]. [Yet if the only other task he wants performed] is more difficult than [the completed task], he may not command them [to perform it], and he must pay them their full wages [while allowing them to remain idle for the remainder of the day]."

The Gemarah then questions this ruling, asking why it is not sufficient to pay the employees as idle workers (בפועל בטל), to which the response is offered that Rava is dealing with a case in which the workers would suffer a loss by becoming physically weakened due to their idleness, a loss for which they must consequently be compensated with full wages.

- 1017 These additional stringencies apply due to the *Eved's* indenture. According to Maimonides, the Torah believes in a negative correlation between freedom and the type of work one may give others. Thereby, because a *Sakhir* works out of his own desire and consent, unlike the *Eved Ivri*, he may be given degrading and humiliating work, while these are prohibited to be given to the latter. (Mishneh Torah, loc. cit., 1,7.) This negative correlation is reflected in numerous talmudic traditions. For instance, the majority opinion of the sages grants the *Eved Ivri* sold by a court due to theft greater rights than the one who sells himself (bQid 14b). Furthermore, a Baraita and the Gemarah rule that an *Eved* must have the same living standard as his householder, and even teach that when one acquires an *Eved*, one has in fact acquired a master (bQid 22a). The Sifra (Behar 5,7 ed. Weiss 109b) also rules that while demeaning "slave work" (עבודת עבד) may not be given to an *Eved*, it may be given to free men.

- 1018 Lev 25,39-40. According to these verses, the *Eved Ivri* is not to be treated as a slave, but rather as a normal hired worker and settler. See Job 31,13-15 for a further biblical demand of viewing the *Eved Ivri* humanely.

iting a crushing, oppressive rule over them.¹⁰¹⁹ The Sifra then provides specific examples of work that violates these two biblical commandments. Commenting on the prohibition of Lev 25,39 to give inhumane work to the *Eved*, the Sifra elucidates: לא תעבוד בו עבודת עבד, שלא יטול אהריך בלנטיא ולא יטול לפניך כלים במרחץ.¹⁰²⁰ The term “slave work” refers to demeaning tasks that humiliate the worker carrying them out by publicly subjugating him to the rule and service of his employer. Thus, giving degrading work to an *Eved Ivri* violates both biblical and Midrashic demands of humane employment.

These demands are reflected by a *Sugya* in which Shmuel financially compensates his bondmaid after examining her for signs of maturity: שמואל בדק באמתיה: ויהב לה ד' זוזי דמי בושחה שמואל לטעמיה דאמר שמואל לעולם בהם תעבודו לעבודה נתתם ולא לבושה.¹⁰²¹ Thereby, someone’s authority over workers does not simultaneously grant this person the license to treat them disrespectfully. On the contrary, the fact that the purpose of workers is to provide their employer with labor prohibits the latter from causing indignity to the former.

The following narrative strengthens this view by effectively granting servants the right to refuse debasing tasks: אתא לקמיה דרב פפא בר שמואל זבניה יומא חד א"ל: חזי דאנא קשיש מאבוך קרי אנפשיה צדיק מצרה אשקיין מיא אזל חורריה לרישיה ולדיקניה א"ל חזי דאנא קשיש מאבוך קרי אנפשיה צדיק מצרה נחלץ ויבא אחר תחתיו.¹⁰²² R. Papa’s apparent acceptance of his *Eved Kena’ani’s*

1019 Lev 25,43/53. While these verses in Leviticus refer to the Hebrew bondsman (*Eved Ivri*), the prohibitions to injure an *Eved* in Ex 21,20-21/26-27 include the non-Israelite bondsman (*Eved Kena’ani*), as well. The latter was to be acquired from surrounding nations or amongst foreigners residing in Israelite territories (Lev 25,44-46). Unlike the *Eved Ivri*, who was prohibited to be held as a permanent servant (Lev 25,39-42), and discouraged from voluntarily becoming one (Ex 21,5-6), the *Eved Kena’ani* was not set free in the Sabbatical Year (Ex 21,1-4; Dtn 15,12-18).

1020 Sifra Behar 5,7 (ed. Weiss 109b): “Don’t make him [the *Eved Ivri*] perform slave work [Lev 25,39] [i.e., he may not carry a chair after you nor may he carry your items in front of you to the bath house].”

1021 bNid 47a: Shmuel inspected his maidservant and gave her four *Zuzim* [to compensate her] for the indignity. Shmuel [thereby] followed his own reasoning, for Shmuel interpreted [the verse] “Forever may you work with them” [Lev 25,46] as—for work they were given, and not for indignity.

1022 BBM 60b:[An *Eved*] came before R. Papa b. Shmuel, who acquired him. One day, [Rav Papa] said to him, “Give me [some] water to drink.” [The *Eved*] then went [to remove the dye from his hair that had made him appear younger and hence more valuable as a servant], turning [the hair on] his head and his beard white again. [The *Eved*] said to him, “See that I am older than your father [it is beneath my dignity to do this type of work for you].” (R. Papa b. Shmuel then) applied the following verse to himself: “A righteous man is rescued from trouble, and someone else comes in his place.” (Prov 11,8.)

R. Papa changed the verse’s original “a wicked one comes in his place” with “someone else,” applying the Proverb to himself because Rava had earlier refused to acquire the *Eved*, and now R. Papa was saddled with the trouble of having a servant who may not be given any tasks that are dishonorable for an elderly person. Note that this servant was an *Eved Kena’ani*, supporting the view that non-Israelite bondsmen were accorded the same treatment as Hebrew ones, besides the release in the Sabbatical Year.

minor rebellion becomes even more noteworthy given that the servant had fraudulently manipulated the sage into acquiring him. This narrative can thus be read as a homiletic appeal to treat all servants respectfully, irrespective of their descent or character.

Having codified that a servant may not be humiliated, the Sifra later also explains the prohibition formulated in Lev 25,43 of ruling over an *Eved* harshly: לא תרדה בו בפרך, שלא תאמר בו החם את הכוס הזה והוא אינו צריך, הצין לי את הכוס והוא אינו צריך, עודר תחת הגפן עד שאבוא שמא תאמר לצורך עצמי אני עושה, והרי הדבר מסור ללב שנא' ויראת מאלהיך הא כל דבר שהוא מסור ללב נאמר בו ויראת מאלהיך.¹⁰²³ Thereby, providing others with work that neither fulfills an actual need nor purpose nor has a clear temporal or spatial limitation is found to be oppressive and hence prohibited.

Ex negativo, these traditions as a whole teach that employees must be treated humanely by only giving them tasks that are purposeful, respectful, and equally demanding (at most) as had been agreed upon prior to employment and by providing clear guidance about the exact point in time or space at which a job is completed. These are the central conditions defining what type of work may be legitimately supplied by an employer, and they underlie the rights of workers to demand humane working conditions.

In exchange for granting the above rights to employees, the Talmud essentially gives an employer the right to benefit from his workers' labor, translating into the responsibility of hired workers to be productive. Diligence is probably the one word that best describes how this fundamental duty of the worker is to be performed. The biblical Jacob is often adduced by the Jewish business ethics literature as a homiletic appeal to such diligence. Having been sent east by his father Isaac to find a spouse, he comes across a few flocks of sheep whose shepherds appear to be idling during their work shift. After a brief introduction, Jacob then immediately admonishes them to labor: הן עוד היום גדול--לא-עת, האסרן ויאמר, הן עוד היום גדול--לא-עת, האסרן

Note that this narrative should be read in context as a warning against falling for false impressions in economic transactions, and not as a devaluation of elderly workers per se. In fact, mKet 8,5 describes elderly servants as the "pride of a household" (שבה בית אביה).

1023 Sifra Behar 7,6 (ed. Weiss 109b): "Don't rule over him harshly," [Lev 25,43] i.e., do not order him to "Heat up this cup" when you have no need for it, [nor to] "Cool this cup" when you have no need for it, [nor to] "Hoe underneath this grapevine until I come." Should you say, "For my own [actual] needs I did so [i.e., gave these tasks]," behold, the matter is passed on to your heart [i.e., conscience], as it is written: "And be in awe of your God" [the conclusion of Lev 25,43]. For regarding all matters that are given over to the heart, it is said [i.e., written] about them, "And be in awe of your God."

Cf. pp. 73f on *Ona'at Devarim*, the identification of which the Talmud also "gives over to the heart" due to the same ending of the biblical verse on which this concept is based. Only the person speaking or giving work to others knows his true intentions, and only he himself can hence determine whether these intentions constitute verbal or labor-related oppression.

המקנה; השקו הצאן, ולכו רעו.¹⁰²⁴ This call to diligence, which is even more remarkable given that it is directed to strangers, makes it clear that for the Hebrew patriarch, time that should be spent laboring may not be wasted. Furthermore, the Bible later presents Jacob himself as a most diligent employee: וְיָדַעְתֶּם; כִּי, וְאִתְּנָה, יְדַעְתֶּם.¹⁰²⁵ Here, he speaks to his wives Rachel and Leah about the hard work he has done for their father and his uncle Laban, putting all his strength into labor. At the conclusion of the same chapter, Jacob states to Laban directly how diligently he has served him: זֶה עָשִׂיתִי שָׁנָה אֶנְכִי עִמָּךְ, רָחֵלִיד וְעַיִדִיד לֹא שָׁכַלְו; וְאִלִי צִאנָה, לֹא אֶכְלֵתִי. טָרְפָה, לֹא-הִבֵּאתִי אֵלֶיךָ--אֶנְכִי אֶחַטְנָה, מִיָּדַי תִּבְקָשָׁנָה; גִּבְתִּי יוֹם, וּגְבַתִּי לַיְלָה. הֵייתִי בַיּוֹם אֶכְלֵנִי הָרֶב, וְקָרַח בְּלַיְלָה; וַתִּדַּד שְׁנָתִי, מֵעַיִנִי וּגְבַתִּי לַיְלָה.¹⁰²⁶ These three verses combine loyalty, assiduity, care, restraint, and sacrifice into a role-model of diligence. The fact that Jacob works for a dishonest employer who deliberately and repeatedly deceives him makes his diligence all the more remarkable.¹⁰²⁷

For the talmudic sages, the obligation of employees to provide diligent labor means three things in particular: working hard, not wasting time, and avoiding losses of employers. The rabbinic praise of hard work has already been described earlier in this book as the productivity imperative of the talmudic work ethic.¹⁰²⁸ Labor should thereby be loved and respected as a distinctly human activity, as a source of honor and protection. Both logic and common sense dictate that these values apply both to the self-employed as well as to employees.¹⁰²⁹ So great was the rabbinic esteem for hard work that the following Mishnah formulates its recommendations on how to serve God in terms of an employment relationship: רבי טרפון אומר, היום קצר, והמלאכה מרובה, והפועלים עצלים, והשכר הרבה, ובעל הבית דוחק.¹⁰³⁰

1024 Gen 29:7: And (Jacob) said, “Behold, the day is still great—it is not the time to gather together the cattle; water the sheep, and go, pasture them.”

1025 Ibid. 31,6: And you (both) know that with all my power I have served your father.

1026 Ibid. 31,38-40: These twenty years I was with you, your ewes and she-goats have not miscarried, and I have not eaten the rams of your flock. What was torn by wild beasts I did not bring to you. I bore the loss of it myself. From my hand you required it, whether stolen by day or stolen by night. There I was: by day the heat consumed me, and the frost by night; and my sleep fled from my eyes.

1027 As examples of Laban’s wickedness, the Bible notes that he changes Jacob’s wages ten times, mocks him, and intends to let him go empty-handedly after completion of his work (Gen 31,7/41-42).

1028 See pp. 57ff.

1029 Although it is important to bear in mind that both the Bible and the Talmud encourage the self-sufficiency and autonomy that are more readily achieved through the establishment of one’s own economic household than through a dependence on hiring out one’s labor power (see section 4.1.2.). Both the Bible and Talmud generally assume that if someone hires himself out he is doing so either because he is poor or because a particularly high wage level provides a sufficient incentive for even the otherwise self-employed to offer their labor on the market.

1030 mAv 2,18: R. Tarfon says, “The day is short, the work is abundant, and the workers are lazy, and the pay is great, and the owner is exerting pressure.”

In the preceding Mishnah, R. Tarfon continues his analogy between life and work.

conduct is no longer reserved exclusively for the particularly righteous. The most remarkable implication of these norms is that contractual obligations of employees towards their employer can weigh more heavily than their ritual duties towards God, the community, and the most respected members of society. Effectively, the Talmud thereby views hired workers' time as belonging to their respective employer. Similar to the *Eved's* exemption from time-bound commandments,¹⁰³⁷ a laborer on the job is thus no longer the owner of the time during which he has hired himself out. Consequently, using this time for purposes other than those agreed upon with his employer can be considered a form of theft.¹⁰³⁸

The third mark of diligence the Talmud demands of hired workers is prudence. In particular, this demand is articulated as a warning that employees should avoid all losses to their employers: רוניא שתלא דרבינא הוה אפסיד סלקיה אתא לקמיה דרביא א"ל חזי מר מאי קא עביד לי א"ל שפיר עביד א"ל הא לא התרה בי א"ל לא צריכא להתרות רבא לטעמיה דאמר רבא מקרי דרדקי שתלא טבחה ואומנא וספר מתא כולן כמותרין ועומדין דמי כללא לטעמיה דאמר רבא מקרי דרדקי שתלא טבחה ואומנא וספר מתא כולן כמותרין ועומדין דמי דמילתא כל פסידא דלא הדר כמותרין ועומדין דמי.¹⁰³⁹ This norm granting employers the right to dismiss employees causing an irrecoverable loss translates into the demand that hired laborers avoid all such losses. The fact that a famous tradition also featuring Rava urges an employer to act beyond the letter of the law (*Lifnim meShurat haDin*) by not just desisting from confiscating the garments of workers who had caused him damage but to pay them their wages as well¹⁰⁴⁰ shows that from a strictly legal perspective negligent employees face not just dismissal but also compensation claims while also forfeiting their wages. Furthermore, the fact

1037 Commenting on mBer 3,3, which exempts indentured servants from the time-bound commandments of *K'riyat Shema'* and *Tefillin*, the Yerushalmi notes that the commandment to recite the *Shema'* applies only to those who have one Master (God), whereas the *Eved* has a human master as well [yBer 2,9 5d, Venice and Krotoshin Editions. Piotrkow Edition: yBer 25a 3,3]. As with the hired worker, the *Eved* is no longer the master over his time while he is in servitude and may therefore not allocate it as he pleases.

1038 This might also explain why the Talmud exempts the hired worker from performing the above positive commandments, for a *Mitzvah* performed by means of a transgression (מצוה הבאה בעבירה) is prohibited (bBer 47b).

1039 bBM 109a-b: Ronya was Ravina's gardener. Having caused a loss, he was dismissed. He [then] came before Rava, complaining, "See, master, what he [Ravina] has done to me." [Rava] responded, "He has done well." He objected, "But he gave me no warning." He responded, "No warning was necessary." This corresponds to Rava's position, for Rava said, "Elementary teachers, gardeners, butchers, circumcisers [or cuppers], and town scribes [or barbers], are all considered to be permanently forewarned [of dismissal in case of unsatisfactory work]." The general principle of the matter is: Every loss that is irrecoverable, [workers causing it] are considered to be permanently forewarned.

1040 bBM 83a. This tradition and the concept of *Lifnim meShurat haDin* are discussed below on pp. 308f.

that someone who, paid or unpaid, breaks a barrel when moving it for someone else must swear that he did not do so negligently to be absolved of liability shows that when negligence is given so is liability.¹⁰⁴¹ And as noted in this book's chapter on whistle-blowing, the Gemarah records that a principal must not bear a loss caused by his agent because he can argue: "I appointed you to benefit and not to harm me" (לתקוני שדרתיך ולא לעוותי).¹⁰⁴² This liability for negligence, the meticulousness in labor-time allocation, and the conscientiousness regarding productive performance result in the diligent labor that righteous employees should agree to offer their employers in return for what are ideally humane jobs.

The Second Agreement: Fair Pay | Directive Authority

While the first agreement deals with an exchange of jobs for labor, the second exchanges the employer's responsibility to pay fair wages for his right to direct employees.¹⁰⁴³ The fact that the *Eved* is not paid a wage might be indicative of this second exchange, for he has already submitted himself to the authority of the householder.¹⁰⁴⁴ The two sides of this second agreement are now analyzed in turn.

The fundamental reason why both the Bible and Talmud emphasize the importance of paying wages and doing so punctually is that they contain the underlying assumption that workers who hire out their labor time to others are in general needy and impoverished. The following Deuteronomical verses make this assumption explicit: לֹא-תַעֲשֶׂק שְׂכִיר, עֲנִי וְאֶבְיוֹן, מֵאֲחִיד, אוּ מִגֵּרָה אֲשֶׁר בְּאֶרֶץ

1041 mBM 6.8. bBM 83a teaches that without such an oath, nobody would move a barrel for someone else from one place to another. Liability for damage limited to cases of negligence hence might be a *conditio sine qua non* for people hiring themselves out at all.

1042 bBM 108a.

1043 Although it might appear as if wages are exchanged for labor provided, on a phenomenological level labor is in fact supplied in exchange for a job offered. This first trade could also take place without any payment exchanging hands. Therefore, wage payments are theoretically offered for a further element of employment relations. The following section conceptualizes this further element as the authority of employers to direct "their" employees. Similar to how "the customer is king" by paying an employer for goods and services, the employer in a sense becomes the king of an employee by paying him to labor. Again, note that this second trade agreement, i.e., the interrelationship and linkage between pay and authority, is also a conceptual construct developed in this book for theoretical purposes without an explicit foundation in talmudic traditions.

1044 As noted, the *Eved Ivri* submits to the householder's authority in exchange for the chance to pay off debts of a theft or to escape destitution, while the *Eved Kena'ani* submits to his authority in exchange for his purchase price.

בשעריה. ביומו תתן שכרו ולא-תבוא עליו השמש, כי עני הוא, ואליו, הוא נשא אַת-נפשו; ולא-
 יקרא עליו אַל-יהוה, והיה כְּדִתְּסָא.¹⁰⁴⁵ Delayed wage payments are thereby a particular
 manifestation of oppression towards hired workers.

A verse in the central Torah portion Qedoshim juxtaposes such delays to robbery as well: לא-תעשק אַת-רעה, ולא תגזל; לא-תלין פְּעֵלַת שְׂכִיר, אַתָּה--עַד-בֶּקֶר.¹⁰⁴⁶
 Note that this verse uses פְּעֵלַת שְׂכִיר (“the *Sakhir’s* labor”) rather than the above
 verse’s שְׂכָרוֹ (“his hire”), indicating that withholding an employee’s wage is akin
 to stealing the fruits of his labor. The Gemarah offers varying interpretations of
 what this latter verse’s differentiation between oppression and robbery means
 regarding wage payments. Oppression is given when an employer repeatedly
 says to his employee that he should return at a later point for his wages, or lies
 that he has already paid them, or denies ever having hired the employee; while
 robbery is constituted when the employer admits to owing wages, but none-
 theless refuses to pay them, or falsely claims to have already paid the wages.¹⁰⁴⁷

Interpreting the second of the above three biblical verses, the Talmud ex-
 plains what it means that a worker’s soul is set upon wage payments: ואליו הוא
 נושא את נפשו מפני מה עלה זה בכבש ונתלה באילן ומסר את עצמו למיתה לא על שכרו דבר אחר
 הוא. ואליו הוא נושא את נפשו כל הכובש שכר שכיר כאילו נוטל נפשו ממנו.¹⁰⁴⁸ The first
 interpretation indicates that for risky or discomfoting jobs, workers labor for
 their employers if and only if they are paid in return. Wage payments thereby
 become a *conditio sine qua non* of employment relations. Without pay, people

1045 Dtn 24,14-15: You may not oppress a hired worker, poor and needy, from [amongst] your brothers, or [amongst] the strangers that are in your land within your gates. On the same day you must give him his pay [lit. hire], and the sun may not go down upon it, for he is poor, and upon it he sets his spirit/soul; lest he call out against you to YHWH, and there will be upon you sin.

1046 Lev 19,13: You may not oppress your fellow, nor rob him; the wages [lit. labor] of a hired worker shall not remain with you (throughout the night) until morning.
 Additional Biblical prohibitions of withholding wages are found in the verses prohibiting theft in general (Ex 20,13; Lev 19,11). Given that the Talmud harshly condemns even the theft of minute amounts such as a *Shave Perutah* (bBQ 119a, bSan 57a, GenR 31,5), the severity of stealing substantial sums such as wages becomes all the more apparent.

1047 bBM 111a. The second opinion of what constitutes robbery thus corresponds to the second opinion defining oppression. Rava concludes the *Sugya* with his opinion that oppression and robbery are identical, but that Lev 19,13 lists them both to indicate that two prohibitions are transgressed when withholding wages.

1048 bBM 112a: “... and upon it he sets his spirit/soul [Dtn 24,15].” Because of what does [the employee] ascend a ladder, suspend himself from a tree, and put himself [in a position where he is] at risk of death, [if] not for his wage? Another interpretation: “... and upon it he sets his spirit/soul.” Everyone who withholds an employee’s wages [is considered] as if he has taken his spirit/soul from him.

A subsequent *Machloket* between R. Huna and R. Chisda discusses whether the soul of the employer or employee is meant.

would in most cases not work for others. Financial compensation is thus often the reason *why* people labor in the first place.¹⁰⁴⁹ As a consequence of wages being an essential motivating factor of employment, withholding them is akin to removing an employee’s soul, particularly because he depends on them to sustain himself and often his family as well.

So great is the talmudic concern for those hiring themselves out to receive their pay that it permits the employee to whom wages are owed to enter the employer’s home to fetch them, in direct contradistinction to the biblical prohibition of creditors doing the same with their debtors in the case of general loans.¹⁰⁵⁰ Such differentiations likely result from the insight that while wage workers are existentially dependent on a continuous income stream from their pay, lenders providing interest-free credit can survive without their capital being returned immediately.

This wage dependency of employees is the first argument in the following fascinating *Sugya* that can be viewed as reflecting the fundamental tenets of talmudic employment ethics while also being a paragon of the Talmud’s dialectical method:¹⁰⁵¹

A	The employee swears [that he has not yet received his wages] in his time [the time during which he is eligible to be paid], and receives [his wages]. Once his time [to be paid] has passed, he does not swear and [does not] receive [his wages].	השכיר, נשבע בזמנו ונוטל. עבר זמנו, אינו נשבע ונוטל. ¹⁰⁵²
B	And why did the rabbis enact that the employee swears and receives [payment]?	שכיר אמאי תקינו ליה רבנן למשתבע ושקיל
[...]	[...]	[...]

1049 Of course, some people would perform certain commercial jobs without financial compensation, but such cases are most likely exceptions that prove the rule.

1050 bBM 115a, Dtn 24,10.

1051 bBM 112b-113a.

1052 mBM 9,12. As discussed below, by “his time” the Mishnah means the time frames within which a worker must claim and receive his wages. This Mishnah’s *Reisha* teaches that the commandments demanding such timely payment are only violated if the worker demands his pay, otherwise they are not. And this Mishnah’s *Seifa* teaches that if there are witnesses that the employee had demanded his wages within the set time limit, he can still take an oath and receive payment even after these time limits have passed.

C	The oath is [actually the privilege] of the employer, but the rabbis took it away from the employer and imposed it upon the employee for the sake of the employee's livelihood.	שבועה דבעל הבית היא ועקרוה רבנן לשבועה דבעל הבית ושדויה אשכיר משום כדי חייו דשכיר
D	And for the sake of the employee's livelihood, are we to cause a loss to the employer [by forfeiting his legal right to be freed from payment by taking an oath]?!]	ומשום כדי חייו דשכיר מפסדנא ליה לבעל הבית
E	The employer himself is pleased that the employee swears and receives [payment], so that workers should hire themselves out to him [rather than mistrust him due to a reputation of not paying wages].	בעל הבית גופיה ניחא ליה דמשתבע שכיר ושקיל כי היכי דליתגרו ליה פועלים
F	[On the contrary], [t]he employee himself would be pleased if the employer took an oath and were exempt [from payment], so that [employers] engage him [rather than mistrust him due to a reputation of alleging unpaid wages].	שכיר גופיה ניחא ליה דמשתבע בעל הבית ויפקע כי היכי דליגרוהו
G	The employer is forced to hire [workers].	בעל הבית על כרחיה אגר
H	The employee is also forced to hire himself out [to employers].	שכיר נמי בעל כרחיה איתגר
I	Rather, [the reason for the ruling is that] the employer is busily occupied with [multiple] laborers [at once].	אלא בעל הבית טרוד בפועלים הוא
J	If so, award [the wages to the workers] without any oath.	אי הכי ניתב ליה בלא שבועה
K	[The purpose of the oath is] to appease the mind of the employer.	כדי להפיס דעתו של בעל הבית
L	Then let him pay [wages] in front of witnesses.	וניתב ליה בעדים
M	That would be too much trouble.	טריחא להו מילתא
N	Then let him pay [wages] in advance.	וניתב ליה מעיקרא

O	Both [the employer and the employee] prefer credit. ¹⁰⁵³	שניהם רוצים בהקפה
	[...]	[...]
P	If so, even if his time [the period during which the employee may claim wages] has passed, [the employee should] still [be believed]. Why did we learn [in the Mishnah], “When his time has passed he does not swear and receive?”	אי הכי אפי' עבר זמנו נמי אלמה תנן עבר זמנו אינו נשבע ונוטל
Q	It is a presumption that the employer does not transgress the prohibition of “shall not remain” [Lev 19,13].	חזקה אין בעל הבית עובר משום בל תלין
R	But have you not said that the employer is busily occupied with [multiple] employees [at once]?	והא אמרת בעל הבית טרוד בפועליו הוא
S	Those words [apply] only before his obligation [to pay wages] matures, but after his obligation has matured, he occupies himself with it and remembers it.	הני מילי מקמיה דלימטייה זמן חיוביה אבל מטא זמן חיוביה רמי אנפשיה ומידכר
T	And [do we presume] that the employee would transgress the prohibition of “do not steal” [Lev 19,11]?	וכי שכיר עובר משום בל תגזול
U	There [in the case of the employer] we have two presumptions [in his favor], here [in the case of the employee] we have [only] one. With the employer we have two presumptions, one that he does not transgress the prohibition of “shall not remain” and another that the employee does not permit his wages to be delayed, and here we have [only] one presumption [as noted above].	התם תרי חזקי הכא חדא חזקה גבי בעל הבית איכא תרי חזקי חדא דאין בעל הבית עובר משום בל תלין וחדא דאין שכיר משהא שכרו והכא חדא חזקה

1053 *Rashi* (loc. cit., s.v. שניהם רוצים בהקפה) explains that the employer prefers credit (i.e., to pay workers after a job is done) because he may not yet have the money for wage payments, and workers prefer this setup because they might lose their wages while on the job.

The *Sugya* sets out (B) to understand the mishnaic ruling (A) that workers may receive allegedly unpaid wages by taking an oath.¹⁰⁵⁴ The wonderment of the rabbis at this ruling, which essentially institutes a wage insurance and guarantee for workers, results from its apparent reversal of the biblical law that the defendant in property claim cases may take an oath to be absolved of all liability,¹⁰⁵⁵ and of the *halakhic* principle that a plaintiff who claims property from others bears the *onus probandi*.¹⁰⁵⁶ According to the Mishnah, the employee need not provide any further proof that he is owed wages for his oath to be accepted, and the employer may not even take an oath to repudiate the claim that he had not already paid wages. These reversals give rise to the assumption that the Mishnah may have categorically prioritized the rights and position of workers vis-à-vis their employers, an assumption which the ensuing *Shaqla veTarya*, the dialectical give and take of the Gemarah, sets out to negate.

First of all, C and D equate the employee's right to earn a livelihood with that of the employer. The Gemarah thereby does not accept employers to be penalized through a removal of their right to absolve themselves of wage-payment claims with an oath simply because they might be viewed as being in a somehow more comfortable position than their employees. Instead, the Gemarah even argues that the mishnaic ruling that at first sight benefits employees in fact pleases employers (E) who cannot afford to endanger their access to the labor supply by establishing a reputation of withholding wages. Rejecting this argument, because employees are equally interested in establishing a good reputation (F), a remarkable statement of mutual dependency in the employment relationship is made: employers are forced to demand wage labor, and laborers are forced to supply it (G and H). In contradistinction to the common perspective that it is the workers who are dependent on jobs, the Talmud here notes that employers also depend on hired labor. Both require each other, and both are consequently interested in

1054 The Tosefta (tBM 10,6) specifies what case the Mishnah is dealing with: When the employer says to [his employee], "I have already paid you your salary," while [his employee] claims, "You never paid me." But if [the worker] says, "You hired me," and the employer says, "I never employed you," [if] the employer says, "I promised you a *Sela*," and [the worker] says, "You promised me two," then he who lays claim against his fellow bears the burden of proof. Thus the mishnaic exemption is only applicable to cases where the worker disputes having received payment itself, not however in cases where the litigants disagree over the employment *per se* or its wage level.

1055 Ex 22,9-10.

1056 bShevu 46a-b: אחת המוציא מהבירו עליו הראיה. See also bBQ 46a-b, which calls this maxim a fundamental principle in law. mShevu 7,5 also rules that both agents and employees can take oaths to claim payments. bShevu 45b discusses the legal basis for this shift of initiative from the *halakhic* norm.

a good reputation vis-à-vis the other. Such balanced views simultaneously strengthen the position and affirm the equality of both parties in an employment relationship.

The remainder of the *Sugya* continues the concern for mutually beneficial and constructive employment relations—positing that the reason for the mishnaic ruling is simply that one employer has multiple employees but an employee has only one employer, and thus that it is more likely that the employer forgets about a particular wage payment (I); refusing to make it even easier for employees to claim wages by not requiring an oath in order to grant the employer peace of mind (J-K); cautioning not to interrupt a smooth flow of business through burdensome regulation (L-M); and seeking solutions that benefit both sides of the employment agreement (N-O). Having rejected all alternatives to deal with the case of conflicting claims regarding wage payments, the Gemarah argues that the Mishnah's rulings are in the best interest of both employers and employees.

The *Sugya* then concludes with an explanation of the further mishnaic ruling that after a certain time period an employee can no longer receive his wages, even if he claims them with an oath (A, P), unless he has witnesses that he demanded them on time. The time-bound nature of wage-payments to which these teachings refer is dealt with by the preceding Mishnah: שכיר יום, גובה כל הלילה; ושכיר לילה, גובה כל היום. ושכיר שעות, גובה כל היום וכל הלילה. שכיר שבת, שכיר חודש, שכיר שנה, שכיר שבוע--יצא ביום, גובה כל היום; יצא בלילה, גובה כל היום וכל הלילה.¹⁰⁵⁷ With this ruling, the sages thus again seek to establish constructs that benefit both transacting parties of the employment agreement, similar to how the *Iska* agreement is constructed in a manner that pleases both its investors and managers.¹⁰⁵⁸ On the one hand, this Mishnah grants employers of night and day workers a twelve-hour window to pay wages after the completion of a job, while likewise enabling workers to claim their wages for this extended period as well.¹⁰⁵⁹ While mBM 9,12

1057 mBM 9,11: A day worker collects [his wages] any time [during the following] night; and a night worker collects [his wages] any time [during the following] day. And an hourly worker collects all night and all day. The weekly worker, the monthly worker, the annual worker, the seven-year worker—[if he] leaves during the day, he collects any time during that day; [if he] leaves at night, he collects any time that night or the following day.

1058 As discussed in the chapter on investor relations of this thesis (section 4.1.2.). It is hence inaccurate to one-sidedly portray this Mishnah as detrimental to employees' interests, as is done by Hillel Gamoran (Talmud for Everyday Living. Employer-Employee Relations, pp. 38f.).

1059 The twelve-hour window applies to workers hired by the day or by the night. For the day worker hired by the hour, the Gemarah later rules that he can collect his wages all day, whereas there is a *Machloket* until when the night worker hired by the hour can collect his: Rav maintains that he can collect his pay all night, whereas Shmuel holds that he can collect it all night and the following day. The same *Machloket* is then applied to the workers hired for periods longer than a week (bBM 111a).

above institutes the norm of an oath that seems to mostly benefit employees,¹⁰⁶⁰ the interpretation offered by mBM 9,11 of the biblical sources for prompt wage payments appears to be more advantageous for employers, who are likelier to profit from the twelve-hour time limit.¹⁰⁶¹

The Talmud proceeds by presenting a Baraita supporting these mishnaic enactments. According to its reasoning, the commandment of Lev 19,13 not to keep the wages of a hired worker “all night until the morning” applies to the day worker, and the commandment of Dtn 24,15 not to “let the sun go down” upon a wage applies to the night worker.¹⁰⁶² This permits their employers to keep the wages overnight and until the next sunset, respectively. The Gemarah then questions these interpretations, suggesting that they can be applied the other way around, i.e., Lev 19,13 to the night worker and Dtn 24,15 to the day worker, whereby they both must be paid before their respective shifts end. This interpretation would consequently favor employees in so far as they then need not extend credit to their employers for up to twelve hours, and are instead eligible to receive their pay even before they finish their shift. Yet such an interpretation is rejected by the Gemarah on the grounds that hire is payable only at the end of an engagement (שכירות אינה משתלמת אלא בסוף).¹⁰⁶³ This is a fundamental principle often taken for granted as it has become the norm for workers to be paid at the end of their engagement cycle or project rather than in advance.¹⁰⁶⁴

The talmudic discussion of our second Mishnah contains a starkly dialectical tension. On the one hand, stern warnings are given to employers against withholding wages, with a total of six biblical traditions adduced to condemn this

1060 Although the ensuing Gemarah aims to show that this Mishnah’s norm permitting employees to take a unilateral oath to receive payment in wage disputes is to the benefit of employers as well, it is nonetheless a clear privilege for workers that they can claim wages by swearing that they have not received them yet. It is important to bear in mind however that taking an oath is a serious matter that the *Halakhah* only uses very sparsely due to the biblical prohibitions to swear falsely and in vain. Requiring workers to take an oath in order to claim their legitimate wages might discourage some from claiming what is rightfully theirs.

1061 While there is a certain utility for workers in being able to claim their wages for an extended period, most would surely enjoy receiving their day wages before the sun sets and their night wages before morning, rather than waiting for them longer. Employers, on the other hand, can surely profit from delaying labor cost impact on their cash flow (as noted by Rabbah b. R. Huna about the market traders of Sura, bBM 111a).

1062 bBM 110b.

1063 Ibid.

1064 The Gemarah’s above reasoning that both employers and employees prefer credit is likely less valid in contemporary times. For while the former can today still benefit from credit because they may not have the liquidity to pay workers until after they complete their job, the latter run less risk of losing their pay while at work with the introduction of bank accounts and other cashless payment systems.

practice: כל הכובש שכר שכיר עובר בה' שמות הללו ועשה משום בל תעשוק את ריעך ומשום בל תגזול ומשום בל תעשוק שכיר עני ומשום בל תלין ומשום ביומו תתן שכרו ומשום לא תבא עליו השמש.¹⁰⁶⁵ And on the preceding folio, a proverbial verse is cited to warn against withholding wages even longer than a day or night: אמר רב עובר משום בל תשאה אמר רב יוסף מאי קראה אל תאמר לרעך לך ושוב ומחר אתן ויש אתך.¹⁰⁶⁶ These traditions are an unequivocal critique of employers not paying workers their due punctually.

Yet on the other hand, this same Gemarah immediately proceeds to provide a technical loophole through which these time constraints can be avoided: ת"ר האומר לחבירו צא שכור לי פועלים שניהן אין עוברין משום בל תלין זה לפי שלא שכרן וזה לפי שאין פעולתו אצלו היכי דמי אי דאמר להו שכרכם עלי שכרו עליו הוא דתניא השוכר את הפועל לעשות בשלו והראהו בשל חבירו נותן לו שכרו משלם וחוזר ונוטל מבעל הבית מה שההנה אותו לא צריכא דאמר להו שכרכם על בעל הבית יהודה בר מרימר א"ל לשמעיה זיל אגיר לי פועלים ואימא להו שכרכם על בעל הבית מרימר ומר זוטרא אגרי להדדי.¹⁰⁶⁷ This striking tradition teaches bluntly that an employer can absolve himself of the responsibility to pay wages within the biblical due-dates as interpreted by the Talmud.¹⁰⁶⁸ The way an employer can achieve this easing of payment obligations is by collaborating with others, such as with his peers or his own employees and agents. The fact that the Gemarah reports three renowned and respected *Amoraim* to have engaged in such collaboration indicates that the presented loophole is not transmitted as a

1065 bBM 111a: All who withhold wages of the employee transgress [the following] five prohibitions [lit. names] and one commandment: "You shall not oppress your neighbor" [Lev 19,13]; "Do not rob him" [ibid.]; "You shall not oppress a poor employee" [Dtn 24,14]; "The wages of a hired worker shall not remain with you [throughout the night] until morning" [Lev 19,13]; "On the same day you must give him his pay [lit. hire]" [Dtn 24,15]; and "The sun may not go down upon it" [ibid].

1066 bBM 110b: Rav said, "[The employer withholding wages beyond the twelve-hour pay limit] transgresses, 'You shall not delay [payment].'" R. Yosef said, "What verse [shows this]? Do not say to your fellow, 'Go, and return, and tomorrow I will give, when you have already have it with you [Prov 3,28].'"

1067 bBM 110b-111a: Our rabbis taught [in a Baraita], "One who instructs his neighbor, 'Go out and hire workers for me,' neither [of them] transgress the prohibition of 'shall not remain' [Lev 19,13] [when they do not pay wages by the respective due times]. The former, because he did not hire them, and the latter, because the wages [lit. the labor for which wages are due] are not with him." What's the case [i.e., how so]? If [the agent] said to them, "I am responsible for your wages," then he is responsible [for paying the wages in due time], for it has been taught: "If one engages a worker to labor on that which is his, but directs him to his neighbor, he must give him his full wages, and in turn goes and receives from the owner [for whom the work was actually done] the value whereby he benefited him." Rather, [the above exemption] holds good only if [the agent] said to [the workers]: "The employer is responsible for your wages." Yehudah b. Meremar used to say to his attendant, "Go and engage workers for me, and say to them [that] the employer is responsible for your wages." Meremar and Mar Zutra used to hire [workers] on each other's behalf.

1068 Cf. the parallel tradition in tBM 10,5.

mere hypothetical and discouraged construct.¹⁰⁶⁹ Thus, on the same folio, the Talmud in its typically dialectical manner provides these liberal employer benefits and simultaneously sternly condemns the maltreatment of workers through the delay of wage payments beyond the strict standards of the Bible and Mishnah, thereby both demanding and easing employment standards.

While this section thus far has postulated that the talmudic perspective on compensation ethics balances employer and employee interests, there is nonetheless a tendency for the norms protecting employees to receive fair wages that are timely and appropriate to outweigh those protecting employers from being overburdened by excessively stringent pay regulations. This perhaps results from the noted point that the Bible and Talmud assume hired workers to be in greater existential need of money than their employers. Therefore, there are numerous talmudic traditions establishing further labor rights, such as the prohibition of unilaterally substituting monetary wages with the fruits of the worker's labor,¹⁰⁷⁰ the illegitimacy of making punctual wages dependent on the financial status of employees,¹⁰⁷¹ or the right of employees to bequeath their wages to their heirs.¹⁰⁷² Furthermore, the Talmud professes the view that the quality of labor and the dignity of workers is positively correlated to wage levels, and that these levels should correspond to the value employees add and the costs they incur for their employers,¹⁰⁷³ all three of which can be understood as discouragements of bargaining down worker pay excessively to extract exaggerated surplus value. This strengthens the hand of employees in pay negotiations.

In fact, numerous talmudic traditions permitting different types of workers to form self-regulatory associations¹⁰⁷⁴ can be understood as a legitimization of worker unions aiming to strengthen and leverage employee influence.¹⁰⁷⁵ Simul-

1069 But the fact that sages utilize this loophole can also indicate an encouragement of making use of it only in a righteous manner that respects worker rights, as would be presumed of the respected rabbis.

1070 mBM 10,6.

1071 bBQ 99a, bQid 48a, bAZ 19b, as cited by Schnall, David J., *The Employee as Corporate Stakeholder: Exploring the Relationship between Jewish Tradition and Contemporary Business Ethics*, p. 57.

1072 bQid 15a.

1073 mBQ 9,4; bBM 76a, 83a.

1074 tBM 11,12; bBB 8b. These traditions literally grant self-regulatory powers to community boards and councils, but have been extensively applied by important responsa to labor-collectives as well. See Tamari, Meir, *With All Your Possessions*, p. 149.

1075 For brief analyses on the legitimacy of trade unions and strikes in classic Jewish sources, see Tamari, Meir, *With All Your Possessions*, pp. 149-158; and Schnall, David J., *op. cit.*, pp. 62-65. It is important to note that the talmudic sources on which these norms strengthening worker bargaining power are based, however, can be equally well applied to employers, granting them the right to form professional trade associations. For instance, tBM 11,25 rules that bakers have the right to agree on weights and measures amongst themselves—this source is used by the secondary literature as a legitimization for bakers to form unions, but it can be equally well understood to strengthen employer influence.

taneously, however, the Talmud makes it clear that this strengthened influence may not be detrimental to public interests.¹⁰⁷⁶ A narrative about the House of Garmu, the noted temple suppliers of the Showbreads, reflects these two poles. On the one hand, the Talmud criticizes the Garmu clan for abusing its bargaining power to extract a two-fold pay increase through a strike, but this conduct is condoned and even praised when the rabbis learn that the House of Garmu acted in the public interest.¹⁰⁷⁷ This narrative can thus be understood to simultaneously encourage workers to leverage their influence vis-à-vis their employer, while warning them not to do so at the detriment of the public.¹⁰⁷⁸

As noted, the sources used to legitimize labor unions and strikes actually deal with groups that are more similar to contemporary trade associations or suppliers than employee organizations, but they nonetheless show that groups of people offering goods on the market can cooperate to decrease the bargaining power of the parties buying from them. Conceptually, the same mechanism can be applied to unions and other employee associations which can effectively unite people selling their labor into a common organization. These traditions can thus be understood to permit labor unions and strikes to form a collective counterweight against employers' authority. The underlying reason for this legitimization is the Talmud's concern with commutative justice, which in this context demands that workers receive their dues. As noted, paying hired workers fairly, in particular punctually and sufficiently, is of the utmost importance for the sages, in whose view a failure to do so is akin to robbery and even murder.

Furthermore, traditions granting special treatment and rewards to the *Eved* can be understood as exhortations to provide benevolent benefits to workers beyond their regular pay. A Baraita demands that the master of an *Eved* treat the latter to the same living standards as his own: דתניא: כי טוב לו עמך - עמך במאכל ועמך במשתה, אתה שותה יין ישן והוא שותה יין חדש, אתה ישן שלא תהא אתה אוכל פת נקיה והוא אוכל פת קיבר, אתה שותה יין ישן והוא שותה יין חדש, אתה ישן על גבי מוכים והוא ישן על גבי התבן, מכאן אמרו: כל הקונה עבד עברי, כקונה אדון לעצמו.¹⁰⁷⁹

1076 bBB 9a, as taught by the stipulation that the self-regulatory ordinances of labor unions must be ratified by an *Adam Chashuv*, i.e., a communal leader with a mandate to protect public interests.

1077 See mYo 3,11; tYo 2,5; bYo 38a; bSheq 14a; yYo 3,7 41a [Venice and Krotoshin Editions].

1078 For a brief analysis of the Garmu narrative as a labor conflict, see: Gordon, Barry/Ohrenstein, Roman A., *Economic Analysis in Talmudic Literature: Rabbinic Thought in the Light of Modern Economics*, Leiden/Boston, MA, 2009, pp. 152-154.

1079 bQid 22a: It was taught [in a Baraita], “‘Since it has been good for him with you [Dtn 15,16].’ [This teaches that your servant should be] with you in food, and with you in drink. So that it should not be [that] you eat bread [made of] fine flour, and he eats bread [made of] inferior flour; [that] you drink aged wine, and he drinks new wine; [that] you sleep on top of mattresses, and he sleeps on top of straw. From here it is said, ‘He who acquires an *Eved Ivri* is like the acquirer of a master for himself.’”

Similar to the talmudic perspective on wealth that simultaneously encourages prosperity and warns of its possible negative consequences,¹⁰⁸⁰ the Talmud here simultaneously grants authority and mitigates it with humanity. Also, the Bible demands that the *Eved* be given special gifts upon his liberation,¹⁰⁸¹ and the Sefer haChinukh applies this norm as an ethical command to all other workers as well, particularly those hired for longer time periods.¹⁰⁸² There is thus a wealth of norms, values and beliefs throughout the Jewish tradition urging particular benevolence in worker compensation, building on those demanding basic fair pay.

In theory, what employers receive in return for the above compensation responsibility is primarily the legitimacy to direct their employees. This deal is reflected in the *Reisha* of mBM 9,12: אחד שכר אדם ואחד שכר בהמה ואחד שכר כלים יש. ¹⁰⁸³ Conceptually and semantically, this Mishnah equates the hiring of work animals and tools with that of human laborers. The main *Tzad haShave* (“common denominator”) between all three categories is that (punctual) payment is due for their utilization, and consequently the party providing this payment is permitted to utilize them at his discretion, within the bounds of *Halakhah* and *Aggadah*.¹⁰⁸⁴ Similar to an ox leased to plow a field and a shovel rented to dig a ditch, the hired employee from a strictly functional perspective becomes an instrument under the direction of the party paying him. In other words, the employee here receives compensation rights in exchange for granting his employer certain rights to utilize and direct him as a productive resource. As the British proverb relates: “He who pays the piper calls the tune,”¹⁰⁸⁵ meaning that those paying someone to perform obtain directive powers over the performance. This mechanism is also found in a number of talmudic traditions.

The Tosefta explicitly rules that once a worker hires himself out, his labor power is no longer his own, and he may consequently not cause it to be diminished even during his free time off the job: אין הפועל רשוי לעשות מלאכתו בלילה ולהשכיר את עצמו ולהשכיר את עצמו ביום לחרוש בפרתו ערבית ולהשכירה שחרית לא יהא מרעיב ומסגיף את עצמו

1080 See this book’s chapter on executive compensation, section 4.2.2., pp. 160-165.

1081 Dtn 15,14.

1082 Sefer haChinukh, Mitzvah no. 482. For the talmudic discussion of the termination payment to the *Eved*, see bQid 15a.

1083 mBM 9,12: Whether one hires man, beast or utensils, it is subject to [the laws] of, “At his day you shall give him his hire” [Dtn 24,15], and to “The wages of the employee shall not remain with you until the morning” [Lev 19,13].

1084 For directive authority does not, according to the Talmud, legitimize misconduct, as noted on pp. 120f.

1085 The Oxford Dictionary of English Proverbs, Oxford/New York, NY, 1982/2008. , s.v. “he who pays the piper calls the tune.”

ומאכיל מזונותיו לבניו מפני גזל מלאכתו של בעל הבית.¹⁰⁸⁶ Again, a comparison is drawn between rented work animals and hired human laborers. Their work belongs to the person hiring them (מלאכתו של בעל הבית), and they are consequently no longer entirely free to allocate their productive capabilities as they please nor to diminish their power. The rights of employers thus extend beyond the actual time employees spend on the job, limiting the latter's legitimate scope of action to ensure the former is provided with the value he is paying for.

All the more so during agreed-upon work time itself, the Talmud makes it clear that the hired worker must follow the instructions of his employer. A Mishnah rules that workers who deviate from these instructions are sanctioned with decreased pay,¹⁰⁸⁷ and the following Gemarah uses striking language to demand that employees fulfill the will of their employers: כל המעביר על דעת של בעל הבית נקרא גולן.¹⁰⁸⁸ Similar to the above Tosefta, this tradition teaches that workers who fail to follow the direction of the party paying for their labor are considered robbers. Both sides of our second employment agreement are thus guilty of robbery according to the Talmud when the respective obligations of this agreement are not met.¹⁰⁸⁹

The converse of the employee's prohibition to diverge from the employer's directive authority is the latter's legitimacy to exert it, as is inherent in the *halakhic* concept that hired workers effectively become an extension of those hiring them: איתיביה רבא לרב נחמן: מציאת פועל - לעצמו. במה דברים אמורים - בזמן שאמר לו בעל הבית נכש עמי היום, עזור עמי היום. אבל אמר לו: עשה עמי מלאכה היום מציאתו של בעל הבית הוא! - אמר ליה: שאני פועל דידו כיד בעל הבית הוא.¹⁰⁹⁰ The employer is here granted legal title to the fruits of his employees' labor. The analogy of the hired hand also implies that just as a well-functioning hand serves the person to whom it belongs, so too should a hired worker follow the legitimate directions of the

1086 tBM 8,2: The worker has no right to do his [own] work at night and to hire himself out during the day, to plough with his cow during the day and to hire it out in the morning. Neither may he deprive himself of food and starve himself [in order to] feed his food to his sons, because this is robbery of his labor, which belongs to the employer [lit. householder].

1087 See the *Seifa* of mBM 6,1 and the discussion thereof on bBM 77b.

1088 bBM 78a-b: Every [worker] who deviates from the employer's stipulation [lit. opinion, mind] is called a robber.

1089 See pp. 270ff. for a discussion of sources equating the withholding of wages to robbery.

1090 bBM 10a: Rava objected to R. Nachman [who has just ruled that if a man finds an object for his neighbor, the latter does not acquire it] [with the following Baraita], "A laborer's find belongs to himself." This ruling only applies when the employer said to the employee, "Weed for me today," [or] "hoe for me today." But if he said to him, "Do work for me today," the laborer's find belongs to the employer. [R. Nachman] answered him, "A worker is different, for his hand is like the hand of the employer."

person paying him. This is also reflected by two talmudic traditions ruling that an agent who fails to follow his principal's instructions must compensate the latter for any losses caused.¹⁰⁹¹

The responsibility to follow employers' directions of course also applies to managers, who are as noted etymologically related to the Latin *manus* (hand), being the extension and under the direction of their supervisory bodies. Given particularly the substantial impact of many managerial decisions, the supervision and direction of management (primarily by but not limited to boards of directors) become all the more necessary. This notion is expressed by the following talmudic license or even demand to supervise workers already cited above: ואמר רבי יוחנן: מי שהניח לו אביו מעות הרבה ורוצה לאבדן ילבש בגדי פשתן, וישתמש בכלי זכוכית, וישכור פועלים ואל ישב עמהן. ילבש בכלי פשתן - בכיתנא רומיתא, וישתמש בכלי זכוכית - בזוגיתא היורתא, וישכור פועלים ואל ישב עמהן - תרגומא בתורי, דנפיש פסידייהו.¹⁰⁹² The Gemarah here ironically warns employers against leaving employees that can potentially cause substantial damage unsupervised, thus encouraging leadership and direction.¹⁰⁹³

It is important to note that the Talmud does not condone an actual rule or dominion of an employer over employees, but rather only institutionalizes strictly legal obligations and limitations of the latter's scope of action during periods when they are hired.¹⁰⁹⁴ That employees remain fundamentally free and autonomous despite such limitations is reflected by the mutual liberty and contractual exchange traded in the third and fourth agreements studied below. Yet even with the following two employment agreements as mitigating forces, the responsibility

1091 As noted, bBM 76a rules that a hiring agent promising a higher wage than his principal had stipulated must pay the differential out of his own pocket, and bBM 73b requires an agent who negligently fails to purchase wine for his neighbor to compensate him should prices have increased since.

1092 bBM 29b: R. Yochanan said, "He who inherits much money and wishes to lose it, [should] wear linen garments, use glassware, and hire workers without supervising [lit. sitting with] them." "Wear linen garments" refers to Roman linen, "use glassware" refers to white glass, and "hire workers without supervising them" refers to [workers handling] oxen, who can cause much loss.

1093 For a further tradition encouraging the supervision of workers, see bChul 105a, which teaches that it is better to inspect fields and monitor workers twice than once per day.

1094 Regarding the nature of the claim that an employer acquires from the employee through the employment agreement, Aaron Levine cites R. Moshe Feinstein's differentiation between three approaches: i) R. Aryah Loeb b. Joseph haKohen views the claim as a lien on the person of the employee, ii) Tosafot instead conceptualize the employment agreement as constituting reciprocal claims for the parties involved, while iii) R. Jacob Moses Lorberbaum views the employment agreement as only generating self-requirements. (Iggerot Mosheh, Choshen Mishpat 1,81, as cited by Levine, Aaron, Moral Issues of the Marketplace in Jewish Law, fn. 32, p. 317.) Thus, all three approaches reflect the notion that employees become legally obligated towards their employer while maintaining their fundamental freedom and autonomy within and beyond the employment agreement.

towards the directive authority of employers is a considerable price employees must pay in return for guaranteed, timely, and dignified wages, constituting a far-reaching discretionary empowerment for employers to extract value from the labor they hire as they see fit. Nonetheless, the talmudic demand that employees earn dignified purchasing power is surely somewhat of a compensation for the right it grants employers to exert directive power.

The Third Agreement: Mutual Liberty | Mutual Responsibility

Having agreed to trade work for labor and fair pay for directive authority, the two parties of the employment agreement are bound to each other through specific responsibilities. Yet the Talmud believes that these obligations may not inhibit the respective freedom of the two parties to disengage from each other, while it simultaneously emphasizes that this liberty must be exercised responsibly.¹⁰⁹⁵

In particular, freedom in talmudic employment relations means the right of employees to quit their jobs and the right of employers to dismiss their workers, whereas the corresponding responsibility means that each party must minimize the loss and inconvenience caused to the other through this liberty. Employment may thereby not lead to the enslavement of the employee by the employer, nor may it become akin to a marriage for the latter from which he can only extract himself with considerable cost and effort, which in turn does not mean that *ex negativo* the two parties are categorically free to back out of their agreements at will.

The source for this dialectic is a Mishnah and nearly two complete folios of Gemarah following it. By the terse and concise standards of the Talmud this is an extraordinarily elaborate exposition, indicating the importance of the issue of mutual liberty and responsibility in employment relations. Yet an analysis of the entire source text in its original form and a discussion of its discursive dynamic are remarkably absent from the Jewish business ethics literature, which instead mostly paraphrases certain parts of the *Sugya* to support the respective points argued for. The following chart instead presents this *Sugya* in its entirety alongside a derivation of implications for employers and employees renegeing on employment agreements.¹⁰⁹⁶

1095 This is likely also why the master of the *Eved* bears much more responsibility than the employer of the *Sakhir*, for the *Eved* is not at liberty to disengage from his servitude, until the Sabbatical Year at least.

1096 In the interest of readability and efficiency, the chart paraphrases the Hebrew and Aramaic into English alongside the developed implications.

Source Type/ Location	Content Translation/ Paraphrase	Implications for Reneging on Employment Agreements	Source Text
mBM 6,1-2 (bBM 75b-76a)	If one hired workers and they deceived one another, they have nothing but complaints against each other and hence have no valid monetary claims. ¹⁰⁹⁷ If one hired a donkey-driver or a wagon-driver to deliver planed wood, or to deliver flutes for a bride or for the deceased, or if one hired workers to remove flax from steeping waters, or if one hired workers to do anything, which, if not performed, would cause a loss, and they reneged on their commitment and refused to work, the law is as follows: in a	The Mishnah’s opening ruling, as understood by the Gemarah below, establishes the fundamental freedom of an employee to quit and of an employer to fire. While backing out of employment agreements is homiletically discouraged (as reflected by the legitimacy of complaints), doing so is nonetheless <i>halakhically</i> permitted for both sides. ¹⁰⁹⁸ The Mishnah then, however, proceeds to limit the freedom it has just granted employees to quit their job without incurring any financial penalty, ruling that when they renege on employment agreements that are time-critical, where a retraction hence causes a	השוכר את האומנין, והטעו זה את זה--אין להם זה על זה אלא תרעומת. שכר את החמר ואת הקדר להביא פרייפריין, חלילין לכלה או למת, פועלין לעלות פשתנו מן המשרה, וכל דבר שהוא אבד, וחזרו בהן--מקום שאין אדם, שוכר עליהן או מטען השוכר את האומנין, וחזרו בהן--ידם תחתונה; ואם

1097 Recall that this Mishnah was presented in the chapter on executive compensation of this thesis [see pp. 154-158] because the ensuing Gemarah first understands the deception to have taken place between a hiring agent and employees. But as noted the proceeding Gemarah then suggests, based on a Baraita, that the Mishnah may be dealing with a case where the deception occurs between an employer himself and his employees, namely when one or the other reneges on an employment agreement. The third possible understanding later offered by the Gemarah is that the deception takes place between two business partners, when one of them withdraws from an agreed-upon deal.

1098 *Rashi* (bBM 76b, s.v. אִין לְהֵם זֶה עַל זֶה אֵלֵא תְרַעוּמַת) explains that the reason the deceived party is not granted a monetary claim is because the deceiving party did not actually cause him a loss. Thereby, employers can tell their employees to find work elsewhere, and employees can tell their employers to hire other workers. Nonetheless, the Mishnah sees a retraction as justified grounds for resentment and complaint because of the inconvenience caused by having to find alternative workers or employment.

	<p>place where there are no other people that can be hired at a comparable wage, the employer may hire other workers to replace the original ones, even for increased wages at the original workers' expense, or he may trick the original workers into returning to work for him.</p> <p>If one hired workers and before completing their task they reneged on the commitment to their employer, they have the lower hand. If the employer reneges on his commitment, he has the lower hand. All who deviate from a work agreement have the lower hand, and all who renege on work commitments have the lower hand.¹⁰⁹⁹</p>	<p>loss to the employer, they are liable for this loss. In particular, they are responsible to compensate the employer for higher labor costs if no other workers can be found for the original wages, and the employer even has the right to deceive the originally hired workers into returning to him. The liberty of employees to end their employment is thus mitigated by their responsibility to avoid losses to their employer.</p> <p>The Mishnah further qualifies the freedom to unilaterally retract from employment agreements. Once a worker has started a job, he is penalized for quitting it. Likewise, an employer is penalized for reneging on his agreement to provide work. How the penalizations are computed and what the seemingly superfluous conclusion of the Mishnah means is discussed by the Gemarah below.</p>	<p>בעל הבית חזר, ידו לתחתונה. וכל המשנה, ידו לתחתונה; וכל החוזר בו, ידו לתחתונה</p>
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1099 By “lower hand” the Mishnah means that the wage of the worker who quits mid-job is calculated in the way least favorable to him when market wage levels change since he struck his employment agreement. When market wages rise, the employee is responsible to subsidize the employer’s increased labor costs, whereas when wages fall, the employee has no right to claim a share of the employer’s decreased labor costs.

<p>Baraita (bBM 76b)</p>	<p>After having considered the possibility that the Mishnah deals with a case of deception between a hiring agent and employees, the Gemarah now considers the possibility that deception occurs between an employer and employees: if you prefer, “deceiving” for this Tanna means “retracting.” For it has been taught in a Baraita: If one hires workers and they deceive the employer, or the employer deceives them, they have nothing but complaints against each other. When does this ruling apply? When the workers have not yet gone to the work-site. But if, for example, donkey drivers hired by the employer to transport grain went to the agreed-upon pick-up location and found no grain to transport, or if the employer hired workers to plough a field and they went there and found the field damp and un-</p>	<p>The entire ensuing Gemarah rests on the linguistic similarity between the above Mishnah and a Baraita. Thus, deception can be constituted by retraction, and this equation thereby critiques breaking employment agreements, from either side. Whereas the above Mishnah qualifies the freedom to retract for the employee, this Baraita does so for the employer. Thus, once employees go to work, the employer is responsible to pay them even if he no longer can or wants to give them a job. When hiring piece-workers, the employer is free to fire them before they have begun work on the job. Otherwise, he is responsible to compensate them for the work they have already performed. Conversely, the piece-workers are free to quit before and after they start work. In the latter case, they are eligible to be paid for the work already done. The Baraita proceeds to teach two differing methods to evaluate the compensation an employer owes a fired piece-worker</p>	<p>איבעית אימא האי תנא חזרו גמי הטעו קרי ליה דתניא השוכר את האומנין והטעו את בעל הבית או בעל הבית הטעה אותן אין להם זה על זה אלא תרעומת במה דברים אמורים שלא הלכו אבל הלכו חמרים ולא מצאו תבואה פועלין ומצאו שדה כשהיא לחה נותן להן שכרן משלם אבל אינו דומה הבא טעון לבא ריקן עושה מלאכה ליושב ובטל בד"א שלא התחילו במלאכה אבל התחילו במלאכה שמין להן מה שעשו כיצד קבלו קמה לקצור בשני סלעים קצרו חציה והניחו חציה בגד לארוג בשני סלעים ארגו חציו</p>
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	<p>suitable for ploughing, the employer must pay them their full wages. Nonetheless, the wages may be decreased to account for the fact that one who comes loaded with grain is not comparable to one who comes without a load, and one who performs labor is not comparable to one who sits idly. When does this ruling apply?¹¹⁰⁰ When the workers have not yet begun to work. But if they have already begun to work, we evaluate for them the labor they have thus far performed and the employer must compensate them accordingly. How is the due compensation calculated? If, for example, the workers agreed to reap grain for two <i>Sela'im</i>,¹¹⁰¹ and they reaped half of it, but</p>	<p>who has already done some work. According to the first method (that of the Tanna Kamma), the employee is not penalized for quitting, and the employer must bear the brunt of higher labor costs. But according to the second method (that of R. Dosa), the employee <i>is</i> penalized for retracting from his employment agreement. Thereby, he would have to subsidize the higher labor costs incurred by the employer forced to hire new workers. Thus, both these opinions affirm the fundamental freedom of employees to quit their job. Yet the latter one rules that they are responsible to bear a price for this freedom in some cases by accepting decreased wages. Despite the differing degrees of responsibility demanded by these two opinions, both hold that liability is strictly limited. For the compensation that employees are obliged to pay their former employers</p>	<p>והניחו חציו שמין להן את מה שעשו היה יפה ששה דינרים נותן להן סלע או יגמרו מלאכתן ויטלו שני סלעים ואם סלע נותן להם סלע ר' דוסא אומר שמין להן מה שעתידי להעשות היה יפה ששה דינרים נותן להם שקל או יגמרו מלאכתן ויטלו שני סלעים ואם סלע נותן להם סלע במה דברים אמורים בדבר שאין אבוד אבל בדבר האבוד שוכר עליהן או מטען כיצד מטען אומר להן סלע קצצתי לכם באו וטלו שתיים ועד כמה שוכר</p>
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1100 The Baraita now asks when its opening ruling applies to piece-workers, whereas the previous ruling dealt with time-workers.

1101 1 *Sela* = 2 *Sheqalim* = 4 *Dinarim* → 2 *Sela'im* = 8 *Dinarim*. For a description of the talmudic currency system, see the following brief online exposition from the Jewish Virtual Library: Weights, Measures, and Coins. From the Bible Through the Talmudic Period, <http://www.jewishvirtuallibrary.org/jsource/History/weightsandmeasures.html>

	<p>then quit and left the other half unreaped, or they agreed to weave a garment in return for two <i>Sela'im</i>, and they wove only half of it, then we evaluate for them the worth of the labor they have already performed. If the value of this labor is six <i>Dinarim</i>, the employer still gives the employees one <i>Sela</i>.¹¹⁰² Or the workers may complete their job for their full wages of two <i>Sela'im</i>. And if the work they performed has the value of a <i>Sela</i>, the employer pays them this one <i>Sela</i>.¹¹⁰³ A differing opinion of how the pay of workers who quit is calculated is offered by R. Dosa, who says that we evaluate for them the worth of the labor that still needs to be performed to complete the job</p>	<p>for higher labor costs after quitting cannot exceed their wages. The Baraita then teaches that liability becomes greater in cases where the employees' retraction causes an immediate loss to the employer. As also taught by the above Mishnah, the employees are responsible to compensate their former employer for his increased labor costs, even up to exorbitant wage levels relative to their own. Their responsibility for the employer's losses is further established through the ruling that they may be tricked into returning to their job through false promises, a practice that would otherwise violate numerous prohibitions. The Baraita then qualifies this responsibility of employees when they can lead their employer to other workers willing to hire themselves out for the</p>	<p>עליהן עד ארבעים וחמשים זוז במה דברים אמורים בזמן שאינן שם פועלים לשכור אבל יש שם פועלים לשכור ואמר צא ושכור מאלו אין לו עליהן אלא תרעומת</p>
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1102 The fact that half the work done is worth six *Dinarim*, although the entire job initially was to be compensated with eight *Dinarim*, means that the wage level has increased by 50% [now the cost of labor to finish the entire job is twelve *Dinarim*]. The Baraita at this point thus rules that the employer must incur higher labor costs if the original workers quit. For when he hires new workers to complete the job, his total labor cost will be 10 *Dinarim* [four *Dinarim* for the original workers plus six *Dinarim* for the new ones].

1103 The Gemarah below explains why these last two seemingly obvious rulings are taught.

and this amount is then deducted from their agreed-upon wages for the entire job. For example, if at current wage levels the cost of the labor that still needs to be performed is worth six *Dinarim*, the employer pays them only a *Sheqel* (two *Dinarim*).¹¹⁰⁴ Or the workers may complete their job for their full wages of two *Sela'im*. And if the work they have already performed has the value of a *Sela*, the employer pays them this one *Sela*. When does this limited responsibility of employees who quit apply?¹¹⁰⁵ In cases where their reneging on the employment does not cause an imminent loss to the employer. But if a job

original wage. Then, the employer need not incur any unexpectedly high labor costs, and the employees are hence free to leave their job at will without any deduction in their prorated wage.

- 1104 The employees who quit must thus compensate the employer for his increased cost of labor. Originally, they would have received a wage of eight *Dinarim*, which means that half the work would have been worth four *Dinarim*. After the 50% wage increase, however, completing the other half will cost the employer six *Dinarim*, i.e., two *Dinarim* more than originally planned, which would bring his total labor costs to 10 *Dinarim*. Instead R. Dosa rules that the workers who quit are responsible to compensate their employer for this increase, and these two additional *Dinarim* are thus deducted from their wage, leaving them with two *Dinarim*, i.e., one *Sheqel*.
- 1105 For the Tanna Kamma of the Baraita, employees who quit have no liability whatsoever to compensate an employer for higher labor costs of completing a job. Even in the stricter opinion of R. Dosa, employees who quit their job must only subsidize the increased labor costs with their partial or at most their full wages, but never beyond that.

is time-critical, the employer may hire other workers to replace the original ones at the expense of the workers, or he may trick the original workers into returning to the job. How can he trick them? He may promise them double wages without actually intending or having to pay them. And up to what wage may the employer hire other workers at the expense of the original ones? Up to 40 or 50 *Zuzim* (= *Dinarim*).¹¹⁰⁶ When do these responsibilities of employees apply? At a time when there are no other workers in an area that could be hired at standard wages. But if there are other workers available to hire at standard wages, and the original workers told the employer to go and hire amongst them, then the employer may neither trick the original workers nor may he hire

1106 Thus, up to about a ten-to-twelve-fold increase over the original workers' wage of one *Sela* [= four *Dinarim*].

	<p>others for exorbitant wages at the original workers' expense. Then, the employer only has grounds for complaint and no valid monetary claims vis-à-vis his original workers.</p>		
<p>Amoraic discourse (bBM 76b)</p>	<p>A teacher of Baraitot taught the following excerpt of the above Baraita in front of Rav: "The employer must pay the workers their full wages if the workers arrive at the work-site and there is no work to do for them." Rav said to him, "My uncle R. Chiya said, 'If I had been the employer, I would have only paid them as idle workers and you say that they should be paid in full?!'" But there is no contradiction, since the Baraita itself teaches that they should be paid as idle workers! The teacher did not complete the entire Baraita before Rav, the</p>	<p>The Gemarah turns to a discourse about the Baraita that was just cited. Responding to its teaching that an employer is responsible to pay dismissed workers their full wages, Rav protests that his uncle would have only paid them as idle workers. This in fact corresponds to the conclusion of the Baraita, so both traditions agree that once an employee arrives at the work-site employers are free to renege on their agreement to provide a job, yet they are responsible to pay the laborer a wage even though he does not do any work, albeit a decreased one to account for the worker's utility of being idle.¹¹⁰⁷ The Gemarah then, however, suggests that Rav, following his uncle R. Chiya's tradition, in fact grants em-</p>	<p>תני תנא קמיה דרב נותן להם שכרן משלם אמר ליה חביבי אמר אילו אנא הואי לא הוה יהיבנא להן אלא כפועל בטל ואת אמרת נותן להם שכרן משלם והא עלה קתני אינו דומה הבא טעון להבא ריקן עושה מלאכה ליושב ובטל לא סיימוה קמיה איכא דאמרי סיימוה קמיה והכי קאמר חביבי אמר אי הואי אנא לא הוה יהיבנא ליה כלל ואת אמרת כפועל בטל אלא קשיא</p>

1107 *Rashi* (bBM 76b, s.v. אבל אינו דומה הבא טעון לבא ריקן עושה מלאכה ליושב ובטל) explains that the idle wage is calculated by estimating the benefit a worker has of not performing the agreed-upon job and then deducting this benefit from his wage.

	<p>latter hence only heard the part teaching that full wages must be paid.</p> <p>There are those who say that the Baraita had in fact been completed before Rav. And this is what Rav responded, “My uncle said, ‘If I had been the employer, I would not have paid the workers any wages at all, and yet you say that they are paid as idle workers!’”</p> <p>But this view contradicts our Baraita!¹¹⁰⁸</p> <p>There is, in fact, no contradiction. R. Chiya’s ruling applies in cases where the land on which work was to be done was inspected on the prior evening.¹¹⁰⁹ Whereas the Baraita’s ruling applies in cases where such an inspection did not take place.</p>	<p>employers the right to dismiss workers appearing on the job without being responsible to pay them at all.</p> <p>In order to synthesize this apparent contradiction, the Gemarah differentiates between cases where an inspection of the work to be done took place on the day prior to the beginning of a job, and cases where such an inspection did not take place. In the former instance, there is no information asymmetry between the employer and the employees regarding the risk that a job may no longer be available. Both would know that, for instance, a field might be unsuitable for cultivation the next day, and there would hence be no work to be done on it. Then, the employer is free not to hire the workers as initially agreed upon, nor is he responsible to compensate them at all for the job loss. If, however, an inspection did not take place, and the workers hence did not</p>	<p>הך לא קשיא הא דסיירא לארעיה מדאורתא הא דלא סיירא לארעיה מאורתא</p>
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1108 As an Amora, Rav could not have openly contradicted the tannaitic Baraita.

1109 It is a *Machloket* between the talmudic commentators and the *halakhic* codes whether the inspection must be conducted by the employer, the employee, or both. (See the commentary to the Soncino Edition, bBM 77a, fn. 1.) The wording of the Gemarah simply states that an inspection of the field took place or did not take place on the prior evening.

		<p>expect their job to be at risk, then the employer is responsible to pay them idle wages.</p>	
<p>Four rulings of Rava (bBM 76b-77a)</p>	<p>This differentiation is similar to what Rava said: “If one hired workers to dig, and rain came and filled the field with water, rendering the land waterlogged and hence making work on it impossible, if the land was inspected the previous evening, the loss is the workers and they need not be paid. But if an inspection did not take place, it is the employer’s loss and he must pay them as idle workers.” Rava also ruled, “If one hired workers to draw water and irrigate his field, but then rain came and watered it before the workers came, it is the workers’ loss and they need not be paid at all. If however the river overflowed and thereby irrigated the fields, the loss is the employer’s, and he must pay them as idle workers.”</p>	<p>The Gemarah continues with four rulings of Rava, the first three of which repeat the previous notion that the employer’s responsibility to compensate for job loss hinges on the existence of information asymmetries regarding the risk of this loss. In the first ruling, this risk is determined by how a natural occurrence such as rainfall will affect the possibility to perform a job. If the workers are aware of this risk, then the employer is free to dismiss them without compensation. He is hence not responsible for job loss caused by a <i>force majeure</i> such as the weather condition. Whereas Rava’s first ruling deals with a case in which workers might not have known that rainfall would preclude a digging job from being performed, this second ruling teaches that when it is clear that, for instance, irrigation work will no longer need to be done if precipitation occurs prior to it, then the em-</p>	<p>כי הא דאמר רבא האי מאן דאגר אגרי לרפקא ואתא מטרא ומלייה מיא אי סירא לארעיה מאורתא פסידא דפועלים לא סירא לארעיה מאורתא פסידא דבעל הבית ויהיב להו כפועל בטל ואמר רבא האי מאן דאוגיר אגורי לדוולא ואתא מטרא פסידא דפועלים אתא נהרא פסידא דבעל הבית ויהיב להו כפועל בטל ואמר רבא האי מאן דאוגיר אגורי לדוולא ופסק נהרא בפלגא דיומא אי לא עביד דפסיק פסידא דפועלים עביד דפסיק אי בני מתא פסידא</p>

Rava also ruled, “If one hired workers to draw water and irrigate his field, and the river stopped flowing at midday, making it impossible to continue the job, the law is: if the river usually does not stop flowing, then it is the workers’ loss and the employer need not pay them anything. Yet if this river does usually stop flowing, then the law is: if the workers are residents of the town, it is their loss. And if they are not residents of the town, it is the employer’s loss.” And Rava said, “If one hired employees to work, and they completed their task at midday, then the law is: if the employer has another task that is less strenuous than the first, he may give it to them to work on for the rest of their hire. Likewise, if he has a task equal in difficulty to the first, he can command them to perform it. But if the

employer is free to cancel the job without any responsibility to compensate the workers. If, however, the job is lost due to a natural occurrence that the workers cannot be assumed to anticipate, then the employer is responsible to pay them an idle wage for their hire period. Again, this is because the employer here has an information advantage to which the workers are not privy.

This same liability mechanism is also inherent in Rava’s third ruling—if the employer could not have forecast that a job would be lost due to an irregular occurrence, he is not responsible to compensate the idle workers. Conversely, if it is a regular occurrence that a particular job is lost, then the employer is responsible to compensate the workers for the job loss by paying an idle wage, but only when the workers could not have anticipated the loss themselves.

Rava’s fourth ruling deals with a case where employees no longer have work to do because they finish their job ahead of

דפועלים לא
בני מתא פסידא
דבעל הבית
ואמר רבא האי
מאן דאגר
אגורי לעבידתא
ושלים עבידתא
בפלגא דיומא
אי אית ליה
עבידתא דניחא
מינה יהיב להו
א"נ דכותה
מפקד להו
דקשה מינה לא
מפקד להו
ונותן להם
שכרן משלם
אמאי וליתיב
להו כפועל בטל
כי קאמר רבא
באכלושי
דמחוזא דאי לא
עבדי חלשי

	<p>further tasks are harder than the completed one, he may not command them to perform it, and he must give them their full wages.” Why shouldn’t they be paid as idle workers instead? Rava referred to the porters of Machuza, who become weakened if they do not work.</p>	<p>schedule. In such a case, the employer may give them further work for the time period they are hired for if and only if it is no more demanding than the completed task. While Rava seems to indicate that the employer is then responsible to pay all idle workers their full wages for the remainder of their hire, the Gemarah makes an <i>Uqimta</i> (“specification”) to resolve the contradiction between this ruling and the one above that idle workers need only be paid an idle wage. Thereby, the employer is responsible to pay the more efficient than expected employees their full wage only if they suffer a loss by being idle. In either case, however, the employer is not free to dismiss the employees as soon as they finish the job ahead of schedule without paying them anything for the remainder of their hire.</p>	
<p>Analysis of the above Baraita (bBM 77a)</p>	<p>The Tanna Kamma of the Baraita taught, “We evaluate for them the worth of the labor they already performed. If the value of this</p>	<p>Returning to the above Baraita, the Gemarah proceeds to analyze the statement of the Tanna Kamma that an employee is free to quit without being penalized</p>	<p>אמר מר שמין להם את מה שעשו כיצד היה יפה ששה דינרים נותן להם סלע קא</p>

labor is six *Dinarim*, the employer still gives the employees one *Sela*.”

This teaching shows that the rabbis hold that the worker has the upper hand, i.e., he is at an advantage, because he is not penalized for quitting with lower wages.

The Baraita also taught, “Or the workers may complete their job for their full wages of two *Sela'im*.”

This is obvious!

This ruling is necessary only when labor costs increased and the workers quit in mid-job, and the employer went and persuaded them to complete their work for him. One might assume that the employees may say to the employer, “When we were persuaded by you, it was on the understanding that you would increase our wages.” Therefore the Tanna Kamma teaches that the employer may respond to them, “It was on the understand-

for doing so. This ruling is seen as proving that the majority opinion of the rabbis holds that workers are at an advantage vis-à-vis their employers, for the latter must pay increased labor and hiring costs out of their own pockets when the former quit.

The Gemarah then, however, qualifies the advantage granted to employees, based on two of the Baraita’s rulings that at first seem obvious. When workers quit a job as wage levels increase, and the employer then persuades them to complete their job without promising a pay raise, he is not responsible to adjust their original pay to the new wage levels.

Given that the Gemarah has just found the majority of the rabbis to hold that employees are at an advantage vis-à-vis their employer, one might have wrongly assumed that they are allowed to claim higher wages even though these had not been agreed upon. Nonetheless, the permitted response of the employer does indicate that he might be responsible to provide

סברי רבנן יד
פועל על
העליונה: או
יגמרו מלאכתן
ויטלו שני
סלעים: פשיטא
לא צריכא
דאייקר
עבידתא ואימרו
פועלים ואזל
בעל הבית
ופייסינהו מהו
דתימא מצו
אמרי ליה כי
מפייסין
אדעתא דטפת
לן אאגרא
קמ"ל דאמר
להו אדעתא
דטרחנא לכו
באכילה
ושתייה: סלע
נותן להם סלע:
פשיטא לא
צריכא דזל
עבידתא
מעיקרא
ואגרינהו בטפי
זוזא ולסוף
אייקר עבידתא
וקם בטפי זוזא
מהו דתימא
אמרי ליה טפי
זוזא אמרת לן
טפי זוזא הב לן
קמ"ל דאמר
להו כי אמרי
לכו טפי זוזא

ing that I will take particular pains over your food and drink.” The Baraita also taught: “And if the work they performed has the value of a *Sela*, the employer pays them this one *Sela*.” This is obvious! This ruling is necessary only where labor costs were cheap at the outset, and the employer offered them an extra *Zuz*. But later when the workers quit, labor costs increased, and the wage rate stood at an additional *Zuz* over the rate at the outset. One might assume that the employees may say to the employer, “You told us you would pay us an extra *Zuz* above the wage rate, so give us this extra *Zuz* now.” Therefore the Tanna Kamma teaches that the employer may respond to them, “When I told you that I would pay an extra *Zuz*, it was only because you would not have agreed to work for the regular wage. But now the

workers with a bonus, such as nourishment free of charge, when they work for him at wages below market levels.

The second wrong assumption about the workers’ advantage deals with the opposite case vs. the first. Here, the employees demand that the employer continues to pay a premium over the market wage, as opposed to demanding that they not be paid less than it. Just as an employer is not responsible to keep his wages at market levels for existing employment agreements, so too is he not responsible to keep his relative wages constant vs. market levels. And whereas the first qualification of worker rights indicated that workers locked into contracts at wages below market levels should be given a bonus, this second qualification teaches that the employer has no additional responsibility to keep wages above market levels if that is where they originally stood. Thus, whereas employees are free to quit without being penalized for doing so, if they return to

דלא הוה קים
לכו השתא קים
לכו: רבי דוסא
אומר שמין להן
את מה שעתיד
להיעשות היה
יפה ששה
דינרים נותן
להם שקל:
קסבר יד פועל
על התחתונה:
או יגמרו
מלאכתן ויטלו
שני סלעים:
פשיטא לא
צריכא דזל
עבידתא ואימר
בעל הבית
ואזול פועלים
ופייסוהו מהו
דתימא מצי
אמר להו
אדעתא
דבצירתו לי
מאגריי קמ"ל
דאמרי ליה
אדעתא
דעבידנן לך
עבידתא
שפירתא: סלע
נותן להם סלע:
פשיטא א"ר
הונא בריה דרב
נתן לא צריכא
דאזילו אינהו
גביה זוזא
מעיקרא ולסוף
זל עבידתא מהו

wage stands where you wanted it.”

The Baraita also taught that R. Dosa says that “we evaluate for them the worth of the labor that still needs to be performed to complete the job and this amount is deducted from their wages. For example, if at current wage levels the cost of the labor that still needs to be performed is worth six *Dinarim*, the employer pays them only a *Sheqel*.” This shows that R. Dosa holds that the worker who quits has the lower hand, i.e., is at a disadvantage. The Baraita also taught in the name of R. Dosa, “Or the workers may complete their job for their full wages of two *Sela'im*.”

This is obvious!

This ruling is necessary only where labor costs have decreased, and the employer dismissed the employees, at which point the workers went and persuaded him to let them complete their

their employer they are responsible not to incur higher labor costs for him. The Gemarah then finds that in contradistinction to the Tanna Kamma, the minority opinion of R. Dosa holds that workers are at a disadvantage when they quit. Thus, employees may not leave their job without being responsible to subsidize higher labor costs incurred by their employer. As a direct mirror image of the above qualification of the workers’ advantage postulated by the Tanna Kamma, the Gemarah now qualifies the employer’s advantage postulated by R. Dosa. First of all, the employer is free to dismiss employees when decreased wage levels enable him to hire new workers at a lower cost, just as workers are free to quit their job when increased wage levels enable them to find more lucrative engagements elsewhere. But when workers persuade their former employer to rehire them, without expressly consenting to an adjustment of their wages to the decreased market levels,

דתימא בציר
זוזא אמריתו לי
בציר זוזא
יהבינא לכו
קמ"ל דאמרי
ליה כי אמרנא
לך בבציר זוזא
דלא הוה קים
לך השתא קים
לך

jobs. Now one might have assumed that the employer can say to the workers, “I rehired you on the understanding that you would decrease your wages.” Therefore R. Dosa teaches that the employees may respond, “It was on the understanding that we will perform a particularly good job for you.” The Baraita also taught in the name of R. Dosa, “And if the work they performed has the value of a *Sela*, the employer pays them this one *Sela*.” This is obvious! R. Huna b. R. Nathan said, “His ruling is necessary only where the employees discounted their wages by a *Zuz* at the outset, and in the end, when the employer dismissed them, the wage rate had decreased. One might assume that the employer may say to them, ‘You originally told me you would accept a *Zuz* less than the regular wage rate,

then the employer is responsible to honor the previously made employment agreement and pay wages accordingly. However, just as the Gemarah above hints that an employer hiring workers below market rates should give them a bonus, so too this Gemarah urges employees who are being paid more than the market level to do a particularly good job for their employer in return. In the mirrored case to the employees working for premium wages, the case of employees working at discounted wages limits the employers’ advantage postulated by R. Dosa by ruling that employees need not keep their discounted wages in line relative to market wages. The Gemarah thus teaches that employees are not responsible to keep their employers’ labor costs constant in accordance with their original employment agreement. This section also teaches that workers are free to discount their wages to make their labor more attractive to employers.

	<p>so I offer to give you a <i>Zuz</i> less than the new rate.’ Therefore R. Dosa teaches that the employees may reply, ‘When we said that we would accept a <i>Zuz</i> less than the going rate, it was only to persuade you to hire us. But now you have already agreed to pay that wage, we will not accept a lower one.’”</p>	<p>Note how the majority opinion of the Baraita rules that employees are at an advantage when exercising their freedom to quit and how it then limits this advantage. Conversely, the minority opinion rules that the employer is at an advantage by being free to penalize employees who quit and then rules that this advantage is limited. Liberty is thus always only granted in connection with responsibility.</p>	
<p>Seeking the <i>Halakhah</i> (bBM 77a-b)</p>	<p>Rav ruled that the <i>Halakhah</i> follows R. Dosa. But did Rav really rule thus? For we know that Rav said, “A worker can quit even in the middle of the working day.” And if you should respond that R. Dosa differentiates between hiring by time and by the task, it can be questioned whether he in fact made such a distinction, for it was taught in a Baraita: “If one hires a worker, and at midday the worker hears that he</p>	<p>In search of the normative law, the Gemarah opens with a surprising ruling by Rav that the <i>Halakhah</i> follows R. Dosa’s opinion that employees who quit are at a disadvantage. This is surprising both because the majority opinion rules the opposite and because Rav himself grants workers the freedom to quit before a job is completed (as shown below). Now the Gemarah first analyzes whether perhaps R. Dosa rules that employees are at a disadvantage only in the case of a piece-worker, whereas a time-worker is free to quit without penalty.</p>	<p>אמר רב הלכה כר' דוסא ומי אמר רב והאמר רב פועל יכול לחזור בו אפילו בחצי היום וכי תימא שאני ליה לרבי דוסא בין שכירות לקבלנות ומי שאני ליה והתניא השוכר את הפועל ולחצי היום שמע שמת לו מת או שאחזתו חמה אם שכיר הוא נותן לו שכרו אם קבלן הוא נותן לו</p>

has suffered a bereavement,¹¹¹⁰ or the worker is seized by fever, then, if he is a time-worker (*Sakhir*), the employer gives him his prorated wages without any deduction. If he is a piece-worker (*Kablan*), the employer gives him his prorated fee for the part of the job he has completed, without any deduction.”¹¹¹¹ Now whose view is reflected by this Baraita? If you will say that of the rabbis, i.e., the Tanna Kamma of the first Baraita, then why did the Tanna specifically deal with a case of the worker who has suffered a bereavement or who was seized by fever, which are cases in which the employee is forced to renege on his employment agreement? Even if he is not forced he may quit his job without being penalized, for

A further Baraita indicates that no such differentiation is made, for it teaches that workers are free to quit at mid-day when they suffer a bereavement or become ill, and they are not penalized for doing so. Since the Tanna Kamma rules that this freedom exists even when employees quit for discretionary reasons, the Baraita must reflect the opinion of R. Dosa, who consequently does not differentiate between the piece-worker and time-worker. Note how the presentation of this Baraita implies that according to all opinions, workers who are forced to quit their job for these serious reasons are free to do so and are not responsible for any compensation whatsoever. Instead, the Gemarah suggests that this Baraita is dealing with a case where the retraction of the employees causes an immediate loss to their employer, and in such instances all opinions agree that employees are not free

קבלנותו מני
אילימא רבנן
מאי איריא
שמע שמת לו
מת או שאחזתו
חמה דאניס כי
לא אניס נמי
הא אמרו רבנן
יד פועל על
העליונה אלא
לאו ר' דוסא
היא וש"מ לא
שאני ליה לרבין
דוסא בין
שכירות
לקבלנות א"ר
נחמן בר יצחק
בדבר האבוד
ודברי הכל תנן
כל המשנה ידו
על התחתונה
וכל החזור בו
ידו על
התחתונה
בשלמא כל
המשנה ידו על
התחתונה
דסתם לן תנא
כר' יהודה אלא
כל החזור בו
ידו על
התחתונה
לאתויי מאי
לאו לאתויי
פועל וכר'

1110 I.e., one of the relatives passes away for whom he must observe *Shivah* (the week of mourning), during which work is prohibited.

1111 Cf. tBM 7,3.

the rabbis stated that the worker has the upper hand. Rather, is it not the view of R. Dosa reflected in this Baraita? And we can infer from this Baraita that R. Dosa does not differentiate between *Sekhirut* and *Kablanut*, for under normal circumstances both types of workers cannot withdraw without penalty. R. Nachman b. Yitzchak said, “Rather, this latter Baraita is dealing with a case where the retraction of the workers causes an immediate loss, and this Baraita thus reflects the view of both the Tanna Kamma and R. Dosa, who both hold that workers quitting under such circumstances are penalized.” The Mishnah taught, “Anyone who deviates from a work contract has the lower hand, and anyone who reneges on his work commitment has the lower hand.” Now, all

to quit without being responsible for compensation. On these latter two points, there is thus an uncommon unanimous agreement amongst the sages. The Gemarah then attempts to resolve the apparent contradictions of Rav’s ruling with the conclusion of the above Mishnah. The first clause emphasizes that workers are not free to disregard the stipulations and directions of their employer and are consequently responsible to compensate him if they do. As becomes clear from the parallel tradition of this ruling in mBQ 9,4, this clause deals with piece-workers. The Gemarah then argues that the Mishnah’s final ruling extends the disadvantage of employees to time-workers as well. This would imply that the Mishnah rules in accordance with R. Dosa’s opinion that employees are not free to quit without responsibility to compensate their employer for higher labor costs or without the right to claim a share of his lower labor costs. The Gemarah

דוסא אלא ר'
דוסא תרתי
קאמר ורב סבר
לה כוותיה
בחדא ופליג
עליה בחדא

is well to teach that “anyone who deviates from a work contract has the lower hand,” for thereby the Tanna rules in accordance with R. Yehudah’s opinion.¹¹¹² But what is added by the clause “anyone who reneges on his work commitment has the lower hand?” Surely the purpose of this latter ruling is to extend the law from the piece worker, to whom the first clause refers, to the time worker as well? Indeed, this Mishnah must reflect the view of R. Dosa that both types of workers are penalized for quitting. But whereas R. Dosa refers to both types alike, Rav agrees with him only when it comes to the piece-worker, ruling that the time-worker is free to quit without being responsible to incur a penalty.

concludes that Rav, however, and hence the *Halakhah*, does not extend this disadvantage to the time-worker. This type of worker is free to quit without being responsible for causing higher labor costs while being permitted to benefit from lower labor costs.

1112 mBQ 9,4.

These intricate folios leave us with a central tenet of talmudic employment ethics, namely that time-workers enjoy the special liberty of being able to quit their job without a responsibility to compensate their employer for increased labor costs, and they are even granted the eligibility to benefit from decreased labor costs by receiving a share of their employer's savings.¹¹¹³ Furthermore, the time-worker must receive at least a partial wage for his entire hire period if the agreed-upon job is no longer available for him.¹¹¹⁴ The reason for these advantages is the negative correlation between a worker's dependence and his rights.¹¹¹⁵ It is due to this mechanism that the indentured servant, the *Eved*, enjoys the most far-reaching *halakhic* protection of all three categories of workers. Therefore, because the employee hired for certain time periods is less independent than the employee hired to complete a specific piece of work,¹¹¹⁶ the Talmud grants the former greater freedom to disengage from his employment than the latter.¹¹¹⁷

The fact that the employee hired for a time-period is most dependent on his employer, barring the indentured servant, leads the Talmud to grant him the dual privilege of freedom to retract from the employment agreement without financial penalties, and of freedom from the anxiety of being forced to immediately find new employment should he be dismissed during his hire period. Dialectically, this means that the legitimacy of labor rights is based on the institution of employer rights. This dialectic is directly reflected in the following famous tradition: אמר ליה: שאני פועל דידו כדי בעל הבית הוא. - והאמר רב: פועל יכול לחזור בו אפילו בהצי היום! - אמר ליה: כל כמה דלא הדר ביה - כי הדר ביה - טעמא אחרינא הוא, דכתיב

1113 As noted, this freedom does not apply when an employer would suffer an immediate material loss through a retraction, such as in the case of employees hired to work at a wedding ceremony.

1114 Again, this right is qualified by considerations such as what the cause of the job loss is and when the worker was notified of it, as discussed in the above chart.

1115 See pp. 264ff., particularly fn. 1017.

1116 The commentary of the ArtScroll Talmud explains this greater dependency as follows: “[A] dayworker must do any sort of work he is given that day, and if the employer wishes, he may give him work throughout the day. A worker hired for the job, however, is more independent: he need perform only the specified task for which he was hired, and he may work at the hours he himself chooses.” (bBM 77a, fn. 35).

1117 Regarding this differentiation, Aaron Levine notes: “Absent the retraction right, obligating oneself to work at specific hours is akin to servitude. But, the retraction right is not conferred on a worker who is paid for finished work and who does not obligate himself to work at specific hours (*kabbelan*). Because the *kabbelan*'s undertaking carries with it the liberty to withhold work at any specific time, the sages did not confer the *kabbelan* the retraction right ... Consider that in the judgment of the sages working at fixed hours psychologically depresses [a worker] to the point of making him feel that he has lost his freedom and is *chained* in a servitude relationship with [his employer]. Conferring [the worker] with the right to withdraw from the work scene without penalty, even though this right is by no means absolute, restores [the worker's] mindset to the extent that he no longer equates working at fixed hours to a status of servitude.” In: *Moral Issues of the Marketplace in Jewish Law*, pp. 282, 284f.

כי לי בני ישראל עבדים - עבדי הם, ולא עבדים לעבדים.¹¹¹⁸ Thus, as long as workers are employed, they are considered akin to an extension of their employer and responsible to follow the latter's legitimate direction. For this reason, Rav rules that employees may extract themselves from the employment relationship. The resulting liberty is presented as a biblical right, based on the verse teaching that to be God's servant precludes being the servant of anyone else. According to the Talmud, employees should serve their employer, but they may not become the latter's servants. Expressing this dialectic is the talmudic demand that employees exchange mutual liberty and mutual responsibility with their employers.

The Fourth Agreement: Mutual Adherence to Contract and Custom

Besides agreeing to exchange a job for labor, a wage for direction, as well as mutual liberty and mutual responsibility, employers and employees, according to the Talmud, should agree to adhere to the stipulations of their employment contract and the conditions of local custom. The central talmudic source for this agreement is the following Mishnah: השוכר את הפועלים ואמר להם להשכים ולהעריב מקום שנהגו שלא להשכים ושלא להעריב אינו רשאי לכופן מקום שנהגו לזון וזון לספק במתיקה יספק הכל כמנהג המדינה מעשה ברבי יוחנן בן מתיא שאמר לבנו צא שכור לנו פועלים הלך ופסק להם מזונות וכשבא אצל אביו אמר לו בני אפילו אם אתה עושה להם כסעודת שלמה בשעתך לא יצאת ידי חובתך עמהן שהן בני אברהם יצחק ויעקב אלא עד שלא יתחילו במלאכה צא ואמור להם על מנת שאין לכם עלי אלא פת וקטנית בלבד רבן שמעון בן גמליאל אומר לא היה צריך לומר הכל כמנהג המדינה.¹¹¹⁹ The Mishnah sets out with the ruling that once workers have

1118 bBM 10a: [R. Nachman] said to [Rava], "A worker is different, for his hand is like the hand of the employer." But hasn't Rav ruled, "A worker may quit even in the middle of the day?" [R. Nachman] answered him, "[Yes], but for the entire time that he does not quit, he is like the hand of the employer." A further reason why the worker may quit is the verse, "For onto Me are the children of Israel servants, they are My servants" [Lev 25,55]—and [hence] not the servants of servants. Cf. the parallel tradition in bBQ 116b.

1119 mBM 7,1: He who hires workers and demands that they start [work] early or end [work] late, in a place where it is not the custom to start [work] early or end [work] late, [the employer] has no authority to compel [his employees to do so]. [Where it is the custom] to provide food [to one's employees], [the employer must] provide [them] with food. [Where it is the custom] to provide a sweet dessert [to one's employees], [the employer must] provide [them] with a [sweet] dessert. All is according to the custom of the state/land. It once occurred that R. Yochanan b. Mattiya said to his son, "Go out and hire workers." He went and agreed to provide them with food. Yet when he returned to his father, the latter said to him, "My son, even if you prepare them a banquet like Solomon's in his time, you have not fulfilled your obligation towards them, for they are the children of Abraham, Isaac, and Jacob. Rather, before they start work, go out and tell them, '[I hire you] on condition that you have no claim upon me other than bread and beans.'" R. Shimon b. Gamliel said, "It was not necessary for him to state [this limitation], for everything is according to the custom of land."

been hired, the terms of the employment agreement are dictated by local custom (*Minhag haMedinah*).¹¹²⁰ Thus, employment conditions such as the length of the work-day and the nourishment provided by employers are fluidly determined by prevailing social norms. These norms can in turn be codified into law through democratic processes, as taught by the Tosefta and Gemarah teaching that “the townspeople may regulate measures, prices, and workers’ wages, and inflict penalties for the infringement of their regulations” (ורשאין בני העיר להתנות על המדות) (ועל השערים ועל שכר פועלים ולהסיע על קיצתן).¹¹²¹

The obligation to adhere to local custom however only applies to matters about which the employment contract has made no stipulations. As Aaron Levine puts it, “[i]n labor relations, *Minhag* (prevailing practice) creates a contractual obligation when the explicit arrangements did not cover the issue at hand.”¹¹²² Thus, R. Yochanan b. Mattiya has an unwarranted concern that his son’s contractual stipulation to provide food for his employees will legitimately create unlimited demands on behalf of the workers, because the type of food to be provided is dictated by local custom. Conversely, an employer may ask his employees to begin work earlier or end it later than customary, for instance, if such a stipulation is included in the employment contract. This also becomes apparent in the immediately ensuing Gemarah, which records the following exchange: פשיטא! לא צריכא, דטפא להו אאגרייהו. מהו דתימא, אמר להו: הא דטפאי לכו אאגרייכו - אדעתא דמקדמיתו ומחשכיתו בהדא, קא משמע לן דאמרו ליה: האי דטפת לן - אדעתא דעבדינן לך עבידתא שפירתא.¹¹²³ This interaction clearly takes place *after* an employment agreement has been struck, otherwise the misunderstanding would not have occurred. *Ex post*, the employer may thereby not charge his employees with conditions that deviate from local custom, unless these terms had been agreed upon contractually *ex ante*. Customs are thereby particularly important because not every aspect of employment can be contractually codified. Also note that the sage who teaches an explicit contract is not necessary in the case of R. Yochanan b. Mattiya is the same R. Shimon b. Gamliel who in the third interpretation of the Mishnah mBM 6,1 (*Hasokher et haUmanim*) urges the transacting parties of a

1120 The binding quality of local custom is emphasized in numerous talmudic traditions. See for instance: mBB 1,1; 10,1; mBM 9,1; bBB 2a; bPes 119b; yYev 8,1 8d [Venice and Krotoshin Editions].

1121 bBB 8b. Cf. tBM 11,23.

1122 Levine, Aaron, *Case Studies in Jewish Business Ethics*, p. 258.

1123 bBM 83a: It is obvious [that all should follow local custom]! It is necessary [to teach this] only when [the employer] pays [his employees] a higher wage [than the market rate]: one might assume that [the employer] can argue, “I pay you a higher wage so that you start work earlier and end it later [than local custom].” Instead, we are taught that [the workers] can reply to him, “The higher wage is [only] for superior labor [we provide, but not for longer hours].”

business deal to pen a contract, showing that he otherwise in principle values explicit written agreements highly.¹¹²⁴ This further emphasizes the binding power of local custom. The Mishnah's interjection of the R. Yochanan b. Mattiya narrative nonetheless also emphasizes the importance of adherence to contracts, for the sage would have only asked his son to make a contractual stipulation with the workers if it were effective.

For all its emphasis on the binding nature of contracts and customs, the Talmud simultaneously encourages a transcendence of a narrow and exclusive focus on them. It does so primarily through the concept of *Lifnim meShurat haDin* ("going beyond the letter of the law," lit. "within the borders of the law").¹¹²⁵ The following narrative applies this general principle to employment relations: רבה בר בר חנן תברו ליה הנהו שקולאי חביתא דחמרא. שקל לגלימיהו, אתו אמרו לרב. אמר ליה: הב להו גלימיהו. - אמר ליה: דינא הכי? - אמר ליה: אין, למען תלך בדרך טובים. יתיב להו גלימיהו. אמרו ליה: עניי אנן, וטרחינן כולה יומא, וכפינן, ולית לן מידי. אמר ליה: זיל הב אגרייהו. Thus, beyond the legal responsibility formed by contract, custom or another normative source, the Talmud institutes an ethical responsibility, particularly towards the socially vulnerable.¹¹²⁷ It is therefore probably no coincidence that this tradition is located exactly before mBM 7,1 discussed above, teaching the obligation to follow employment contract and custom. Nonetheless, the imperative of acting more generously than the law requires applies equally to the first three agreements, for their respective obligations become contractually codified and habitually accepted.

The demand of magnanimity as embodied in the concept of *Lifnim meShurat haDin* has thereby effectively become a legal obligation itself, as reflected by its application in the court of Rav. This becomes less paradoxical when one considers that the Bible and Talmud already establish many magnanimous norms as *halakhically* binding. For instance, field workers are permitted to partake of their

1124 Baraita cited on bBM 77b.

1125 For a further discussion of this principle, see pp. 125 and 180.

1126 bBM 83a: Rabbah b. R. Chanan hired porters who then [negligently] broke a barrel of wine belonging to him. He then seized their garments [to compensate for the damage], whereupon they went and complained before Rav. [Rav] said to [Rabbah b. R. Chanan], "Return their garments to them." To which the latter responded, "Is this the law?" Said the former, "No, [but nonetheless you should observe the verse]: 'That you may walk in the path of the good [Prov 2,20].'" Having received their garments back, the workers said, "We are poor, and worked hard all day, and are in need, are we to get nothing?" Said [Rav], "Give them their wages." Asked [R. Rabbah b. R. Chanan], "Is this the law?" To which [Rav] responded, "No, [but nonetheless you should observe the verse]: '... and guard the path of the righteous [ibid].'"

1127 This concern for society's weak is already inherent in the biblical protection of widows, orphans, and foreigners (Ex 22,20-23; Dtn 15,7-11; Isa 1,17-19/23-25; Prov 19,17; 22,22-23), as well as the poor in general (see this book's chapter on philanthropy, section 5.2.2.).

employer's produce,¹¹²⁸ craftsmen may retain certain remains of their work,¹¹²⁹ and a laboring ox may not be muzzled.¹¹³⁰ Magnanimity is also expected of employees, such as in the teaching of Reish Laqish that they should relinquish some of their personal time for the commute to work.¹¹³¹ The Talmud also demands that employees practice restraint when partaking of their employer's produce, and warns that a greedy and gluttonous exploitation of his magnanimity will make it difficult for them to find future employment.¹¹³² The Mishnah explicitly teaches: אוכל פועל קישות אפילו בדינר וכותבת אפילו בדינר ר' אלעזר חסמא אומר לא יאכל פועל יתר על שכרו והכמים מתירין אבל מלמדין את האדם שלא יהא רעבתן ויהא סותם את הפתח בפניו.¹¹³³ Both magnanimity and restraint are thus simultaneously demanded of both employers and employees, urging each to relate to the other not just via the strict letter of the law as embodied by employment contracts and customs but rather via its ethical spirit as well.

7.1.3. *Implications for Managing Employment Relations*

In order to avoid a premature and naïve application of the previous section's findings to contemporary corporate practice, it is important to first differentiate between the types of employment related by the Talmud. To summarize our above findings in this regard: both the Bible and Talmud essentially know three categories of workers supplying their labor for pecuniary benefits—the *Sakhir* (“time-worker”), *Kablan* (“piece-worker”), and the *Eved* (“indentured servant”). Time-workers are assumed to be poor or at least dependent on their wages for survival. In some cases, householders hire themselves out as time-workers when the opportunity cost of not doing so becomes particularly high through increased wage-levels. The *Sakhir* is hired for specific time periods for jobs such as plowing fields, serving at weddings, and transporting goods. The allocation of his labor-time is at the discretion of the employer paying for it, and the latter can direct him to perform planned or spontaneous tasks throughout his hire.

1128 Dtn 23,26-27; mBM 7,2; bBM 87a-b, 91b-92a.

1129 mBQ 10,10; bBQ 119a-b.

1130 Dtn 25,4.

1131 bBM 83a-b.

1132 Op. cit. 87b, 92a.

1133 mBM 7,5: A worker may eat cucumbers [that are a part of his employer's produce], even up to the value of a *Dinar*, or dates, even up to the value of a *Dinar*. R. Ele'azar Chisma said, “A worker may not eat more than his wage.” But the sages permit it. Yet they [simultaneously] teach that one should not be greedy, to avoid shutting the door [of employment] in one's face.

In contradistinction to these characteristics of the *Sakhir*, the *Kablan* is hired to complete piece work, such as constructing a home or weaving a garment. Consequently, the latter tends to be more skilled and is paid for productive output rather than for time. A similarity between these first two types of workers is that they transact with employers on a job-to-job basis and get paid accordingly.

The *Eved*, however, becomes a member of his master's household and receives no wage. He is to enjoy the same living standards as family members, and in order to protect his dignity there are restrictions on the type of tasks he can be charged with. The purpose of bringing *Avadim* into a household is primarily the ongoing contribution of their productive labor power.¹¹³⁴ The *Eved* remains with the household at least until the Sabbatical Year following his acquisition, unless he chooses to flee before then.

The main differences between these three types of laborers and corporate employees as a whole are clear: the former are hired by a householder or his agent, generally have a lower socioeconomic status, and are viewed as being in a sub-optimal position vis-à-vis the independence of the *Ba'al haBayit* (householder) ideal. Contemporary managers, however, lead large-scale business organizations owned by dispersed shareholders, are often highly skilled professionals from the middle and even upper classes,¹¹³⁵ and many feel a sense of pride and identification towards "their" company.

These differences and the degree of abstraction following therefrom in the following discussion notwithstanding, there are fundamental similarities between talmudic and contemporary employment relations. The short-term and dependent status of the *Sakhir* is reminiscent of part-time employees and their often existential struggle to survive from paycheck to paycheck. The *Eved's* longer-term integration into a household and the specific benefits accorded to him are similar to full-time employees' mostly multi-year engagements with a single employer and their perks such as paid vacations, health care subsidies, and retirement fund contributions.¹¹³⁶ Thirdly, the piecework of the *Kablan* might be likened to pro-

1134 As already evinced by their name, deriving from the same Hebrew root as the verb "to work/serve." The name of the *Sakhir* derives from "to hire," and that of the *Kablan* from "to receive."

1135 Of course, some corporations hire unskilled, working-class managers as well, particularly certain retail, food, and service businesses. Yet a historically unprecedented number of corporate employees has entered the middle-class and even the upper-class in the case of managerial employees particularly in certain industries such as investment banking. In contradistinction to the Marxist dichotomy of the capitalist and the bourgeois, corporations have hence enabled the latter to enter the ranks of the former as well.

1136 It may seem demeaning both towards the *Eved* and corporate employees to compare the two to each other. Yet it can be argued that certain labor laws of the *Eved* can be applied to contemporary employees as well. For instance, according to the commentary of R. Moses

ject-based workers and suppliers of the corporation. And what all forms of talmudic and corporate employment relations share in common are their conceptual transactions—exchanging jobs for labor, wages for directive authority,¹¹³⁷ mutual freedom and responsibility,¹¹³⁸ as well as mutual adherence to contract and custom. In light of these similarities, a fruitful application of the previous section's findings to corporate practice seems feasible and warranted.

The framework structuring a seminal work on corporate HRM by Michael Beer et al. is useful to facilitate the relevance and practicability of this application. In *Managing Human Assets*, the authors find that there are four major HRM policy

Isserles (the *Rema*) on the Shulkhan Aruch, a person may not hire himself out to a single employer for more than three years because such a prolonged employment is akin to the servitude of the *Eved Ivri* (Shulkhan Aruch, Choshen Mishpat, 333,3, based on Dtn 15,18, which states that the *Eved Ivri's* maximum service of six years is double that of the hired worker). Given that most contemporary employees expect to work at the same employer for more than three years, it seems reasonable to deduce that they may not be given any work prohibited to the *Eved Ivri*. Furthermore, R. Meir b. Baruch (Responso Maharam meRothenburg, 4,85; cited in Levine, Aaron, Case Studies in Jewish Business Ethics, p. 245) argues that all amenity the Torah grants the *Eved* must also be granted to the hired worker (*Po'el*). Thus, if the Torah accords the privilege of legitimately being able to refuse certain types of work to the *Eved Ivri*, then a fortiori these privileges should also be granted to the contemporary employee. For unlike the former, the latter fulfills the imperative to not become a servant to another man (based on bBM 10a, as shown below). This a fortiori argument is further strengthened by the fact that employees nowadays mostly do not enter employment due to extreme poverty or a debt that they cannot repay, which are however the ways in which a person becomes an *Eved Ivri* (Ex 22,2; Lev 25,39-43; bQid 14b; Mishneh Torah, Sefer Kinyan, Hilchot *Avadim*, 1,1). Arguing for an extension of the *Eved Ivri's* rights to employees as well, R. Saul Wagschal therefore asks rhetorically: "Is an employee worse than a slave?" (In: Torah Guide for the Businessman, Jerusalem/New York, NY, 1991, p. 37; cited in: Cohn, Gordon/Friedman, Hershey H., op. cit., who also argue: "Although, strictly speaking, these laws apply to a slave, logic dictates that they should also apply to any employee.") As shown below, Maimonides rules that work prohibited to be given to the *Eved* may be given to the *Sakhir* because the latter hires himself out consensually. Yet many contemporary workers, particularly in low-paid and highly strenuous jobs, only consent to accepting their employment because they resent the alternatives such as destitution or crime. Their socially diminished freedom thus, following Maimonides' above negative correlation, would make them eligible to some of the benefits enjoyed by the *Eved Ivri*. Also, as noted, the Sefer haChinukh extends the *Eved Ivri's* privilege of a parting gift to employees as well (Sefer haChinukh, Mitzvah 482). Such an extension has also been applied by the Israeli judiciary, where a court ruling granted a school principal severance pay based on Dtn 15,14 (Piskei Batei Din Harabanim, Haifa, 1963, cited in: Tamari, Meir, With All Your Possessions, p. 144). All the differences between the institutions of the Hebrew bondsman and contemporary employment notwithstanding, the above arguments and rulings provide a solid foundation legitimizing the extension of the Talmudic perspective on permissible types of work from the *Eved Ivri* to corporate employees as well.

1137 While the *Eved* does not earn an ongoing wage, he nonetheless also receives financial compensation through his sale price, his being provided for in a household and his parting gifts.

1138 Even the *Eved* is free to flee from his employer.

areas that management must attend to: employee influence, human resource flow, reward systems, and work systems.¹¹³⁹ The implications of the previous section's analyses and findings for each of these policy areas are developed in the following.

Employee Influence

This policy area revolves around the question of what responsibility, authority, and power a corporation should delegate to its employees, and of how much influence they should have regarding matters such as “business goals, pay, working conditions, career progression, employment security, or the task itself ...”¹¹⁴⁰ The authors proceed by noting: “managers possess much of the decision-making power in the organization, so a lack of action in regard to employee influence amounts to a decision not to share and delegate much of that power and influence.”¹¹⁴¹

Based on the findings of the previous section, the Talmud agrees that employers fundamentally have the authority to direct their employees. After all, the former are compensating the latter for this right. Therefore, the employer has more influence over the employee than vice versa. Yet the Talmud simultaneously encourages a mitigation and counterweight to this hierarchical influence differential.

In their demand that the employment relationship turn mutual dependency into mutual beneficiality, the talmudic sages believe that hierarchy must be compensated by humanity. This implies that employees may influence working conditions to satisfy their human needs. Hired workers may not be oppressed and ruled over harshly, as already taught in the Bible. When working conditions might violate these prohibitions, employees have the right to exert their collective influence to effect change. As reflected by the narrative of R. Papa's recalcitrant

1139 Beer, Michael et al., *Managing Human Assets*, New York, NY, 1984, p. 7ff.

This framework is particularly suitable for our purposes because Beer et al. have a conception of the employment relationship similar to that of the Talmud and codices as studied above: namely that it is a trade-based relationship which must fulfill the evolving needs of both its sides. The authors reflect these two perspectives on the opening page of *Managing Human Assets*: “In order for a corporation to meet effectively its obligations to shareholders, employees, and society, its top managers must develop a relationship between the organization and employees that will fulfill the continually changing needs of both parties. At a minimum, the organization expects employees to perform reliably the tasks assigned to them and at the standards set for them, and to follow the rules that have been established to govern the workplace ... At a minimum, employees expect the organization to provide fair pay, safe working conditions, and fair treatment.”

1140 Beer et al., *op. cit.*, p. 8f. The authors continue by warning that “[d]emocratic societies have tended to legislate influence mechanisms whenever employees have felt aggrieved or underrepresented in decisions governing their welfare.”

1141 *Ibid.*, p. 8.

servant, employees may refuse to do debasing tasks. Furthermore, they have the right to unionize and to strike for higher wages, albeit only if they do not harm the public good by doing so. Hence, while it is clear that the Talmud grants employers greater influence and authority than employees when it comes to decision-making about what, how, and under which conditions jobs are to be performed, there is a simultaneous demand that this influence discrepancy does not lead to a violation of legitimate human and labor rights.

Human Resource Flow

Beer et al. describe that “[t]his policy area has to do with the responsibility shared by all managers in an organization for managing the flow of people (at all levels) into, through, and out of the organization.”¹¹⁴² The Talmud emphasizes the fundamental liberty of both employees and employers to begin and terminate an employment relationship. Not granting employees the right to quit would effectively turn them into slaves. Conversely, employers are granted the liberty to dismiss workers at will, for instance to benefit from lower wage rates. Neither party of the employment contract may hence force the other to remain in it. This mutuality notwithstanding, the time-worker is granted the special right to quit mid-job without incurring any penalty because the Talmud views those who hire themselves out as being in a particularly dependent and anxiety-provoking position.

Despite its apparent support for at-will employment, the Talmud acknowledges that reneging on an agreement to provide jobs or labor is a legitimate cause for criticism, albeit without concordant rights to seek legal redress. Yet under certain circumstances, liberty is curtailed by responsibility. When workers might cause a loss to their employer by quitting an urgent job, they may be liable to subsidize higher labor costs incurred by more expensive replacement workers. Furthermore, the employer may deceive the original workers into returning to him. Piece-workers who quit mid-job might be required to compensate their employer for higher labor costs even for projects that do not cause an immediate loss through their urgency or importance.

These drastic measures show that the liberty of one party may not, in general, come at the expense of the other. The same responsibility applies to employers as well. Once their employees begin work, they may not be dismissed without paying them at least an idle wage for the remaining time period of their agreed-upon hire in the case of time-workers, or without compensating them prorata for

1142 Ibid., p. 9.

work already completed in the case of piece-workers. Paying an idle wage can in fact be a good means to increase employer flexibility and to avoid lay-offs when there is a short-term decrease in labor demand.

The Talmud limits the liberty of employers to dismiss workers when jobs are no longer available due to information asymmetries between the two parties. In general, an employer is more knowledgeable about acute business risks that might threaten job security. He is therefore responsible to compensate workers when they come to begin an agreed-upon job that is subsequently lost. The way to decrease this responsibility is to counteract information asymmetries. Thus, when workers know that certain events will lead to job loss for them, they can prepare accordingly and need not be paid as idle workers.

Each party of the employment contract should hence strive to minimize any harm inflicted on the other through the liberty to dismiss and to quit. When ending an employment relationship, both employers and employees should do so in a manner that does not violate other biblical and talmudic commandments such as the prohibition to hate, to cause public embarrassment, and to lead others into poverty.

Reward Systems

This policy area deals with the question of what pay and other benefits employees should be compensated and rewarded with. The Talmud believes that pay is what ultimately leads someone to work for others, particularly in risky or unpleasant jobs. Employers and managers are thereby encouraged to bear in mind that the reward system is often a major motivating factor for their employees, and its design is hence of the utmost importance.

The sages also believe that pay levels are positively correlated to the quality and dignity of work. An employer who depends on a particularly skilled, talented, and motivated workforce would hence be advised to offer wages above the going market rate. Also, the Talmud intimates that wage levels should correspond to the value workers are adding to the employer's business. While no specific ratios are codified, it seems fairly clear that the rabbis herewith encourage employers not to extract an excessive profit margin from their employees' labor, instead allowing workers to benefit from a significant stake in the value they contribute to their employers.¹¹⁴³

1143 Instead of a categorical rejection of wage labor as that found in Marxist thought, the Talmud presents an employment relationship that is to be profitable for both employers and employees. Nonetheless, it is important to note again that the sages view the condition of the wage laborer as suboptimal due to his dependence and lacking autonomy.

Furthermore, wages should be paid punctually at or close to the end of a hire period or a job completion. They may under no circumstances be withheld, keeping workers who depend on them in dire straits. So great is the concern of the talmudic sages for employees to be paid that they permit them to enter their employer's home to fetch a collateral for wages due. Wages are always to be paid in hard currency rather than in kind. All of these norms encourage fair pay.

A number of traditions also urge employers to deal with their workers compassionately. Employees are free to leave a job immediately without penalty when they suffer bereavement or become ill. They are eligible to receive an idle wage when they lose their job unexpectedly. And the indentured servant is supposed to be treated to the same living standards as his master, while the latter must give him a termination payment when he goes free. Clemency and cooperation is expected from workers as well. Their pay can be reduced when they do not follow the employer's instructions, and they can be asked to make a part of their commute on their own time. These rulings also imply that employee rewards should take into account how well management directives are followed and what value workers are adding for employers.

Work Systems

Beer et al. note: “[a]t all levels of an organization, managers must face the task of arranging people, information, activities, and technology. In other words, they must define and design work.”¹¹⁴⁴ The Talmud offers a number of traditions regarding types of jobs that may be given to workers. For all employees, employers should eschew working conditions and tasks that cause harm, injury, or anguish. Employees may not be compelled to do jobs that are more difficult, harsh, or exhausting than the ones they are hired for. Particularly dependent workers, such as the indentured servant, are granted additional protection regarding the tasks they may be given. Jobs that have no purpose or limit are forbidden, as are those that are debasing. These demands imply that managers should strive to define and design jobs that impart a sense of purpose and importance, promote the dignity of those performing them, and enable the determination of the point at which they are completed.

To fulfill the talmudic demand of worker diligence, work systems can be designed and delivered in a manner promoting employee prudence, meticulousness and conscientiousness. Policies, structures and measures can be introduced that

1144 Beer et al., *op. cit.*, p. 10.

make the talmudic work ethic's love and honor of work easier for employees to actualize. The dual demand of the Talmud regarding work systems is hence the establishment of humane work and the encouragement of diligent labor.

What is not stipulated in employment contracts becomes subject to local customs for all of the above four policy areas. Corporations and managers are thereby urged both to make employment agreements as explicit as possible, and to adhere to local conceptions of adequate employee benefits, appropriate workplace conditions, and legitimate management demands.

The Missing Link

A talmudic perspective on employment ethics is incomplete without the concept of magnanimity. As noted, the celebrated Aaron Feuerstein in the wake of a factory fire kept his employees and continued paying their salaries, although he had no legal obligation to do so. Also according to talmudic law, there is no duty to continue paying workers after a *force majeure*. Yet Feuerstein chose to act more generously than the law requires, legitimating his decision to do so with Hillel's aphorism that someone who engages excessively in business cannot become wise, and one should strive to be a *Mensch* in a place where there are none.¹¹⁴⁵ Feuerstein's magnanimity may have led his company into bankruptcy—his actions thereby show both the importance and risks of taking on ethical responsibilities beyond legal ones.

Nonetheless, the trust and good faith that magnanimity fosters in employment relations can make it an important factor in strengthening management and employee loyalty, commitment, and dedication. Even though the employment relationship as viewed by the Talmud is severable, this missing ethical link can simultaneously help ensure that this relationship remains indivisible through mutual care and compassion. Executives are thereby urged not just to make what is taken from employees inseparable from what is given to them, but to go beyond contractual and legal obligations to foster a spirit of cohesiveness and integration. Overall, the value of reciprocating magnanimity can encourage managers to make indivisible how they themselves want to be treated from how all other employees actually are. Just and magnanimous employment relations thereby foster mutually beneficial cooperation within and across the whole value chain.

1145 mAv 2,6. Cited in: Shafran, Avi, Aaron Feuerstein. Bankrupt and Wealthy, <http://www.aish.com/ci/be/48881397.html>.

8 Ethics Taxonomy Dimension 7: Product and Brand

8.1 Issues 13 and 14: Product & Service Impact and Reputation Management

8.1.1. *The Ethical Augmentation of Products, Services, and Their Brands*

The ethical dilemmas arising from the products¹¹⁴⁶ and brands¹¹⁴⁷ a corporation develops are frequently the most fundamental ones faced by management, due to three main aspects. Firstly, a corporation's products essentially define its business as a material foundation underlying all its operations and its entire philosophy.¹¹⁴⁸ Without a product or service, a corporation is not in business. Secondly, the perception and reputation of a corporation is strongly influenced by its product

1146 Unless stated otherwise, in the remainder of this chapter the term product refers to both products and services.

1147 For all its importance, the concept of a business brand is an elusive one to define. Originally simply referring to the trade name of a product (as the Merriam-Webster dictionary notes: "a class of goods identified by name as the product of a single firm or manufacturer," <http://www.merriam-webster.com/dictionary/brand>), the term "brand" now signifies associations people have with the product. The American Marketing Association, a professional association for marketers, offers the following definitions: "A brand is a customer experience represented by a collection of images and ideas; often, it refers to a symbol such as a name, logo, slogan, and design scheme ... A [brand is a] name, term, design, symbol, or any other feature that identifies one seller's good or service as distinct from those of other sellers." (American Marketing Association Dictionary, http://www.marketingpower.com/_layouts/Dictionary.aspx?dLetter=B.) The pre-eminent academic marketing authority Philip Kotler notes that "[b]rands represent consumers' perceptions and feelings about a product and its performance—everything that the product or service means to consumers. In the final analysis, brands exist in the minds of consumers." (In: Kotler, Philip et al., *Marketing: An Introduction*, London, 2009, p. 243.)

1148 The defining quality of a corporation's product and service offering became evident when the former CEO of the Hewlett-Packard Company (HP), Leo Apotheker, was let go a few months after announcing his intention to shut down or spin off all hardware operations at the company to focus on enterprise software instead. Having come from the German software corporation SAP AG, Apotheker perhaps underestimated both that the hardware business (e.g., computers, printers) still defined HP, and an exit from this business would consequently be met with fierce resistance. The redefinition of a corporate mission and strategy can thereby be constrained by the material status quo.

branding, which has in and of itself become a fundamental asset class.¹¹⁴⁹ Without a brand, a product is more difficult to differentiate and hence easier to substitute. Thirdly, the products offered by a corporation and the brands through which they are marketed form the key touch points with its consumers, customers, and clients.¹¹⁵⁰ Without demand for products or services, a corporation can neither begin to do business nor profitably sustain itself.

In light of this centrality accruing to goods and brands, it is unsurprising that some of the most high-profile managerial ethics dilemmas involve what it is a corporation sells. Probably the most frequently cited case in the business ethics literature is that of the 1982 poisoned Tylenol capsules when executives at the health care corporation Johnson & Johnson were faced with the death of seven customers in the Chicago area and the dilemma whether to subsequently, at a cost of 100m U.S. dollars and the risk of indefinitely losing public confidence,

1149 According to a former McDonald's CEO, brands are more valuable than all physical assets: "If every asset we own, every building, and every piece of equipment were destroyed in a terrible natural disaster, we would be able to borrow all the money to replace it very quickly because of the value of our brand ... The brand is more valuable than the totality of all these assets." (Cited in: Kotler, Philip et al., op. cit., p. 243.) For an applied study of how brands qualify as corporate assets, see: Tollington, Tony, *Brand Assets*, Hoboken, NJ, 2002. In corporate practice, brand management has become a key function, pioneered by the consumer goods giant Procter & Gamble (Harvard Business School Working Knowledge, P&G Changing the Face of Consumer Marketing, Cambridge, MA, 2000, <http://hbswk.hbs.edu/archive/1476.html>). For a history of brand management, see: Fullerton, Ronald A./Low, George S., *Brands, Brand Management, and the Brand Manager System: A Critical-Historical Evaluation*, in: *Journal of Marketing Research*, Vol. 31, Issue 2, May 1994, pp. 173-190. Specialized consulting firms such as Interbrand seek to measure and develop the financial value (also known as equity) of brands—according to its most recent ranking of the world's most valuable brands, the Coca-Cola brand tops the list with a value of nearly 72m USD (Interbrand, *Best Global Brands 2011*, http://interbrand.com/Libraries/Branding_Studies/Best_Global_Brands_2011.sflb.ashx?download=true). The main mechanism with which financial value is captured through branding is competitive differentiation and the resulting charging of premiums. (Kotler, op. cit., p. 244 also notes that consumers are willing to pay a premium of 100% for Heinz ketchup, 50% for Coca-Cola soda, and 40% for Volvo cars). For studies on how businesses leverage the power of their brands, see: Davis, Scott, *Brand Asset Management: How Businesses Can Profit from the Power of Brand*, in: *Journal of Consumer Marketing*, Vol. 19, Issue 4, 2002, pp. 351-358; Aaker, David A., *Managing Brand Equity: Capitalizing on the Value of a Brand Name*, New York, NY/London, 1991.

1150 In marketing research and practice, the term "touch point" refers to all moments and locations at which customers and other stakeholders come into contact with a product, service or brand (e.g., advertising, purchase, use, customer service). Besides determining the interaction between a corporation and its customers/clients, products and services also have a strong effect on other stakeholders—for instance, employees, investors, local communities, etc., are more likely to do business with a corporation that markets products and services they appreciate.

order a U.S.-wide recall of the pain-relief product.¹¹⁵¹ More recently, the executives of web-based companies such as Google and Facebook, whose products and services are offered free of charge to consumers by providing advertisers with detailed user information and analyses, are confronted with increasingly severe dilemmas between advertisement accuracy and privacy protection.¹¹⁵²

Management dilemmas such as these result when manifestations of a product or service clash with certain values, norms, and beliefs—in these cases, poisoned Tylenol bottles vs. consumer safety, Google Street View and Facebook Open Graph vs. consumer privacy.¹¹⁵³ These types of dilemmas can be navigated by recalling (as Johnson & Johnson chose to do) or tweaking (as Google and Facebook are doing by offering enhanced privacy options) certain problematic aspects of products or services, whereas their fundamental qualities remain the same.

The same mechanism can be applied to branding dilemmas, such as when McDonald's executives in Germany on the one hand managed a highly valuable brand, but faced increasing resistance from environmental and health activists regarding some of the phenomena associated with it, such as deforestation and obesity. As a result of this reputational risk, the fast-food chain chose to introduce a green logo and to offer healthier menu options such as salads.¹¹⁵⁴

1151 The facts of the Johnson & Johnson Tylenol case can be found in nearly every business ethics textbook. See for instance, Shaw, William H, *Business Ethics: A Textbook with Cases*, Florence, KY, 2010, pp. 194f. For an applied perspective, see: Green, Ronald Michael, *The Ethical Manager: A New Method for Business Ethics*, New York, NY, 1994, pp. 207ff. For a brief analysis of the case from a theological perspective, see Bayer, Richard C., *Ethical Reasoning in Business*, in: Acton Institute, *Religion & Liberty*, Vol. 12, No. 1, 2002, <http://www.acton.org/pub/religion-liberty/volume-12-number-1/ethical-reasoning-business>.

1152 For instance, the Google Maps Street View service unleashed public outrage, legal action, and regulatory backlash across Europe for allegedly violating privacy laws. Facebook is also at the center of controversies surrounding its privacy policies, particularly in countries such as Germany which witnessed devastating consequences of fascism and communism impinging on human and civil rights including privacy protection. The Frankfurter Allgemeine Zeitung accordingly likened the online social network to the Stasizentrale, i.e., the headquarters of the Ministry for State Security in the GDR (<http://www.faz.net/aktuell/feuilleton/debatten/digitales-denken/facebook-das-leben-wird-zur-online-show-11370897.html>); and the Bild tabloid dedicated its lead story to a Facebook privacy scandal (<http://www.bild.de/digital/internet/facebook/student-deckt-auf-was-wirklich-mit-den-daten-passiert-20203562.bild.html>). Edward Snowden's revelations have led to further public scrutiny of Internet companies' technological capabilities.

1153 Such clashes then require management decisions in light of possibly opposing claims—e.g., cost efficiency and human health, revenue growth, and digital privacy.

1154 McDonald's Goes 'Green' in Germany, in: *The Independent*, London, November 24th 2009, <http://www.independent.co.uk/environment/mcdonalds-goes-green-in-germany-1826567.html>; http://www.mcdonalds.com/us/en/food/food_quality/nutrition_choices.html.

Such tweaking and adapting are aimed at pro-actively countering a delegitimization of products and brands and addressing the risk of public sentiment that demands prohibitions or at least some forms of restriction. This delegitimization can seriously threaten the license to operate in entire product segments, as has been the case with cigarettes, alcohol, narcotics, gambling, violent video games, certain pharmaceutical products, medical treatments, weapons, military technology, pornography, prostitution, biotech services, and genetically modified foods, to name but a few examples. In these industries, little or nothing can be changed about their products and services to make them less controversial, because it is the essence of the offering itself that conflicts with certain moral standpoints.

Conversely to the above two sets of cases, there are products and brands which are perceived as possessing ethical goodness. Prominent cases of this approach include The Body Shop, which offers products that are marketed as “natural, inspired by nature, ethically produced,”¹¹⁵⁵ the wealth of “fair trade” products promising a better deal for suppliers along the value chain, the microcredit offered by Nobel Laureate Muhammad Yunus’s Grameen Bank to poor people without collateral,¹¹⁵⁶ organic food and fitness service providers, and the “ethical, green” ice-cream of Ben & Jerry’s.¹¹⁵⁷ For such companies, the alignment of private profits and public principles becomes a strategic source of competitive advantage.¹¹⁵⁸ Rather than just avoiding or addressing the dilemmas resulting from clashes of product attributes and moral sentiments, such firms are leveraging their reputation of ethical goodness as a marketing differentiation.

The phenomenon that emerges from all the above cases is that the perceived ethical quality of a product or service can both induce and reduce sales. It may thus pay for a corporation when its goods or it itself are considered to be good, and conversely a corporation’s performance might suffer when its products or organization are perceived to be bad. Consequently, marketing science and practice have increasingly set their sight on the ethics of product development and brand

1155 <http://www.thebodyshop-usa.com/>.

1156 The later controversy surrounding microcredit and Yunus (both have been accused of loan-sharking the poor) could find such traction precisely because the two are commonly perceived as being and doing good. Organizations and individuals considered to be ethical are judged by particularly high standards. For a brief analysis of this phenomenon, see: Rogers, Danny, *Ethical Tactics Arouse Public Doubt*, in: *Marketing*, August 6th, 1998, pp. 12f.

1157 See the following news report about the importance which the ice-cream company’s founders Ben Cohen and Jerry Greenfield attribute to their ethics: Farrell, Sean, *Ben and Jerry Explain How They Got The Taste for Ethical, Green Ice-Cream*, in: *The Sunday Times*, February 22nd, 2010, http://business.timesonline.co.uk/tol/business/industry_sectors/retailing/article7035599.ece.

1158 For a brief analysis and interesting cases of such an alignment, see: Mitchell, Alan, *The Power of Ethical Branding*, in: *MarketingWeek*, May 22nd, 1997, <http://www.marketingweek.co.uk/home/the-power-of-ethical-branding/2015908.article>.

management. Over a decade ago, a journal called on new product development practices to take into account “[t]he changing demographics, values, expectations, and behavior of the population” and the “[i]ncreased government and public scrutiny of business decisions, with greater focus on ethical dimensions of these decisions.”¹¹⁵⁹ Since then, studies have argued for ethics to be viewed as an additional attribute determining a product’s benefit to consumers.¹¹⁶⁰ This so-called augmentation can function in two directions, as Andrew Crane rightly notes: “it is essential that ethical product augmentation is thought of as something that can be both positive *and* negative, an incentive *and* a disincentive, whether intended or not.”¹¹⁶¹ Thus, there are corporations and products that are ethically praised, and those that are ethically condemned. As a result, the impact of products and the management of reputation become an interlinked moral issue. Given such ethical augmentation, the following section sets out to develop a talmudic perspective on the ethics of product and brand development, based on the fundamental question of how to determine a product and brand’s moral worth.

8.1.2. *The Principles of Reciprocity, Honesty, Reputability, and Society*

The fundamental shifts in economic activity during the past three millennia explain why the Talmud contains no traditions that directly discuss the most

1159 Mahajan, Vijay/Wind, Jerry, Issues and Opportunities in New Product Development: An Introduction to the Special Issue, in: *Journal of Marketing Research*, Special Issue on Innovation and New Products, Vol. 34, February 1997, p. 1.

1160 Based on Theodore Levitt’s product augmentation model, which differentiates between the generic product that provides a fundamental benefit sought by consumers, the expected product that provides the basic terms and services with which the generic product is offered, and the augmented product that provides customers with useful but unexpected benefits (Levitt, Theodore, *Marketing Success Through Differentiation—of Anything*, in: *Harvard Business Review*, Cambridge, MA, January-February 1980, pp. 4ff.). N. Craig Smith then argues that ethical considerations are one type of product augmentation, providing unexpected benefits, or costs to consumers (Smith, N. Craig, *Morality and the Market: Consumer Pressure for Corporate Accountability*, London, 1990). While Smith is right to note the importance of a product’s ethical quality, his use of Levitt’s model seems to posit that the ethical benefits and costs of a product are not expected by consumers, although there are many instances in which products are explicitly purchased or avoided due to ethical considerations.

1161 Crane, Andrew, Unpacking the Ethical Product, in: *Journal of Business Ethics*, Vol. 30, Issue 4, April 2001, p. 364. Crane continues to note that in an individual consumer’s mind, given ethical qualities of a product might be neutral as well—ethical augmentation is thereby a continuum ranging from positive through neutral to negative. In addition to this quality-axis, Crane develops a framework to study the content of ethical augmentation, i.e., the various levels on which ethical issues can be considered in relation to the product—the product itself, its marketing, the corporation, and the country (p. 365).

pressing ethical issue in the product development process of contemporary corporations, namely how to determine whether a product innovation is not just profitable but equitable as well. The talmudic sages lived in a society where agriculture, services, crafts, and industry were the established modes of production, and where markets and fairs were the institutionalized trade mechanisms.¹¹⁶² In such an economy, there is still a direct relationship between an occupation and the product or service it develops—i.e., shoemakers make shoes, olive pressers press oil, carpenters construct homes, teachers educate students, traders make deals, etc. Most probably because under these circumstances it is an art, craft, science, or trade that directly determines the type of work people engage in and the goods they thereby offer, the sages encourage and discourage certain occupations rather than the production of specific products.¹¹⁶³

Yet in times of mass production and commoditization, the determining link between occupations and the goods that result from them has become largely obsolete. For irrespective of the industry corporations operate in, their management professionals responsible for product development are all charged with basically the same tasks: coordinating the allocation of research and development budgets and the utilization of technological capabilities with the aim of bringing promising innovations to market.¹¹⁶⁴ Whether they work at an automotive company, investment bank, or ice-cream manufacturer, these professionals use essentially generic tools, processes, and frameworks in order to assess market demand, develop a business plan, calculate investment requirements, etc.¹¹⁶⁵ Consequently, whereas in the talmudic era it was fairly clear what the end-products of, say, the tailoring profession are, contemporary management is a

1162 Safrai, Zeev, *The Economy of Roman Palestine*, London, 1994, pp. 61-135. This basic economic structure did not change in the Babylonian exile, although a shift did take place away from agricultural activity towards trade and commerce (see pp. 135-138).

1163 See the study of the talmudic work ethic on pp. 57-64.

1164 Individual corporations spend nearly 9bn USD and up to 25% of sales on research and development annually. See Booz & Company's annual study of the world's largest corporate R&D spenders: Dehoff, Kevin/Jaruzelski, Barry, *Profits Down. Spending Steady. The Global Innovation 1000, 2009*, http://www.booz.com/media/uploads/Innovation_1000-2009.pdf.

1165 This generic nature of management practice is explained by the functional and sectoral specialization of managers. Whereas particular industry characteristics may vary, the functional responsibilities of a CEO, CMO, CFO, etc., remain essentially the same. The similarity of management tools, processes and frameworks becomes evident in business school didactics and consulting methodologies that develop and serve general managers using mostly standardized functional models, with added customization options for industry-specific characteristics. That the direct connection between occupation and end-product no longer holds in much of contemporary management practice is also evinced by executives switching industries (e.g., the former CFO of a pharmaceutical company becoming the new CFO of a financial services firm).

discipline that can theoretically and practically be applied to bring any and all products imaginable to market, both ethical and unethical ones, both ethically and unethically. The resulting infinite scope and moral liberty of management are unique and call for high standards of responsibility when making decisions on what products to market. In corporate business and product development practice, the ethically relevant issue is hence not which occupation managers ought to pursue, since management already functions as an essentially identical occupation across industries, but rather which moral principles ought to be taken into account on the corporate quest for product innovation.

The remoteness of this issue from talmudic tradition likely explains why there does not yet seem to be a contribution of the Jewish business ethics literature directly germane to corporate product development. However, the methodology of a thorough and innovative paper by Michael Broyde on the bioethical permissibility of cloning from a *halakhic* perspective is likely a fruitful approach for our purposes as well. In this paper, Broyde deals with a question that was obviously not yet directly asked, let alone answered, by the talmudic sages due to the biotechnological limitations of their time. Nonetheless, the paper develops a convincing argument indirectly, applying Jewish family law, concepts such as the *Golem* (“artificial person”), and a range of miscellaneous legal opinions to the question of cloning.¹¹⁶⁶ In a similar manner, this section attempts to guide corporate product development, a process perhaps as far removed from classical rabbinic thought as cloning, by extracting principles from talmudic traditions indirectly applicable to our question at hand through interpretation and deduction.

The following four suggested principles of product development are now presented in turn: reciprocity, honesty, society, and reputability. These principles are neither mutually exclusive nor collectively exhaustive. Reciprocity and honesty are interrelated, as are reputability and society, etc. Further scholarship and reflection might produce additional principles. Nonetheless, these initial four can provide a foundation to determine a product’s moral worth.

Reciprocity

As most other religious and ethical traditions, Judaism teaches an ethic of reciprocity that urges treating others based on a reflection of how oneself would

1166 Broyde, Michael J., Cloning People and Jewish Law: A Preliminary Analysis, in: Jewish Law, undated, <http://www.jlaw.com/Articles/cloning.html>.

like to be treated.¹¹⁶⁷ The following verse forms the biblical manifestation of this ethic: וְהָיָה אִתְּךָ לְרֵעֶךָ כְּמֹדֶךָ: אֲנִי, יְהוָה. ¹¹⁶⁸ The love of oneself should thereby be reflected by a love of others, whereas a mistreatment by others may not effect a mistreatment of them. Reciprocity is thus commanded regarding amicable sentiments, yet prohibited regarding spite and resentment leading to grudge-holding and revenge-taking. This core philosophy is also promulgated by the talmudic sages in a number of traditions, particularly in Tractate Avot.

R. Eli'ezer specifies that the honor one accords oneself, one should accord to others as well: רַבִּי אֵלִיעֶזֶר אוֹמֵר, יְהִי כְבוֹד חֲבֵרְךָ חַיִּיב עֲלֶיךָ כְּשֶׁלְּךָ, וְאֵל תְּהִי נֹחַ לְכַעַר...¹¹⁶⁹ The Midrashic commentary in Avot deRabbi Natan understands this Mishnah to teach that just as someone perceives honor pertaining to himself, so too should he see honor pertaining to his fellow—and just as a person does not want a bad name circulating against his honor, so too should he avoid wanting to circulate a bad name against the honor of his fellow.¹¹⁷⁰ Similar to the above biblical verse, positive stances towards oneself are to be reciprocated towards others, whereas negative ones are to be eschewed or at least tempered.

This former principle of reciprocity is extended two Mishnayot further on, from love and honor to money: רַבִּי יוֹסִי אוֹמֵר, יְהִי מִמּוֹן חֲבֵרְךָ, חַיִּיב עֲלֶיךָ כְּשֶׁלְּךָ...¹¹⁷¹

1167 This ethic has been famously coined the Golden Rule (“treat others in a manner that you want to be treated in”), and the Silver Rule in its negative formulation (“do not treat others in a manner that you do not want to be treated in”). For a comparative analysis of the Golden Rule in religious traditions, see Chilton, Bruce/Neusner, Jacob, *The Golden Rule: The Ethics of Reciprocity in World Religions*, New York, NY, 2009. This volume also contains Neusner’s paper *The Golden Rule in Classical Judaism*, available online at http://www.bard.edu/iat/newsletters/IATNewsletter/documents/Wednesday_April16.pdf, pp. 1-15. See also Chilton, Bruce/Neusner, Jacob, *The Golden Rule: Analytical Perspectives*, Lanham, MD, 2008. A philosophical treatise on the Golden Rule is offered by Wattles, Jeffrey, *The Golden Rule*, Oxford, 1996. For an early application of the Christian manifestation of the Golden Rule to business, see Dole, Charles Fletcher, *The Golden Rule in Business*, Boston, MA, 1896.

1168 Lev 19,18: You shall not take vengeance, nor bear a grudge against the children of your people, and you shall love your fellow as yourself, I am YHWH.
Cf. Lev 19,34: כְּאֶזְרָח מִמֶּנּוּ יִהְיֶה לְכֶם הַגֵּר הַגֵּר אֲתֶכֶם, וְאֶהְבֶּתֶם לוֹ כְּמֹדֶךָ--כִּי-גֵרִים הָיִיתֶם, בְּאֶרֶץ מִצְרַיִם: אֲנִי, יְהוָה. אֲלֵהֶיכֶם כְּאֶזְרָח מִמֶּנּוּ. Like a resident from amongst you shall be the foreigner that lives with you, and you shall love him like yourself—for you were foreigners in the land of Egypt. I am YHWH, your God.

1169 mAv 2,13: R. Eli'ezer says, “May the honor of your fellow [lit. friend] be as dear to you as your own. Do not be easily moved by anger....”
The Mishnah continues with the teachings that one should repent one day before one’s death, and strive to learn from sages while maintaining a respectful distance towards them.

1170 AvRN I 15,1.

The talmudic understanding of a name is analyzed below.

1171 mAv 2,15: R. Yossi says, “May the money of your fellow [lit. friend] be as dear to you as your own....”
This Mishnah continues with a call to prepare oneself for Torah study and to always act for the sake of heaven.

negative, urging an avoidance of doing what is hateful to oneself onto others.¹¹⁷⁷ In a famous narrative, a man asks Hillel to make him a proselyte on condition that he be taught the entire Torah while standing on one foot: בא לפני הלל גייריה לא תעביד זו היא כל התורה כולה ואידך פירושה הוא זיל גמור אמר לו דעלך סני לחברך לא תעביד זו היא כל התורה כולה ואידך פירושה הוא זיל גמור.¹¹⁷⁸ Hillel's striking statement establishes reciprocity as the fundamental principle of the entire Torah. A similar view is formulated in the positive by R. Akiva, who holds that the obligation to love one's fellow as oneself is the major principle of the Torah: ואהבת לרעך כמוך. רבי עקיבה אומר זהו כלל גדול בתורה.¹¹⁷⁹

Reciprocity demands the reflection, consideration, and connection necessary to both place oneself in others' shoes and others in one's own shoes.¹¹⁸⁰ Perhaps this is why Hillel also suggests putting oneself in the position of others: ואל תדון ואל תהיה למקומו את חברך עד שתגיע למקומו.¹¹⁸¹ Thereby, before passing judgment on people, one should first seek to understand their perspective.

The *Tzad haShave* ("common denominator") of all the above traditions establishing the principle of reciprocity is transcendence of egotism and misanthropy through love, honor, and consideration. Rather than exclusively serving oneself, putting this principle into practice inspires care for others as well, thereby shifting life's emphasis from taking to giving, from demanding to providing.

1177 For it is more likely that those with a lack of self-love, self-esteem, or financial prudence would prefer living without these oftentimes painful character traits. As noted above, the negative formulation of the Golden Rule is also referred to as the Silver Rule.

1178 bShab 31a: A man desiring a conversion came before Hillel, who said to him, "What is hateful to you, do not do onto your fellow [lit. friend]. That is the whole Torah, the rest is commentary thereof. Go and learn [lit. complete] [it]."

Cf. the positive phrasing of the Golden Rule attributed to Jesus of Nazareth in Matthew 7,12 and Luke 6,31. Further negative phrasings can also be found in the Deuterocanonical traditions of Tobit 4,15 and Sirach 31,15.

1179 yNed 9,1 41c [Venice and Krotoshin Editions]: "And you shall love your fellow as yourself." [Lev 19,18.] R. Akiva says, "This is the major principle of the Torah." [Piotrkow Edition: yNed 9,4 30b.]

This tradition continues with a dissenting opinion of Shimon b. Aza'i, who holds that the major principle of the Torah is taught in Gen 5,1 (זה ספר תולדות אדם), arguing that this verse perceives all of humanity as equal and as honored by its descendance from Adam who in turn was created in the image of God.

Cf. the parallel traditions in Sifra Qedoshim 4,12 (ed. Weiss 89a) and GenR 24.

1180 Figuratively placing oneself in someone else's shoes enables reflecting on how oneself would like to be treated if one were that person; while placing someone else in one's own shoes can lead to interpersonal identification, care, and trust.

1181 mAv 2,5: And don't judge your fellow until you have reached his place.

Honesty

As noted in this book's chapter on fraud and corruption, the concepts of *Ona'ah*, *Lifnei Iver*, and *Geneivat Da'at* have cross-functional relevance, being applicable to the corporate functions of strategy, finance, marketing, human resources, operations, etc. Clearly, these concepts are applicable to product and brand development as well. Underlying them all as a common denominator is the fundamental principle of honesty.¹¹⁸²

Truthfulness is already a major biblical tenet, with אמת (*Emet*, “truth”) considered to be one of the Thirteen Attributes of God (שלוש עשרה מידות).¹¹⁸³ Truth thereby attains the divine connotations of wholeness, completeness, and integrity, as symbolized by the word's composition of the Hebrew alphabet's first (א), middle (מ) and last (ת) letters.¹¹⁸⁴ The Talmud offers a beautiful interpretation of the respective alphabetical compositions of *Emet* and *Sheqer* (“falsity,” שקר): שי"ן שקר תי"ו אמת מאי טעמא שקר מקרבן מיליה אמת מרחקא מיליה שיקרא שכיח קושטא לא שכיח ומאי טעמא שיקרא אחדא כרעיה קאי ואמת מלבן לבוניה קושטא קאי שיקרא לא קאי.¹¹⁸⁵ This tradition emphasizes both the importance of pursuing truthfulness and the difficulty of achieving it. Accordingly, a Proverb urges the acquisition of truth, while warning of selling it out: אַמֶּת קָנֵה, וְאַל-תִּמְכַּר; הַכֶּמֶה וּמוֹסֵר וּבִינָה.¹¹⁸⁶

The converse of the Torah's idealization of honesty is its condemnation of dishonesty: מִדְּבַר-שָׁקֶר, תִּרְחֹק; וּנְקֵי וְצַדִּיק אֶל-תִּתְּרַג, כִּי לֹא-אֶצְדִּיק רָשָׁע.¹¹⁸⁷ The resulting prohibition to be dishonest, particularly as manifested by lying, is frequently

1182 For avoiding unfair prices, refraining from misleading people and from creating false impressions, for instance, are all manifestations of truthful behavior.

1183 Ex 34.6. Cf. bShab 55a, which teaches that the seal of God is truth (חותמו של הקב"ה אמת).

1184 As taught by R. Beryl Gershenfeld, the Rosh haYeshivah from whom I was fortunate to learn in Jerusalem.

1185 bShab 104a: [The letter] *Shin* [stands for] *Sheqer*, [the letter] *Tav* [stands for] *Emet*. Why are the letters of *Sheqer* close [to each other in the alphabet, i.e., adjacent], [while] the letters of *Emet* are far [from each other in the alphabet]? Falsity is frequent, truth is rare [Soncino commentary: “Instances of truth are found only at distant intervals”]. And why does *Sheqer* [stand] on one foot, while *Emet* has a brick-like foundation [i.e., the letters comprising *Sheqer* end in a single vertical line at the bottom, whereas those comprising *Emet* rest on two vertical lines (א, ת) and a horizontal one (מ)]? Truth stands, falsity does not stand.

R. Gershon Fluk cites this tradition in the following article: Fluk, Gershon H., The Ethics of Cheating—The Jewish View, in: Ten Da'at 1,1, 1987, pp. 9-11, available online from: http://www.lookstein.org/articles/cheating_ethics.htm.

1186 Prov 23,23: Acquire truth, and do not sell it; wisdom, and instruction, and understanding [as well].

1187 Ex 23,7: From a false matter, distance yourself; and do not slay the innocent and righteous, for I shall not justify the wicked.

ממי שאינו עומד בדברור.¹¹⁹³ The Talmud thereby criticizes a dichotomy between words and actions that follow them.

Conversely, staying true to one's words is established as an ideal, which is also reflected in the gravity with which biblical and talmudic injunctions deal with the concepts of a vow (נדד, *Neder*) and an oath (שבועה, *Shevu'a*).¹¹⁹⁴ In fact, one of the Ten Commandments (עשרת הדיברות) forbids making an oath in vain,¹¹⁹⁵ swearing falsely is also expressly prohibited by the Bible,¹¹⁹⁶ as is failing to keep one's word and promise,¹¹⁹⁷ and an entire talmudic tractate is dedicated to both oaths (Tractate *Shevu'ot*) and vows (Tractate *Nedarim*). Besides teaching intricate *Halakhot* regarding concepts such as promises, intentions, resolutions, etc., these traditions are homiletic appeals to live the virtue of truthfulness.

1193 bBM loc. cit.: R. Shimon says, "Even though they [i.e., the sages] said that a garment [lit. *Tallit*] acquires a gold *Dinar*, while a gold *Dinar* does not acquire a garment [and it is hence permissible to retract from a transaction before the garment changes hands], in any case that is [only] the *Halakhah*. But they [also] said, 'He who exacted punishment from the people in the generation of the Great Flood [during Noah's time] and from the people in the generation of the dispersion [following the episode of the Tower of Babel], He is destined to exact punishment from those that do not stand by their word [lit. speech].'"

As noted in the chapter on fraud and corruption, the central source regarding the talmudic conception of price fraud is chapter four of Tractate Bava Metzi'a. It opens with a Mishnah teaching that the more valuable of two items in a transaction acquires the item of lesser value, and not the other way around (e.g., gold acquires silver but silver cannot acquire gold; movable items acquire coins, but not vice versa). One consequence of this economic doctrine is that when produce is handed over without money having exchanged hands, a transaction takes effect and neither of its parties can withdraw from it, whereas when money is given before produce, either party can still withdraw. Because this *Maskana* permits renegeing on deals in certain cases, the Mishnah gives the stark warning cited in the above talmudic teaching: מי שפרע מאנשי דור המבול ומדור הפלגה הוא עתיד להפרע ממי שאינו עומד בדברור (mBM 4,1). This remarkable statement invokes two of the most severe divine retributions of the Bible, the collective punishment of the deluge from which Noah's ark emerges and that for the construction of the Tower of Babel (as recounted in Gen 6-9 and 11,1-11 respectively.), to teach that while it is *halakhically* permissible to retract from a commercial exchange when the item of superior value has not been taken possession of yet by its prospective owner, homiletically there is a strict obligation to abide by one's word.

1194 While there are numerous kinds of *Shevu'ot* and *Nedarim*, each with their own intricate *halakhot* and applications, the Gemarah in bNed 2b establishes as the basic difference between the two that while a *Neder* applies to an object, a *Shevu'a* [oath] applies to a person. For instance, the statement "This wine is forbidden to be drunk by me" constitutes a vow, whereas the statement "I will not drink this wine" constitutes an oath.

1195 Ex 20,6; Dtn 50,10. For further biblical verses on oaths and vows, see: Num 30,2-17; Lev 5,4.

1196 Lev 19,12.

1197 Dtn 23,24. Based on the biblical narrative of Abraham, the Talmud finds that "the righteous promise little and perform much, the wicked promise much and do not perform even a little." (bBM 87a.)

קיים--על הדין, ועל האמת, ועל השלום.¹²⁰³ Thereby, standards of truthfulness might have to be compromised when they endanger peace and justice. This point is studied in a paper by Hershey Friedman and Abraham Weisel, who argue that while the Jewish tradition emphasizes the importance of honesty, it might also justify lying in order to preserve peace, to avoid harm, damage and hurt, and in order to be modest and eschew arrogance.¹²⁰⁴ As with most talmudic principles, the actualization of appropriate honesty requires an awareness and navigation of the dialectical tension resulting from competing demands.

Society

Similar to how the talmudic work ethic developed in this book's chapter on corporate culture encourages occupations that contribute to societal development and discourages those that do not, so too teach a number of talmudic traditions that products sold and services offered should have a positive impact on society and avoid a harmful one.

The first chapter of the mishnaic Tractate Avodah Zarah institutes and discusses many stringencies regarding business transactions between Jews and so-called idolaters. The Tractate opens with the prohibition of doing any business with “star worshippers” (עובדי כוכבים, a talmudic term for “heathens”) three days before their festivals: לפני אידיהן של גויים שלושה ימים, אסור מלשאת ומלתת עימהן, ומלהשאילן ומלשאול מהן, מלהלוותן ומללוות מהן, מלפרוען ומלפרוע מהן. רבי יהודה אומר, נפרעין מהן, מפני שהוא מצר. אמרו לו, אף על פי שהוא מצר עכשיו, שמח הוא לאחר זמן.¹²⁰⁵ As *Rashi* explains, these prohibitions are instituted so as not to give heathens additional inducement for gratitude and celebration before their idolatrous festivals.¹²⁰⁶ The Mishnah thus both acknowledges the benefits of business, portraying them as a source of gratitude, while simultaneously denying these benefits when they support practices condemned by the sages. talmudic societal

1203 mAv 1,18: Rabban Shimon b. Gamliel says, “The world endures on three things—on justice [lit. law], and on truth, and on peace.”

1204 Friedman, Hershey H./Weisel, Abraham C., Should Moral Individuals Ever Lie? Insights from Jewish Law, in: Jewish Law, 2003, http://www.jlaw.com/Articles/hf_LyingPermissible.html.

1205 mAZ 1,1: Three days before the festivals [lit. calamities] of non-Jews, it is forbidden to trade [i.e., do business] with them, to lend [items] to them or to borrow [items] from them, to lend [money] to them or to borrow [money] from them, to repay a debt or receive any repayment from them. R. Yehudah says, “We should [be permitted to] receive repayment from them, as this can only depress them.” They said to him [i.e., the majority opinion of the sages is that]: “Even though it will depress them now, they will rejoice about it in time.”

1206 *Rashi*, bAZ 2a, s.v. אסור מלשאת ומלתת עימהן, לפני אידיהן של גויים שלושה ימים, אסור מלשאת ומלתת עימהן.

interests are thereby granted precedence over economic ones, a prioritization also found four Mishnayot further on: וּבְנֵי שׁוֹחַ אֱצִטְרוּבְלִין, ובנות שוח; אלו דברים אסורין למכור לגויים--אצטרובלין, ובנות שוח; בפטוטרותיהן, ולבונה, ותרנגול לבן. רבי יהודה אומר, מוכר הוא לו תרנגול לבן, בין התרנגולין; בזמן שהוא בפני עצמו, קוטע את אצבעו ומוכרו, שאין מקריבין חסר לעבודה זרה. ושאר כל הדברים--סתמן מותר, ופירושו אסור. רבי מאיר אומר, אף דקל טב וחצב ונקליבס, אסור למכור לגויים.¹²⁰⁷ The ensuing Gemarah connects the products blacklisted by this Mishnah to specific forms of idol worship, and also interprets the Mishnah's differentiation between "specified" and 'unspecified' items as a prohibition on selling goods to a buyer who specifies his intention to use them for idolatrous purposes, whereas sales that could be used for other purposes are permitted.¹²⁰⁸

While the Mishnayot up to this point in the first chapter of Avodah Zarah restrict economic activity to curtail what the sages perceive as idolatry, and hence a phenomenon which is harmful primarily from a talmudic perspective, the following Mishnah codifies such a curtailment explicitly in the interest of more general societal well-being: אין מוכרין להן דובין ואריות, ולא כל דבר שיש בו ניוקה לרבים. . . . אבל בונין עימה דיימוסיות ומרחצאות; הגיעו אין בונין עימהן בסילקי, וגרדון, אסטדיא, ובימה. אבל בונין עימה דיימוסיות ומרחצאות; הגיעו לכיפה שמעמידין בה עבודה זרה, אסור לבנותה.¹²⁰⁹ Compared to the foregoing traditions, this Mishnah has a more universalistic perspective. Firstly, it refers to *public* damage, as opposed to the previous condemnations of idolatry based primarily on a particularistic perspective of permissible religious practices.¹²¹⁰ As R. Ovadiah Bertinoro and the codes comment, the prohibition to inflict "public

1207 mAZ 1,5: These items are forbidden to be sold to non-Jews—*Iztroblin*, and *Bnoth-Shuach*, stems, frankincense and a white rooster. R. Yehudah says, "One may sell him [the non-Jew] a white rooster, amongst other roosters; when he [the rooster] is sold by himself, one should clip its spur and then sell it to him, for a deficient animal is not sacrificed during idol worship. And for all remaining things—if they are not specified, [their sale is] permitted, and if they are specified, [their sale is] forbidden." R. Meir says, "Also a good palm, *Chazav* and *Nikolaus* [certain types of dates or date palms; nk] are forbidden to be sold to non-Jews."

1208 bAZ 14a-b. Besides specificity as a variable in determining the permissibility of a sale, the proceeding Mishnah (mAZ 1,6) institutes local custom as a consideration, teaching that where it is the *Minhag* to sell small cattle to idolators, such a sale is permitted, whereas it is prohibited when there is a custom not to effect such sales.

Cf. mPes 4,3 and the ensuing Gemarah, legitimizing respect for local custom with a concern to avoid controversy.

1209 mAZ 1,7: One may not sell them [i.e., idolators] bears, lions, nor anything that might cause public damage. One may not build a basilica with them, nor a scaffold, nor a stadium, nor a platform. But one may build with them pedestals and baths; but when they reach the cupola in which the idol worship takes place [lit. stands], it is forbidden to build her [i.e., the cupola]. The Mishnah manuscript attributed to Maimonides uses the feminine term ניוקה לרבים, whereas the term generally used in the sources is the regular masculine נוק לרבים.

1210 It is important to note that the term לרבים נוק is only found in Tractate Avodah Zarah, and that the implications resulting from this casuistic *Halakhah* might hence not be representative of the talmudic tradition as a whole.

damage” includes the sale of items such as weapons; thus the motive of the Mishnah’s prohibition is to prevent the sale of items that can harm society as a whole.¹²¹¹ Hence, our Mishnah contains the dialectic of on the one hand regulating economic transactions between Jews and heathens while simultaneously preventing damage to people of all nations, cultures, and religions.

Secondly, the prohibition of aiding the construction of a basilica, an executioner’s scaffold, stadium, or platform reflects a concern with a wider conception of justice, because these buildings were commonly used as courts of law where the innocent might be sentenced and put to death.¹²¹² Thirdly, the Mishnah makes it clear that if a building is not specifically used for idolatrous purposes, abetting its construction is permissible, so long as it neither harms the public nor supports an unjust judiciary. What these Mishnayot ultimately leave us with is the establishment of a responsibility to avoid societal harm caused by goods and services.¹²¹³

This responsibility is also reflected by the *Sugya* discussed above teaching that when R. Yehudah haNasi offers to sell the white mules due to which R. Pinchas b. Yair had reprimanded him, the latter responds that doing so would constitute a violation of *Lifnei Iver*, because the unwitting buyer of the mules would then be liable for the subsequent damage caused by the potentially dangerous animals.¹²¹⁴ Trading in items that can cause harm without their purchaser being aware of this potential before the transaction takes place is thus condemned with the force of a *deOraita* (“biblical”) prohibition.

Whereas the teachings discussed so far in this section demand that goods and services cause no harm to society, a number of traditions analyzed in this book’s section on the talmudic work ethic urge an active contribution to societal welfare.¹²¹⁵ Recall that offering a gamble is *halakhically* discouraged because it

1211 See for instance the Bartenura, mAZ loc. cit.

1212 See fn. 16-17 of the Soncino Edition’s commentary to this Mishnah.

1213 A corollary of this responsibility, based on the rabbinic identification of sin with harm (see p. 117, fn. 457), could be that products and services which violate *Halakhah* are to be avoided as well. This view is reflected by the recent *Charedi* (Israeli ultra-orthodox) responsum noted in this book’s introduction, which prohibits purchasing shares of Israeli companies because shareholders thereby become “full partners in investments that involve Torah prohibitions: that earn yields from profits [generated] by selling on Shabbat ... and Yom Kippur; from [television] channels that are full of filth; and from obscene advertising,” as a booklet published by the Court of Justice of the Edah haChareidis (*Badatz*) justifies the responsum. Cited in: Toker, Nati, Rabbinical Court Forbids Haredim from Investing in Israeli Companies, in: Haaretz, May 7th, 2010, <http://www.haaretz.com/print-edition/business/rabbinical-court-forbids-haredim-from-investing-in-israeli-companies-1.288841>.

1214 bChul 7b. For a presentation and translation of this teaching, see pp. 240f and fn. 940. For the discussion of the biblical and later talmudic concept of *Lifnei Iver*, see pp. 94f.

1215 See pp. 63f.

does not promote the “settlement of the world” (יישובו של עולם),¹²¹⁶ whereas the entertainment offered by jesters is homiletically encouraged because of the peace and happiness it promotes.¹²¹⁷ These traditions can also be applied to product development, which thereby ought to contribute to societal welfare and well-being. The principle of society thus calls for a consideration of the social impact, both positive and negative, goods and services might cause.

Reputability

Many talmudic sources teach the importance of reputation, particularly by urging the establishment of a good name (שם טוב), and conversely by warning against a bad one (שם רע, lit. evil name). The Hebrew word for name (שם, *Shem*) finds its biblical etymology in the root שמה, which stands for identification.¹²¹⁸ Both meanings of the noun “name,” i.e., the word by which someone or something is referred to and reputation,¹²¹⁹ are hence a means of identification. Reputability thereby becomes a determinant of someone’s or something’s identity, which is perhaps the central reason why the rabbis emphasize the importance of this principle.

Both this emphasis and the double meaning of *Shem* are reflected in the following Midrash: כל זמן שאדם מרבה במצות הוא קונה שם טוב לעצמו, את מוצא שלשה שמות: נקראו לו לאדם, אחד מה שקוראים לו אביו ואמו, ואחד מה שקוראים לו בני אדם ואחד מה שקונה הוא לעצמו, טוב מכולן מה שקונה הוא לעצמו.¹²²⁰ Here, we find a differentiation between a

1216 bSan 24b. The talmudic critique of gambling is hence not (just) based on the harm caused by this activity, but on its lacking beneficial impact on society as well.

1217 bTaan 22a.

1218 Clark, Matityahu, *Etymological Dictionary of Biblical Hebrew*. Based on the Commentaries of Samson Raphael Hirsch, Jerusalem/New York, NY, 1999, p. 264.

1219 This double meaning exists both in Hebrew and in English. According to the Online Etymological Dictionary, the noun “name” has taken on the meaning of reputation since c. 1300 (see http://www.etymonline.com/index.php?allowed_in_frame=0&search=name&searchmode=none).

1220 Tan, א פרשת ויקהל סימן א: Every time that a person increases in *Mitzvot* [i.e., good deeds and the observance of *Halakhah*], he acquires a good name for himself. You find that a person is called by three names—one by which his father and mother call him, and one by which other people [lit. children of Adam] call him, and one which he acquires for himself; better than all of them is the one he acquires for himself.

A part of this Midrash is cited by Kahaner, op. cit., p. 232, in his chapter titled “The Ultimate Business Secret of the Rabbis: Reputation.” Unfortunately, the rich context of the Midrash is not discussed, and Kahaner’s 15-page chapter features but two talmudic sources besides this Midrashic tradition (one of which does not deal directly with reputation, but rather with *Lashon haRa*) to make its point that the rabbis viewed a good name as “the prime factor in business success” (loc. cit.), focusing instead on anecdotes and research from contemporary business practice. Besides Kahaner’s cursory chapter, which is particularly lacking given that it is contained in a book that claims to teach *talmudic* “business lessons from the ancient

name by which a person is called, and one which he “acquires for himself.” The latter is presented as the most important, with the means to its acquisition declared to be *Mitzvot*, i.e., *halakhic* observance and good deeds. Whereas the first two names are called, the third is acquired, thereby becoming a possession of its holder, dependent primarily on its owner rather than on others.¹²²¹ Following this teaching, the Midrash discusses the importance of a good name at length, first supporting the conclusion that the third type of name is better than all others with the case of Bezalel, who earns the privilege of building the Tabernacle by acquiring a good name (שהרי בצלאל על ידי שקנה שם טוב זכה שיעשה מלאכת המשכן).¹²²²

The Midrash also adduces two verses from biblical writings (כתובים) to further emphasize the importance of a good name. From the Proverbs, it cites a call to prioritize the development of reputability over prosperity: *מְעַשֵׂר רָב: מִמְּכָרָהּ*.¹²²³ Then, the transcendental sentiment of Ecclesiastes applied to the development of a name is reflected in the following verse: *טוֹב שֵׁם, מִשְׂמֵן טוֹב; וַיּוֹם*.¹²²⁴ EcclR makes a number of interesting comments on this latter verse, first teaching an explanation of its meaning in the name of King Solomon:¹²²⁵ when a person is born, no one knows who he is, but when he passes away with a good name, he influences good deeds (בשעה שאדם נולד אין הכל יודעין (מי הוא, נפטר בשם טוב משפיע מעשים טובים

rabbis,” the Jewish business ethics literature seems to have neglected the topic of reputation altogether. Further scholarship regarding the talmudic perspective on the importance of reputability will hence likely add value to the contemporary business ethics discourse.

- 1221 The concept of acquiring a name is reminiscent of the *Erev Shabbat* prayer liturgy, where the *Chazan* refers to God in the beginning of the *שבע* מעין *ברכה* (“summary of the seven blessings of the evening prayer”) as *אל עליון קונה שמים וארץ* (“God most High, Who acquires the Heavens and earth”). Note that the Heavens are here acquired just as a good name is, and that both words contain the letters *ש* and *מ*, as does the Hebrew word for “soul” (*נשמה*). These connections might further allude to the idea that a name in the reputational sense becomes a possession that characterizes its holder in an essential manner, and that a good reputation is of essential importance similar to that of the soul.
- 1222 The Midrash (Tan, loc. cit.) finds proof of Bezalel’s good name in the verse on which it is commenting: *וַיֹּאמֶר מֹשֶׁה אֶל-בְּנֵי יִשְׂרָאֵל, רְאוּ קָרָא יְהוָה בְּשֵׁם, בְּצַלְאֵל בֶּן-אוּרִי* (Ex 35,30: And Moses said to the children of Israel, “See the Lord has called by name Bezalel the son of Uri...”). The name Bezalel can be interpreted to mean *בצל אל*, in the shadow of God. This name thus reflects the good reputation earned by Bezalel, through which he in turn merited the privilege to be the architect of the Tabernacle.
- 1223 Prov 22,1: A [good] name is to be chosen rather than great riches; [and rather than] silver and gold, good grace [is to be chosen].
- 1224 Eccl 7,1: A [good] name [is better than] good oil; and the day of death [is better than] the day of birth.
Note that in Hebrew, the word for name (*שם*) is contained in the word for oil (*שמן*).
- 1225 Who according to Jewish tradition authored both the Book of Proverbs and the Book of Ecclesiastes.

deeds of loving kindness, and they extol him with praises.¹²²⁶ This teaching posits a virtuous circle and multiplier effect of reputability, where good deeds establish a good name which in turn leads to more good deeds.

Asking why a good name is only compared to precious oil (שמן טוב), rather than to other precious liquids such as wine and honey as well, EcclR further offers the interesting explanation that just as precious oil rises and ascends to the surface when poured into a bottle of water, in which other fluids are miscible, so too someone who possesses a good name rises and ascends.¹²²⁷ Our Midrash Tanchuma then focuses on our verse's aspect that a good name is not just comparable to but greater than precious oil, for which it finds the ten reasons charted in the following table, including the biblical sources cited to support them.¹²²⁸

A good name ascends, while precious oil descends. ¹²²⁹	Gen 12,2; Ps 133,2	שם טוב עולה, ושמן טוב יורד
Precious oil is transitory [lit. for an hour], while a good name endures forever.	Ps 72,17	שמן טוב, לפי שעה. ושם טוב, לעולם
Precious oil may be destroyed, while a good name is indestructible.	Isa 56,5	שמן טוב כלה, ושם טוב אינו כלה
Precious oil is owned by the wealthy, while a good name is owned by the poor and the wealthy.	No biblical support	שמן טוב, בעשירים. ושם טוב, בעניים ובעשירים
A good name is for the living and for the dead, while precious oil exists only for the living.	No biblical support	שם טוב, בחיים ובמתים. ושמן טוב, בחיים
And precious oil, how far does it travel, from the sleeping room to the anteroom. And a good name, from one end to the earth until its other end.	No biblical support	ושמן טוב, כמה הולך, ממיטון לטרקלין. ושם טוב, מסוף העולם עד סופו.

1226 EcclR 7,1.

1227 Ibid.

1228 Tan, loc. cit.

1229 The teaching noted above in which the ascending quality of both a good name and precious oil was compared is not a contradiction to this differentiation, because it does not take place in the context of water. Outside of water, oil flows downward, while a good name is still posited to rise up.

Precious oil falls on a corpse and it becomes putrid, and a good name falls on a corpse and it does not become putrid.	Eccl 10,1; II Kings 4,34	שמן טוב נופל על המת והוא מבאיש, ושם טוב, נופל על המת ואינו מבאיש
Precious oil falls on water and it floats away, a good name does not float away.	Jona 2,11	שמן טוב נופל על המים והוא נדה, שם טוב אינו נדה
Precious oil falls onto fire and it burns, a good name falls onto fire and it does not burn.	Dan 3,26	שמן טוב נופל על האור והוא נשרף, שם טוב נופל על האור ואינו נשרף
R. Yehudah b. Simon said, "We find that the owners of precious oil enter into a place of life and leave it dead. And the owners of a good name enter into a place of death and leave it alive."	Lev 10,2; Dan 3,26.	אמר רבי יהודה בר סימון, מצינו שבעלי שמן טוב נכנסו למקום החיים ויצאו מתים. ובעלי שם טוב נכנסו למקום המתים ויצאו חיים

This Midrash constitutes a remarkable paean of reputability, which is praised for transcending physical limitations and being an enduring, universal, and powerful source of greatness. The fact that the above ten contradistinctions compare a good name to precious oil further emphasizes the value which the sages attributed to the principle of reputability, given that oil is one of the Torah's most esteemed physical substances.¹²³⁰

A similar call to prioritize the establishment of reputability over more worldly pursuits and possessions is taught in the mishnaic Tractate Avot, where Hillel concludes his seven featured aphorisms with the following teaching: הוא היה אומר: מרבה בשר מרבה רמה מרבה נכסים מרבה דאגה מרבה נשים מרבה כשפים מרבה שפחות מרבה זמה מרבה עבדים מרבה גזל מרבה תורה מרבה חיים מרבה ישיבה מרבה חכמה מרבה עצה מרבה תבונה מרבה צדקה מרבה שלום קנה שם טוב קנה לעצמו קנה לו דברי תורה קנה לו חיי העולם הבא.¹²³¹ Here, Hillel contrasts five commonly prized material pursuits with five

1230 For an overview of how highly the Bible (both Hebrew and Christian) values oil, see: Orr, James (ed.), *Oil*, in: *International Standard Bible Encyclopedia*, Grand Rapids, MI, 1915.

1231 mAv 2,8: He [i.e., Hillel] used to say, "Increasing flesh, increases worms. Increasing possessions, increases worry/anxiety. Increasing wives, increases magic/witchcraft. Increasing maidservants, increases lechery. Increasing manservants, increases theft. Increasing Torah, increases life. Increasing *Yeshivah* [Torah study, lit. sitting], increases wisdom. Increasing counsel, increases understanding. Increasing *Tzedakah*, increases peace. [He who] acquires a good name, acquires it for himself; [he who] acquires words of Torah, acquires life in the World to Come."

spiritual activities.¹²³² Whereas increasing involvement with these worldly matters is portrayed as being inversely related to well-being and fulfillment, with more in fact being less, the pursuit of the spiritual dimensions is promised to have enduring, continuously augmenting benefits. Unlike the other four encouraged activities, a good name is not lauded as a means to further ends such as wisdom, understanding, justice, and peace, but is rather taught to constitute an essential quality of the person acquiring it, and reputability is described as an identity-determining characteristic at the core of a person like his bone.¹²³³ Interestingly, on the one hand both the pursuit of the four encouraged spiritual activities as well as that of the benefits to which they lead according to this Mishnah are praised by Hillel.¹²³⁴ On the other hand pursuing a good name itself is discouraged by Hillel's second saying in Tractate Avot, which warns that "he who pursues his name, loses his name" (נגד שמה אבד שמה).¹²³⁵ Thus, reputability should be acquired as a laudable sequent to having accomplished good deeds, but its attainment should not be a primary motivational factor. This view is reflected in a further Mishnah of Tractate Avot, which on the one hand exalts the "crown of a good name," but on the other hand implicitly denies its existence: רבי שמעון אומר, שלושה כתרִים הן--כתר תורה, וכתר כהונה, וכתר מלכות; וכתר שם טוב, עולה על גביהן.¹²³⁶ A good reputation is thereby the greatest honor to be crowned with, yet it should simultaneously not even be considered to exist as a crown. Instead of focusing on and pursuing greatness of a human name, trust should be placed in the Name of God.¹²³⁷ The talmudic dialectics of reputability might hence be synthesized as follows: a person should establish a good name for himself without the intention to do so.

1232 The pursuit of Torah is lauded twice but constitutes one activity, with its benefits posited as accruing both to life in this world and to that in the "World to Come."

1233 In fact, the Hebrew word for "bone" (עצם) is found in the Mishnah's "for himself" (לעצמו), and simultaneously means "essence." A similar connection between a bone and reputability might be the idiomatic usage of "backbone" in the English language to signify strength of character (in German, the word *Rückgrat* has the same dual meaning).

1234 Also for instance in the other aphorisms of Hillel taught in Tractate Avot, where we find exhortations to pursue peace and Torah (e.g., mAv 1,12).

1235 Ibid., 1,13.

1236 mAv 4,17: R. Shimon says, "There are three crowns—the crown of Torah, and the crown of priesthood, and the crown of kingship; yet the crown of a good name surmounts them all."

1237 Ps 40,5; GenR 89,3.

8.1.3. *Implications for Product Development and Reputation Management*

Applied to corporate product development and reputation management, each of the talmudic principles developed in the previous section can be viewed as being linked to indivisibility along a specific dimension in particular, while combined they can offer an ethics screening and integration framework. Due to their mostly homiletic nature, these principles require little abstraction for an application to the corporate context to thereby simultaneously establish and foster positive reputations. For the same reason, an exposition of these same principles carries the risk of constructing an ivory tower, for most know that honesty and reciprocity for instance are important virtues and exalted ideals but many do not put them into practice for very pragmatic reasons. Yet the relevance of such talmudic values is timeless, and their following application can thus bear fruitful insights.

Reciprocity: Indivisibility between Manager and Customer

The principle of reciprocity urges business development and product managers to place themselves in the position of their target segment. This principle reflects on whether they would want to be offered a certain product or service if they were their own customer or client. According to two of the Talmud's greatest authorities, Hillel and R. Akiva, reciprocity is the major principle of the entire Torah.¹²³⁸ Likewise, it is perhaps legitimate to claim that reciprocity underlies all of business ethics, for the prohibition of practically every form of economic misconduct can be derived from this rule, as can all encouragement of positive economic contributions.

Applying the talmudic traditions analyzed above, a manager could practice reciprocity in product development by a) making the honor and money of his customers indivisible from his own,¹²³⁹ b) loving his customers as himself,¹²⁴⁰ and c) avoiding all impact on his customers that he himself would consider hateful in their shoes.¹²⁴¹ Essentially, a reciprocal manager offers (only) products and brands that he himself believes are good for the people buying them. Thereby, he becomes inseparable from the interests of him who is in many respects his key stakeholder, i.e., the customer. For does not everyone like to be satisfied with the goods and services they pay for?

1238 Hillel on bShab 31a; R. Akiva in yNed 9,4 30b, based on Lev 19,18. Cf. Sifra Qedoshim 4,12 (ed. Weiss 89a) and GenR 24.

1239 Based on mAv 2,13 and 2,15.

1240 Based on Lev 19,18; Sifra Qedoshim 4,12 (ed. Weiss 89a); yNed 9,4 30b.

1241 Based on bShab 31a, mAv 2,5.

Determining whether a product launch or brand positioning fulfills the principle of reciprocity requires reflection and dialogue. This discursive, analytical process can support management in determining whether a product is both likely to add value for those purchasing it,¹²⁴² and whether it is congruent with ethical values as well. If his customers' money is as dear to a manager as his own, he would surely want to avoid wasting theirs. Consequently, such a manager would ideally strive to deliver products that provide substantial value for money. Also, if a manager finds it hateful to deal with lengthy waiting periods and high costs for customer service himself, he would ideally refrain from imposing these service conditions upon his customers.

Considerations such as these can help management identify with customers, thereby fostering an inseparable relationship between the two. This connection becomes all the more important to establish in the context of frequently substantial spatial, informational, and societal distance in the customer-manager relationship. The resulting anonymization and asymmetry can make it easier for a manager to rationalize the marketing of wasteful, careless, dishonorable products that he would never purchase for himself or a loved one. One way to avoid such rationalizations in corporate practice is to encourage managers to "eat their own dog food."¹²⁴³ This idiom essentially urges managers to place themselves in the position of customers by using the products their corporation markets themselves. Failing to do so can raise eyebrows, as was the case when the fund research firm Morningstar recently found that 45% of basic stock and 66% of basic bond funds contain no investment by the management running them. The resulting potential division and separation of managers from those investing in their offerings raises particular concerns given that funds with high levels of management investment outperform those with less.¹²⁴⁴

Putting the principle of reciprocity into practice can thus enable product quality itself to improve, by inducing managers to offer products and brands

1242 In fact, market research (surveys, focus groups, etc.) is explicitly designed to gain insights into customer desires, motivations, behavior, etc., and has become a *conditio sine qua non* for product and branding success.

1243 According to a Wikipedia article, this phrase was coined by a Microsoft manager who in 1988 used it to title an e-mail urging an increased internal usage of one of the company's products (the article cites the following book published by Microsoft as its source: Microsoft, *Inside Out: Microsoft—In Our Own Words*, New York, NY, 2000.) The Microsoft manager in turn might have come up with the phrase through a dog food television commercial, in which a brand spokesperson claims that "Alpo" products are of such good quality that he feeds them to his own dogs.

1244 For an overview of the Morningstar study and reactions to it, see: Taylor, Chris, *Analysis: Why Some Fund Managers Don't Invest In Their Own Funds*, October 4th, 2011, <http://www.reuters.com/article/2011/10/04/us-mutualfunds-managers-idUSTRE7935BJ20111004>.

which they believe in both from their own and their customers' perspective. When a management team cannot itself actively use its corporation's goods (e.g., certain pharmaceuticals or business to business services), it should foster even closer bonds with customers that do. Such indivisibility avoids a potentially dangerous dichotomy between what a manager offers his customers and what he himself would purchase in their shoes.

Honesty: Indivisibility between Product and Brand

The principle of honesty is particularly relevant regarding the congruence between what a product's brand promises to deliver and what the product itself actually does. As noted above, a brand is essentially a customer's perception of a product, its quality, performance, etc. Honesty in product and brand development demands indivisibility between this perception and reality. Applying the words of the Sifra, a brand's "yes" should correspond to an actual "yes" of its product, and a product's "no" should correspond to an actual "no" of its product.¹²⁴⁵ For instance, a positive brand-promise of cleaner teeth with a certain toothbrush, or a negative promise such as "no more fatigue" with a certain energy drink should be truthful and fulfilled. In addition to the talmudic calls for honesty analyzed above, the biblical commandments to stay true to one's word can also be understood as a call to practice such congruence between what a brand preaches and how its corresponding product performs.¹²⁴⁶

Besides fulfilling the Torah's ideal of truthfulness itself, offering honest brands avoids transgressing further talmudic concepts such as *Ona'ah*, *Lifnei Iver*, and *Geneivat Da'at*.¹²⁴⁷ For a brand fostering expectations that its associated product cannot meet let alone exceed creates false goodwill, misleads customers, and constitutes what the Talmud terms "mental theft." Furthermore, given that a brand communicates certain product qualities and performance indicators, failing to deliver on these brand-promises can be perceived as violating the prohibition of false vows and of false oaths as well.¹²⁴⁸ For a brand-promise should function as a guarantee that its product conforms to, and even though executives do not generally swear that their branding is truthful, they would ideally aspire to a level of truthfulness *as if* they had committed to it under oath.

1245 Sifra Qedoshim 8,7 (ed. Weiss 91a); bBM 49a.

1246 See for instance Ex 20,7; Lev 19,12; Num 30,3; Dtn 23,22/24.

1247 See the chapter on fraud and corruption, section 3.1.2., for a discussion of these concepts.

1248 As noted above, the basic difference between a *Neder* ("vow") and a *Shevu'a* ("oath") is that the former applies to objects, whereas the latter applies to people.

Companies that align the image of their brands with the performance of their products, and vice versa, build the trust that is essential for sustainable business success as the following cases involving Apple and Reebok demonstrate. Products such as the iPod, iPhone, and iPad consistently deliver on Apple's brand-promise of offering innovative, hip, and easy-to-use electronic devices. As a result, the iconic company has built a global following of devoted customers willing to pay significant premiums, endure sometimes staggering waiting times in front of stores for products they have not even tested yet, and trust that the excitement promised by the respective product brands will be delivered upon. The level of importance of product and brand congruence for Apple became particularly apparent during the company's presentation of its iPhone 4S model. Widely expected to introduce an iPhone 5, Apple instead chose to market its phone as an upgrade rather than a new series. Thereby, the product's brand name promises to deliver certain improvements, rather than groundbreaking innovations. The company then strove to counter a certain disappointment resulting from this restrained branding with a truly innovative iPhone feature allowing users to control many device functions with their voice. In the live demonstration of this feature called Siri, Apple on the one hand touted the voice-controlled artificial intelligence innovation but avoided promising too much by noting that the software is still in the beta stage of development¹²⁴⁹ and by letting Siri call itself "a humble personal assistant."¹²⁵⁰ Underlying all of these communications is the consistent attempt to both perpetuate and reinforce Apple's brand-promise, while ensuring that the expectations resulting there from are met or exceeded.

Conversely, a company that fails to maintain this indivisibility between product and brand can suffer damaging consequences. For instance, the sportswear company Reebok recently agreed to pay 25m USD in a settlement with the U.S. Federal Trade Commission (FTC) to resolve allegations that it had made unsupported claims in marketing its EasyTone and RunTone shoes.¹²⁵¹ These shoes were branded as proven to help lose weight and build muscle more effectively than other sneakers. The FTC, whose stated purpose is to "protect America's consumers," declared that these promises were not backed up by "sound science," and reaffirmed its "ongoing effort to stem overhyped advertising

1249 The beta stage of the software release cycle generally indicates that software is still being tested.

1250 Apple Special Event, October 4th, 2011, 84m:47s, <http://www.apple.com/apple-events/october-2011/>.

1251 Forden, Sara et al., Reebok Pays \$25 Million to Settle FTC Claims of False Ads for Toning Shoes, September 28th, 2011, <http://www.bloomberg.com/news/2011-09-28/reebok-to-pay-25m-in-refunds-to-settle-ftc.html>.

claims.”¹²⁵² Although it agreed to the settlement, Reebok has publicly rejected the FTC’s allegations, promising that “[our] customers are our number one priority, and we will continue to deliver products that they trust and love.”¹²⁵³ Nonetheless, it is likely that many of these customers will demand the refund that the FTC settlement enables them to receive, no longer trusting in the congruence between the Tone brand-promise and its product performance. Such a negative consumer response to a perceived brand/product incongruence was experienced by the confectionary corporation Ferrero, which was widely criticized for marketing its *Milch-Schnitte* branded sweets in Germany as a healthy snack.¹²⁵⁴

These cases can be interpreted as a call for managers to ensure that a product is indivisible from its respective brand. This indivisibility is a direct manifestation of the principle of honesty in product and brand development. *Pacta sunt servanda*. Applying the tradition that “the righteous promise little and perform much, whereas the wicked promise much and do not perform even a little”¹²⁵⁵ can mean that brands should avoid overselling and focus on exceeding performance expectations instead. This notion is also supported by the Mishnah that prohibits sifting or painting goods to make them appear more valuable than they truly are.¹²⁵⁶ Unfulfilled brand-promises constitute a deception of the eye and mind.

Just as the Talmud strongly condemns a dichotomy between words and the actions that follow, so too would a manager ideally refuse to separate brand communications from product manifestations. And similar to how the Mishnah condemns people who conceal that they are dealing with stolen goods,¹²⁵⁷ so too should a corporation strive to keep brand perceptions indivisible from product reality. While the Talmud seems to condone compromising honesty for values such as peace, justice, and character,¹²⁵⁸ in corporate practice the alignment of products and brands can in fact be an opportunity to foster these further values as

1252 Federal Trade Commission Press Release, Reebok to Pay \$25 Million in Customer Refunds To Settle FTC Charges of Deceptive Advertising of EasyTone and RunTone Shoes , September 28th, 2011, <http://www.ftc.gov/opa/2011/09/reebok.shtm>.

1253 Reebok, Press Release Regarding FTC Settlement, undated, http://corporate.reebok.com/en/about_reebok/FTC%20Easytone.asp.

1254 See Schultz, Stefan, Verbraucher kren Milch-Schnitte-Kampagne zur Top-Werbelge, in: Spiegel Online, June 17th, 2011, <http://www.spiegel.de/wirtschaft/service/0,1518,768945,00.html>.

1255 bBM 87a.

1256 mBM 4,11. This Mishnah is presented in its entirety in this book’s chapter on fraud and corruption, pp. 91f.

1257 mBQ 10,9, see the discussion on p. 330.

1258 mAv 1,18, see the discussion on pp. 330f.

well.¹²⁵⁹ The principle of honesty applied to product and brand development thereby builds the integrity and hence the internal indivisibility of managers along multiple ethical criteria.

Society: Indivisibility between Manager and Societal Product Impact

Recall that one of the three elements comprising the talmudic work ethic developed in this book's chapter on corporate culture urges the pursuit of occupations that contribute to societal welfare.¹²⁶⁰ The key implication deduced from this element is that corporations should strive to establish an organizational culture that enables its members to achieve a positive social impact. Analogously, this chapter's principle of society urges the development of products and brands that benefit, or at least do not harm, the societies in and through which they are marketed. By putting this principle into practice, managers thus ideally become indivisible from the societal impact of what it is their corporation develops and sells.

Based on the talmudic perspective developed above, indivisibility between management and societal product impact has three central implications. Firstly, corporations should avoid selling products and marketing brands that support and legitimize regimes, societies, or groups that conflict with their own philosophy and spirit. Secondly, corporations should refrain from developing and marketing products or brands that can cause public damage or perpetuate injustice. And thirdly, corporations should seek to actively develop and market products and brands that contribute to societal welfare and well-being. These implications are now briefly analyzed and applied in turn.

Regarding i) Similar to how the rabbis prohibit the sale of a product that is clearly intended for what they considered idolatrous practices, particularly at times that legitimize these practices,¹²⁶¹ so too might managers need to sacrifice short-term business opportunities in certain countries and societies to reaffirm the values, beliefs, and norms of their own corporation and society. For a number of western companies, such a dilemma exists for instance regarding trade with the Islamic Republic of Iran, which on the one hand has the economic resources to be a significant trading partner but pursues policies and espouses ideologies

1259 Since the opposite of this alignment, i.e., a dichotomy between brand-promises and product performance, can cause legal battles, constitute an inequitable treatment of customers, and smack of lacking modesty through exaggerated claims.

1260 See illustration 7.

1261 Based on mAZ 1,1/5 and the discussion on pp. 331-334.

that directly contradict those of the liberal democracies in which these same western firms are rooted and based.¹²⁶²

Although they reinforce this dilemma, the talmudic sages simultaneously provide three parameters to navigate it pragmatically and expediently while maintaining integrity: designating, defusing, and timing.¹²⁶³ Thereby, products that are not specifically designated for an idolatrous purpose may still be sold to an idolater, as may those whose potentially dangerous qualities are “defused” (the mishnaic case is clipping the spurs of a rooster before selling it). Also, the timing parameter teaches that business may generally be done with heathens but not immediately before their festivals.

Applying these three parameters to the dilemma of trade with Iran, a western corporation might formulate a policy stating that while it is open to do business with the country in general, it will never sell any products to it that might support the development of a nuclear arms program, nor the practice of human rights abuses such as the disenfranchisement of women. Furthermore, such a policy could state that all trade ties are to be put on hold during periods when transacting any business with Iran could be interpreted as a victory and cause for rejoice by its leaders who are committing institutionalized human rights abuses and are possibly pursuing a nuclear weapons program.¹²⁶⁴ In fact, it appears that corporations such as Siemens are in fact formulating policies on Iran that roughly conform to the above parameters: the engineering conglomerate’s former CEO Peter Löscher emphasized at the 2010 shareholder’s meeting that the company’s trade ties with the country are exclusively civilian, i.e., Löscher was designating and defusing, and no new trade contracts would be sought given the current international isolation of Iran, i.e., Löscher here alluded to timing).¹²⁶⁵ Rather than getting embroiled in dogmatic controversies, executives who formulate such transparent policies can provide societies with incentives to become more humane while simultaneously avoiding the risk of alienating them as long-term business partners.

1262 For a news report on the dynamics of this dilemma in practice, see Shields, Michael/Wagner, Rene, German Firms in No Rush to Follow Siemens Iran Exit, in: Reuters, January 27th, 2010, <http://www.reuters.com/article/2010/01/27/iran-germany-exports-idUSLDE60Q13020100127>.

1263 Based on mAZ loc. cit.

1264 For information on Iran’s human rights record, see the website of the Iran Human Rights Documentation Center, an independent, non-profit organization run by human rights scholars and lawyers: http://www.iranhrdc.org/english/publications/reports/index.1.html?gclid=CK2p6vCc26sCFUO_zAod62ZiOg. For an overview of Iran’s nuclear program, see the following collection of reports from The New York Times on the topic: http://topics.nytimes.com/top/news/international/countriesandterritories/iran/nuclear_program/index.html.

1265 Melman, Yossi/Ravid, Barak, German Conglomerate Siemens to Cut Future Trade Ties with Iran, in: Haaretz, January 27th, 2010, <http://www.haaretz.com/news/german-conglomerate-siemens-to-cut-future-trade-ties-with-iran-1.265800>.

Regarding ii) The second implication of indivisibility between management and the societal impact of its product and brand development is that corporations should avoid developing and marketing products that cause public harm or perpetuate social injustice. This can be deduced from the Mishnah prohibiting the sale of any item that can cause damage to the public (נוק לרבים) and forbidding construction services for the development of buildings in which an unjust judiciary can wrest judgment and exact punishment.¹²⁶⁶ Whereas implication i) discussed above relates more to *whom* a corporation trades with, implication ii) relates more to *what* a corporation trades with. Applied to corporate practice, this latter implication urges managers to avoid causing societal harm and injustice through the products and brands they develop and market.

A recent ruling by the German Federal Court of Justice (*Bundesgerichtshof*) upholding a prohibition of online gambling seems to apply the first of these two standards, i.e., avoiding societal harm. The ruling was justified with the increased anonymity, lacking social control, and constant availability of gambling products offered on the Internet, which combined were presented as posing a significant threat to stated societal goals such as addiction control (*Suchtbekämpfung*), youth protection (*Jugendschutz*), and fraud prevention (*Betrugsvorbeugung*).¹²⁶⁷ Thereby, the social impact of online gambling products deprived them of their license to operate.

The second of the above standards, i.e., avoiding the support of what might be perceived as injustice, came to the fore in a high-profile case involving the pharmaceutical and medical device corporation Hospira, which was involved in the production and distribution of an anesthetic (sodium thiopental) that is also used for lethal injections in capital punishment executions of many U.S. states. At first, the corporation continued to supply these states with the anesthetic but chose to express its discomfort with how the drug was being used. For instance, a letter to the state of Ohio by the company's clinical research and development vice president Kees Groenhout read: "Hospira provides these products because they improve or save lives and markets them solely for use as indicated on the product labeling. As such, we do not support the use of any of our products in

1266 Based on mAZ 1,7 and the discussion on pp. 332f. It is important to note again that the term נוק לרבים is only found in Tractate Avodah Zarah, and that the implications resulting from this casuistic *Halakhah* might hence not be representative of the talmudic tradition as a whole.

1267 According to a verdict of the *Bundesgerichtshof* on September 28th, 2011 (AktENZEICHEN I ZR 189/08).

capital punishment procedures.”¹²⁶⁸ Less than a year later, facing growing pressure by social activists, the company discontinued production and distribution of the anesthetic in question altogether, officially basing itself on an Italian law forbidding exports of sodium thiopental to be used for capital punishment.¹²⁶⁹ Through such maneuvering, Hospira managed to eschew further controversy caused by its association with officially administered lethal injections and simultaneously managed to avoid alienating certain stakeholders by refusing to take a hard-line stance against capital punishment itself, basing its policies on legal compliance instead.

Also when it comes to branding, corporations should be mindful of a possible negative societal impact. Prominent cases of potentially harmful social effects of branding practices include the fashion industry’s idealization of extremely slim bodies in its advertisements and fashion shows, a practice linked by pundits to the significant rise in eating disorders.¹²⁷⁰ A further societal marketing issue is the growing prevalence of brands targeted at children, a practice that has been linked to social problems such as bullying, discrimination, and unsustainable spending.¹²⁷¹ This trend is particularly troubling because children as a target segment are frequently unaware of the potentially harmful consequences of being exposed to certain branding tactics. From a talmudic perspective, profiting from this lacking awareness could imply a transgression of the *Lifnei Iver* prohibition, similar to the case where R. Pinchas b. Yair accuses R. Yehudah haNasi of leading unwitting buyers into harm by selling them dangerous mules.¹²⁷² Of course, the concept of *Lifnei Iver* can be applied to harm caused by both product and brand exposure.

1268 Cited in: Welsh-Huggins, Andrew, Shortage of Drugs Holds Up Some U.S. Executions, in: MSNBC, September 27th, 2010, http://www.msnbc.msn.com/id/39385026/ns/health-health_care/#.TpGNB5sr2RJ.

1269 Koppel, Nathan, Drug Halt Hinders Executions in the U.S., in: The Wall Street Journal, January 22nd, 2011, <http://online.wsj.com/article/SB10001424052748704754304576095980790129692.html>.

Sodium thiopental was produced in a Hospira manufacturing facility located in Italy.

1270 See for instance Knight, Renee, Fashion Industry Accused On Anorexia, in: The Independent On Sunday, October 15th, 2006, <http://www.independent.co.uk/life-style/health-and-families/health-news/fashion-industry-accused-on-anorexia-420159.html>. As the following editorial of a psychology journal argues, the “size zero culture” is not just damaging to the general public but also to models themselves: Treasure, Janet L., Models as a High-Risk Group: The Health Implications of a Size Zero Culture, in: The British Journal of Psychology, Vol. 192, Issue 4, April 2008, pp. 243-244.

1271 Roper, Stuart/Shah, Binita, Vulnerable Consumers: The Social Impact of Branding on Children, in: Equal Opportunities International, Vol. 26, Issue 7, 2007, pp. 712-728.

1272 bChul 7b.

What the above cases show is that managers are from a descriptive perspective already interlinked with societal damage their products and brands might cause—for the public and regulators perceive certain companies as responsible for a given harm and view their management as capable of ending it. Consequently, managers are held accountable for such harm. In this context, the normative call of the Talmud to avoid public damage through trade *a priori* can be helpful in urging managers to consider themselves indivisible from the negative societal impact of what it is they are developing and marketing.

Regarding iii) Besides its potential to be negative, the impact of a product or brand on society can of course be positive as well. And it is the harnessing of this latter power that the Talmud also explicitly demands. While a necessary condition of the talmudic principle of society, just simply avoiding public harm is insufficient. Rather, this principle also urges managers to develop products and brands that positively contribute to societal development, peace, and happiness.¹²⁷³ Corporate product and brand development thereby becomes an opportunity to create value by doing good.

The resulting dual responsibility of avoiding a negative impact and aspiring towards a positive one is increasingly being recognized. The well-publicized “MBA Oath,” a voluntary commitment for management students modeled after the Hippocratic Oath made by doctors and the oaths made by attorneys for admission into the bar,¹²⁷⁴ opens with an affirmation that managers operate within a societal frame: “As a business leader I recognize my role in society.”¹²⁷⁵ Later, the text of the oath both refers to the avoidance of harm to society (“I will refrain from corruption, unfair competition, or business practices harmful to society”), and to the aspiration of societal flourishing, at least from an economic perspective (“I will invest in developing myself and others, helping the management profession continue to advance, and create sustainable and inclusive prosperity”).¹²⁷⁶ Further reflecting an increasing concern with a positive social impact of business is the growing number of management education programs, courses, and events dealing with ecological sustainability and social responsibility.¹²⁷⁷

1273 See the discussion on pp. 63f, particularly on bSan 24b and bTaan 22a.

1274 For more information on the MBA Oath, see mbaoath.org, and the following paper that had first suggested creating a Hippocratic Oath for managers: Khurana, Rakesh/Nohria, Nitin, It’s Time to Make Management a True Profession, in: Harvard Business Review, Cambridge, MA, October 2008, <http://hbr.org/2008/10/its-time-to-make-management-a-true-profession/ar/1>.

1275 <http://mbaoath.org/about/the-mba-oath/>.

1276 Ibid.

1277 Blackman, Stacy, Business Schools Blazing Trails in Social Impact Management, in: U.S. News, October 7th, 2011, <http://www.usnews.com/education/blogs/MBA-admissions-strictly-business/2011/10/07/business-schools-blazing-trails-in-social-impact-management>.

More than auxiliary activities such as corporate philanthropy, in many cases products and brands themselves have the greatest power to do good. For instance, the South Korean conglomerate Samsung recently unveiled a plan to enter the clean technology and health business, a move which *The Economist* commented on as follows in an extensive report: “With these plans Samsung sees itself bringing technologies that are vital for society into much broader use. The company has always had an eye for more than just the bottom line, seeking both to epitomize and to further the progress of its home country. Now it talks idealistically of improving the world by driving down the costs of zero-carbon power and providing poor countries and rural areas with medical equipment and drugs that they cannot afford today.”¹²⁷⁸ The executives of Samsung thus link their products to the positive manifestation of our principle of society.¹²⁷⁹

This link can also be established by means of branding, as the rise of “cause-related marketing” exemplifies particularly well. Here, companies augment their brand profile by integrating a non-profit organization or initiative into their marketing activities.¹²⁸⁰ For instance, the sportswear giant Nike launched a highly publicized and successful drive to support the Lance Armstrong Foundation by selling yellow bracelets,¹²⁸¹ the water company Volvic introduced a “Drink 1, Give 10” campaign to support UNICEF in improving access to drinking water,¹²⁸² and the automobile manufacturer Subaru stages an annual “Share the Love Event” during which it donates a certain amount of money to specific charities for every new car sold or leased.¹²⁸³ These cases exemplify the instrumentalization of branding to achieve a positive social impact.

Yet products or brands need not have an explicitly philanthropic or humane purpose in order to do good. In many cases, product characteristics themselves already contribute to society—the sustenance provided by food and beverage companies, the productivity improvements enabled by technology firms, the

1278 Samsung. The Next Big Bet, in: *The Economist*, October 1st, 2011, <http://www.economist.com/node/21530976>.

1279 I.e., doing good rather than just avoiding bad.

1280 For papers explaining and critically examining this practice, see: Barron, Greg/Erev, Ido et al., On the Robustness and the Direction of the Effect of Cause-Related Marketing, in: *Journal of Consumer Behavior*, Vol. 2, Issue 4, Jun 2003, pp. 320-332; Higgins, Matthew/Smith, Warren, Cause-Related Marketing: Ethics and the Ecstatic, in: *Business & Society*, Vol. 39, No. 3, Sept. 2000, pp. 304-322; Menon, Anil/Varadarajan, P. Rajan, Cause-Related Marketing: A Coalignment of Marketing Strategy and Corporate Philanthropy, in: *The Journal of Marketing*, Vol. 52, No. 3, July 1988, pp. 58-74.

1281 See <http://www.livestrong.org/Shop> for the growing number of product categories sold under this cause-related brand.

1282 <http://www.drink1give10.com/>.

1283 <http://media.subaru.com/index.php?s=43&item=201>.

investment capital offered by the banking sector, and the health care provided by pharmaceutical companies. I recall a talk in which Ian Davis, then the global Managing Director of McKinsey, told a group of new hires that management consulting is a “noble profession,” because it aims to improve the performance of businesses that in turn provide major contributions to society as producers, employers, tax payers, etc.¹²⁸⁴ Connecting their products and brands to positive social impact thus might not require managers to change what they are already doing. Nonetheless, there is a risk of rationalizing ancillary benefits such as job creation and tax revenues into products that might in fact be useless or even harmful themselves.¹²⁸⁵ Similar to how the Talmud discourages gambling and lauds jesters due to their respective societal impact, so too all managers can consider how their products and brands are linked to and indivisible from social welfare and well-being.

Reputability: Indivisibility between Manager and Product

The talmudic perspective on reputability can be synthesized by means of the following values, norms and beliefs. Reputability should be attained by establishing a good name and by avoiding a bad one. The name a person acquires for himself becomes an essential part of his identity, and one’s reputation should hence be valued more highly than material goods such as money. Good deeds are the means by which reputability can be attained, yet such deeds must not be instrumentalized in order to pursue a good name; rather, reputability should be perceived as a positive side-effect of having done the right thing. Applied to corporate product development, these teachings can be understood to encourage managers to establish their own reputation by marketing good products and brands, and consequently to view their own reputation as inseparable from what it is they offer on the market.

This perspective is being put into practice in a number of successful cases. In advertisements and on packaging of the German baby food market leader Hipp, the name and image of its chief executive Claus Hipp functions as a personal guarantee for product quality: “dafür stehe ich mit meinem Namen.”¹²⁸⁶ For an

1284 At the 2007 McKinsey Summer Academy in Passau.

1285 For a popular list of what might be useless consumer financial products, see: Collinson, Patrick, *The Top 10 Most Useless Financial Products Revealed*, in: *The Guardian*, June 4th 2010, <http://www.guardian.co.uk/money/2010/jun/04/top-10-useless-financial-products>.

1286 This slogan has become well-known throughout Germany, and is also the title of Hipp’s autobiography: Hipp, Claus, “*Dafür stehe ich mit meinem Namen*,” Tübingen, 2003.

industry and product category in which trust is essential, the resulting invisibility between the reputation of this executive and that of the baby food he offers is a valuable competitive differentiator, giving customers the impression that an actual living person is responsible for the company's product quality. Conversely, such high levels of personalized trust can be almost impossible to build for the baby food products of a multinational conglomerate such as Nestlé, for neither its executives nor even less so its shareholders integrate their own name and reputation explicitly into product marketing.

This anonymization is in large part the result of the division of labor so praised by Smith for its remarkable productivity improvements¹²⁸⁷ and condemned by Marx for its alienation of workers from the fruits of their labor.¹²⁸⁸ It can be hypothesized that this division, which has reached unprecedented levels through the increasing specialization within corporations, is both conducive to managerial misconduct as well as a hindrance to managerial excellence. For a manager who knows that he personally will be named in the news for causing harm through his work rather than being able to hide behind a corporate veil of anonymized and dispersed responsibility is thereby faced with a powerful stick that can make the temptations of misconduct considerably less enticing. Likewise, the carrot of being publicly named in connection with the products they develop and market can be a powerful incentive for executives to reach new heights in product innovation, performance, and impact. Combined, such perspectives make the reputation of a manager indivisible from the reputability of the products and brands he is responsible for.

There are a number of ways in which corporations can identify products with executives directly. For instance, the success of Apple's product launch presentations hinged in no small measure on the iconic reputation and captivating performance of its late Chief Executive, Steve Jobs. Apple also places other senior managers into its advertisements and features them at its launch shows, enabling them to develop their own stellar reputations and giving them further incentives to do so. Another way to integrate the name of a manager into a product might be learned from the closing credits shown after motion pictures. A corporation could similarly develop a website or product packaging listing the managers responsible for a product, but perhaps anonymizing their names to a certain extent to avoid talent poaching from competitors or personal reprisals from customers. Even more drastic would be to learn from the practice of naming laws after the politicians

1287 Smith, Adam, *WoN*, pp. 7f.

1288 Marx, Karl, *Ökonomisch-philosophische Manuskripte*, 1. Manuskript, Teil 4, Paris/Frankfurt a. M., 1844/2009.

who sponsor them¹²⁸⁹ by basing brand names on their key managers' names. Irrespective of the exact measures of reputation management chosen, connecting a product and brand to its managers can be conducive to fostering the indivisibility between the two that is essential for the enduring reputability of both.

A Principled Business and Product Development Process

The preceding analyses deduced a specific dimension of indivisibility from each of the four talmudic principles of product and brand development derived in the previous section. Yet most espousal of and reflection on values that is not simultaneously institutionalized in a structured frame is all but fanciful.¹²⁹⁰ Therefore, for executives who intend to implement the talmudic perspective developed above, it is crucial that our four principles also function as an institutional framework supporting the existing business and product development processes. For instance, corporate functions such as reputation management or risk management could be partly integrated into these processes to ensure that products and brands remain principled.¹²⁹¹ This practice would ideally create an internal discourse to screen, reflect, and augment the ethical value of a product and brand under development. And after a product launch, the framework can be used as a foundation of external discourse as well, for instance with customers and regulators, the results of which are then fed back into the organization to enable continuous product improvements from an ethical perspective. The key impact of such an ethically augmented product development process would ideally be an increased prevalence of products and brands that are indivisible from principles such as reciprocity, honesty, society, and reputability. Such goods simultaneously become inseparable from the reputation of the corporations and managers responsible for them.

1289 E.g., the Sarbanes-Oxley Act named after Senator Paul Sarbanes and Representative Michael G. Oxley.

1290 This is a fundamental tenet of New Institutional Economics, which, rather than the Kantian approach of individual edification or the Marxian approach of resistance to the market economy, views the institutionalization of binding norms on the organizational or national level as the most effective way to imbue ethics into the economy. Karl Homann shared this perspective in a lecture given at Mannheim University in the fall of 2010.

1291 The reputation management function lends itself well to this task because its purpose actually coincides with the realization of at least one of our four principles (i.e., reputability). The risk management department could also be responsible for integrating the four principles into product development because neglecting these principles can increase the business risks of consumer boycotts, regulatory backlashes, legal action, etc.

9 Conclusion and Implications

Perhaps it is unfitting to open the conclusion of a thesis on talmudic management ethics with Karl Marx, given his anti-Semitic¹²⁹² and anti-capitalistic sentiments.¹²⁹³ Yet he picked up on a Hegelian concern that most likely applies to this thesis as well: the inability of philosophers and social scientists to transcend the times they live in, whereby their work reflects given or developing structural conditions. Jewish business ethics are of course no exception, as one preeminent scholar in the field notes: “[w]e find that in the first half of this [20th] century many studies in Jewish economic history and behavior were heavily influenced by the socialist or liberal philosophers of the time and tend, therefore, to present a Judaism synonymous with those philosophies. At the present time, the pendulum seems to have swung in another direction, and now scholars tend to equate Judaism with the most extreme free market philosophers.”¹²⁹⁴ Like the joke of the Jewish school-boy telling a priest that Jesus is the greatest prophet of all times,¹²⁹⁵ scholars of Jewish business ethics are prone to give their audience that which it wants.

This is not just an academic concern. Jewish business ethics have been influenced if not determined by political, civil-societal, and economic circumstances for millennia. The Bible could prohibit interest payments because the mostly agrarian and pastoral Israelite economy required loans mainly for charitable rather than for investment purposes and could permit exacting interest from outsiders because these in turn charged the Israelites interest as well.¹²⁹⁶ Then when the interest prohibition became an increasing impediment to a successful

1292 Brumlik, Micha, *Deutscher Geist und Judenhass – Das Verhältnis des philosophischen Idealismus zum Judentum*, München, 2000, p. 285. Based on a study of Marx’s letters, Brumlik describes Marx as a “glühender Anti-Semit.”

1293 This concluding section is an updated, expanded and contextualized version of the one contained in my unpublished M.A.-thesis.

1294 Tamari, Meir, *With all your Possessions*, Jerusalem/Northvale, NJ, p. 9.

1295 A priest during a classroom visit asks who is the greatest prophet of all times, offering money to the pupil who offers the right answer. When Yankelle responds with “Jesus,” the priest congratulates him for winning, but then adds in a somewhat surprised manner that he would have expected the Jewish pupil’s answer to be Moses. To this, Yankelle says, “Moses is Moses, and business is business.”

1296 Gamoran, Hillel, *Jewish Law in Transition. How Economic Forces Overcome the Prohibition against Lending on Interest*, Cincinnati, OH, 2008, pp. 4f.

participation of the Jews exiled in the commerce-based Babylonian economy, the talmudic sages develop the *Iska*, a *halakhic* construct in which the return on capital invested into a business is classified as a dividend on a deposit rather than as an interest payment on a loan.¹²⁹⁷ Over a millennium later, Jewish communities in Eastern Europe became dependent on their wealthy members to finance communal institutions, leading R. Abraham Slonick to devise an intricate mechanism enabling donors to public funds to generate a return on their investment without transgressing the interest prohibition by passing on promissory notes from one donor to the next.¹²⁹⁸

Almost 500 years later, a leading scholar of Jewish business ethics, a modern orthodox one at that, makes the adaptability of his field explicit. After propounding that legal norms derived from religious texts or authorities have no space on the institutional level of pluralistic organizations such as contemporary corporations, Moses Pava suggests that Jewish business ethicists must “offer innovative interpretations of our traditional teachings in support of pluralism.”¹²⁹⁹ This reasoning implies that a contemporary CEO refusing to pay investors a return on his corporation’s bonds based on the *halakhic* interest prohibition will likely be out of work quite soon, whereas he might be celebrated if he invokes the charitable intention of the very same prohibition by providing interest-free student loans with parts of his corporation’s philanthropic budget. Thereby, Jewish business ethics must adapt to the empirical realities of the circumstances they are developed in, as they have in fact been doing since their inception. This book’s subject matter and its conclusions seem to provide a further example of this dialectical process.

Corporate social responsibility, economic regulation, environmental sustainability, managerial values, and the many other keywords of the business ethics discourse have become “hot topics,” particularly since the economic crises and corporate scandals of the past decade. In this discourse, many unlikely sources, ranging from religious texts to works of literature, are being tapped to find novel solutions to a corporation’s fundamental ethical dilemmas. The integrity of management and the reconciliation of conflicting stakeholder interests are two of the key focal points in the search for what might repair capitalism. And the emerging consensus in the discourse on the issues contained in the ethics taxonomy underlying our inquiry are reflected in the findings of this book.

1297 Klingenberg, Eberhard, Das israelitische Zinsverbot in Tora, Mischnah und Talmud, in: Abhandlungen der Geistes- und Sozialwissenschaftlichen Klasse der Akademie der Wissenschaften und der Literatur, Mainz, 1977, p. 97.

1298 Described in Levine, Aaron, Free Enterprise and Jewish Law: Aspects of Jewish Business Ethics, New York, NY, p. 163.

1299 Pava, Moses L., Business Ethics. A Jewish Perspective, New York, NY, 1997, p. 182f.

Managers are called upon to frame their corporate philosophy in terms that are meaningful to broader society while affirming the fundamental legitimacy of private profit generation. When it comes to corporate culture, ways are sought in which the needs for productivity and wealth-generation can be simultaneously fulfilled alongside those for personal balance and contributions to societal development. Corporations are attempting to address growing public and regulatory scrutiny of fraud and corruption, while simultaneously striving to avoid business losses arising from stricter compliance standards. In order to harness the beneficial effects of whistle-blowing while mitigating its potential harm, corporations are increasingly instituting internal ethics officers and are urging witnesses of misconduct to address them. The governance of investor relations is adapting to meet the demands of greater transparency and democracy while leaving corporate control firmly in the hands of management. And in the debate on executive compensation, the pay level of managers is increasingly compared to their performance and the wage of the average worker, whereas the way in which they conduct themselves in light of their wealth is under growing scrutiny. The social impact and responsibility of corporations has been in the limelight for decades, and there is now an emerging consensus that they must address societal concerns in order to protect their license to operate. Corporate philanthropy has become widespread but primarily because of its business benefits. Similarly, environmental conservation, “green” product development and pollution abatement increasingly are improving corporate performance while simultaneously addressing widespread calls for sustainability. Corporations are being held accountable for bad working conditions and labor practices, while managers are finding that happy employees are good for business. And reputation management has become the answer to align demands such as consumer safety and privacy with the interests of profit growth. In short, corporate management is being called upon to become more indivisible from the interests of its stakeholders, the concerns of society, and high standards of personal integrity. Indivisibility is thus a descriptive theory of a trend already taking place within corporations. Does that imply that this thesis has little to contribute to the contemporary discourse on management ethics besides strengthening the case for such indivisibility, not only as a description of how human economies actually function but of how they ought to from a normative and prescriptive standpoint as well?

A unique contribution of the talmudic perspective is that it sheds light on the dialectical complexity of each corporate dilemma. The culture of controversy (תרבות המחלוקת) is a hallmark of the Talmud, reflecting the rabbinic esteem of a discursive approach to establish and debate differences of opinion revolving

around complex, multi-faceted, and in some cases irresolvable questions.¹³⁰⁰ In an increasingly complex and dynamic world marked by moral disagreement and disorder,¹³⁰¹ corporate executives are forced to deal with clashing opinions and interests of their stakeholders, a context in which the talmudic approach might hence offer some guidance. In particular, the attempt of the sages to prevent disagreements from causing a break-down of a unifying social foundation can be helpful for executives to both foster stakeholder dialogues while avoiding the groups participating therein to separate into divided fractions, affirming the fundamental unity embodied in the corporation instead.¹³⁰² In terms of philosophical context, the talmudic rabbis are hence closer to the aporetic method of Aristotle and the discourse ethics of Habermas than to the deontological ethics of Kant and the utilitarianism of J.S. Mill.¹³⁰³

1300 yYev 1,6 3b [Venice and Krotoshin Editions]; tEd 1,4; bChag 3b.

1301 MacIntyre, Alasdair, *After Virtue: A Study in Moral Theory*, Notre Dame, IN, 1981/2007, pp. 6-22.

1302 As discussed in Ronen Reichman's seminar on the tannaitic culture of controversy, the term מחלוקת (*Machloket*) means both "controversy" as well as "party" (see mAv 5,17 for the second meaning, mMiq 4,1 for the first). Whereas the rabbis encourage controversy in the sense of differences of opinion, they simultaneously sought to avoid a further splintering of Judaism into antagonistic parties. This can be a model for stakeholder management, which would thus foster debate and compromise from within a common social foundation.

It is important to note that the discourse within corporations is not a Habermasian *herrschaftsfreier Diskurs*, given that it is marked by the asymmetrical power of top managers, a tabooisation of certain opinions, and an exclusion of the public from its development—therefore, following Habermas, the discursive process in a corporation can at best reach a compromise rather than a consensus. (Habermas, Jürgen, *Theorie des kommunikativen Handelns*, Bd. 1: Handlungsrationalität und gesellschaftliche Rationalisierung, Frankfurt a. M., 1981, p. 49.)

1303 As noted in this book's introduction (p. 29, fn. 64), Aristotle in particular actively seeks out unresolved questions that cause puzzlement, being comfortable with ambiguity surrounding the resolution of complex moral dilemmas. In the opening of his *Metaphysics*, he notes accordingly that "with a view to the science we are seeking [metaphysics, nk], it is necessary that we should first review the things about which we need, from the outset, to be puzzled." (Aristotle, *The Metaphysics*, Amherst, NY, 1991, 995a24.)

The talmudic dialectical method also seems congruent with parts of Habermasian discourse ethics, a principle of which holds that norms are legitimate when they reflect a reasonable consensus developed discursively. (Habermas, Jürgen, *Legitimationsprobleme im Spätkapitalismus*, Frankfurt a. M., 1973, p. 153.)

As noted in the introduction as well (loc. cit.), Kant's belief in a simple, straightforward manner to determine human duties seems to run counter to the view of the talmudic sages that complex dialectics are required to do so, which nonetheless still might end in a *Teiku*, i.e., an unresolved debate. Also, Mill's Greatest Happiness Principle, urging the maximization of society's aggregate utility ("the greatest amount of happiness altogether," in: *Utilitarianism*, Charleston, SC, 1863/2008, p.14), differs from classical rabbinic esteem for equitable distribution and for values beyond happiness.

As can be expected from a culture of controversy, the Talmud offers neither unambiguous guidance nor straightforward solutions for any of the fourteen issues studied in this thesis. Rather, its dynamic moves between making a suggestion, which it then challenges and attempts to reconcile opposing yet mutually valid claims.¹³⁰⁴ Particularly for the aporetic character that corporate dilemmas often take on, such a dialectical approach can be valuable because it accounts for differing viewpoints causing conflicts that cannot be resolved by uncritically applying general principles.

The culture of controversy is reflected in the findings of each chapter of this thesis. Both the pursuit of economic activity as well as its transcendence are encouraged. Engagement with productive work is deemed holy, as is the hallowed repose from it, neither of which may detract from the importance of community. Cultural values such as diligence, ambition, and elitism are propounded, then restrained by consideration, balance, and societal development. Fraud and corruption are condemned, yet defined in such a manner that under special conditions they are condoned. Witnesses of wrongdoing are urged to protest and rebuke, but only under specific circumstances, in a certain way and while simultaneously protecting themselves, their corporation, and even the perpetrator. Charging interest is criticized, leading to the construction of a mechanism through which a return on financial investment is legitimized and channeled to produce societal benefits. Executives are granted the right to receive any pay business owners stipulate yet are also obligated to accept an agreed-upon wage even when it is lower than this stipulation. The accumulation of wealth is praised and poverty warned of, as are the risks of riches. Demands of state, competitors, and civil society are legitimized but only under certain circumstances and tied to specific conditions. Engaging in philanthropy with other people's money is considered theft, unless it is linked to past or future benefits accruing to its owners. Humanity is perceived as both a part of and greater than nature, a dialectical stance from which the natural environment should be both actively utilized as well as responsibly preserved. Employees are considered fundamentally free but are nonetheless subject to their employer's direction. A good reputation is lauded but its pursuit warned of. Instead, reputability is urged to be the result of conduct based on principles which themselves face dialectical

1304 In his classic guide to Talmud study, R. Moshe Chaim Luzzatto (*Ramchal*) analyzes this dynamic as follows: "Every talmudic discussion is built from seven principle elements of dialectic reasoning. They are: Statement, Question, Answer, Contradiction, Proof, Difficulty, and Resolution." From the following translated edition including the original Hebrew text: Luzzatto, Moshe Chaim, דרך תבונה, *The Ways of Reason. The Classic Guide to Talmud Study*, Jerusalem, 1989/1997, p. 14.

tensions. Such analyses indicate that the Talmud can indeed offer important contributions to contemporary business and management ethics, urging indivisibility between its argumentative poles.

The dialectics clarified by the above talmudic perspectives acknowledge that in a complex reality one should neither seek clear-cut solutions nor holy grails, but should rather discursively address, respect, and reconcile the forces that give rise to a dilemma in the first place. With this emphasis on complex decisions rather than grand visions, a talmudic approach to management ethics might support and enable the transcendence of given historical circumstances and empirical conditions still in need of repair, offering perspectives both exceedingly traditional yet refreshingly unconventional. Academic scholarship and corporate practice can jointly apply this approach by reflecting on and seeking to “indivisibly” navigate the ethical dilemmas that have functioned as our anchor in the ocean of the Talmud. Because such a collaborative effort itself aspires to become indivisible between its oftentimes opposing viewpoints, it might also prove a particularly promising contribution to the dialectical discipline of management ethics.

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Appendix

Illustrations

Illustration 1: The various components of corporate ethics programs

Corporate ethics programs utilize a variety of components

Component	Description
Mission, vision, values statements	Statements of corporate aims, beliefs and values
Ethics codes	Explicit outlines of what type of conduct is desired and expected of employees
Reporting/advice channels	Gathering information on ethical matters, receiving advice regarding ethical dilemmas. Ethics hotlines, ombudsmen
Risk analysis and management	Spelling out risks of ignoring ethics, measuring these risks in monetary terms (fines, damages, sanctions)
Ethics managers, officers, committees	Individuals or groups appointed to co-ordinate and/or take responsibility for ethics management, e.g., Ethics Officers, CSR committees
Ethics consulting services	Environmental consulting, research services, project management, strategic advisory, social and environmental auditing and reporting, verification, stakeholder dialogue
Ethics education and training	Training formats, knowledge and tools to recognize and resolve ethical dilemmas more accurately and easily
Stakeholder consultation, dialogue, partnership programs	Means of including stakeholders more fully in corporate decision-making
Auditing, accounting and reporting	Measuring, evaluating and communicating corporate impact and performance on a range of social, ethical and environmental issues of interest to stakeholders

SOURCE: Crane & Matten (2007), team analysis

Illustration 2: Business risks of unethical conduct

On the flipside, business conduct perceived to be unethical carries substantial risks

- **80% of people decide to buy** a firm's goods or services partly on their **perception of its ethics**
- **74% said their perception of a firm's honesty** directly affects their decision about whether **to buy its stock**
- **Increased fines and jail time** if a firm does not have an ethics program in place
- **Companies without an ethics program** have **up to three times lower market value-added** than companies with one
- Up to **\$4 trillion** in value at stake globally from **regulation**, which increases in the wake of misconduct
- Those who **contribute the most to a company's revenues and reputation** show the **greatest drop in productivity** because of others' **unethical behavior**
- **71% of employees** who said **honesty** applies rarely or never in their organization have **seen misconduct** in the past year compared to **25%** who reported honesty is common
- **78% of workers** in firms with an ethics program said they **report misconduct** when they see it compared to **39% of employees** at firms with no ethics program
- **79% of employees** said a lacking **concern for ethics** at their employer would be a **key reason to leave**
- **41% of low-morale organizations** feel **absenteeism** is a serious issue, while just **20% of high-morale** firms feel the same



SOURCE: Various empirical studies compiled by the Josephson Institute, Global Insight

Illustration 3: Examples of how the seven dimensions of the business ethics taxonomy impact performance

The active management of risk and opportunity in the 7 areas of the business ethics taxonomy can have a significant impact on performance

Opportunity Risk

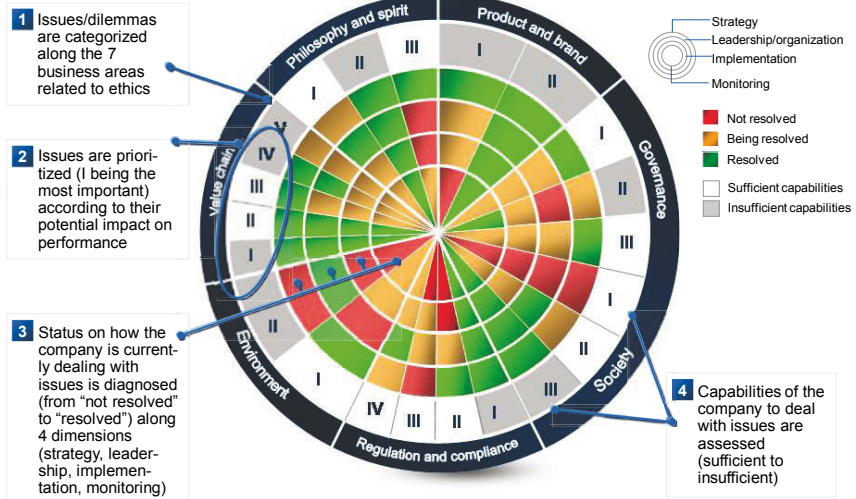
1	Philosophy and spirit	▪ One-third to one-half of mergers fail due to matters such as cultural assimilation and leadership issues ¹
2	Regulation and compliance	▪ Firms that went from poor to good compliance with Sarbanes-Oxley outperformed the Russell 3000 by an average of 8% ²
3	Governance	▪ Good governance is rewarded by the market with a 10% increase in market-to-book ratio ³ ▪ Firms that do not have good governance suffer an average of a 6% market-to-book ratio loss when governance regulations are introduced ³
4	Society	▪ Socially responsible activities targeted at secondary shareholders can provide an insurance-like benefit that reduce the impact of adverse events by an average of 68% ⁴
5	Environment	▪ Severe regulatory backlash and permanent brand damage can result in the event of an environmental catastrophe
6	Product and brand	▪ There is a strong positive relationship between increased quality perception and stock return ² ▪ Corporate reputation, distinct from financial reputation, results in persistent above-average ROA for up to five years ⁵
7	Value chain	▪ Employee satisfaction, adjusted for compensation, has significant effects such as increased revenues and decreased costs and can be improved through factors such as store cleanliness and manager experience levels ⁶

1 Davy et al 1988; 2 Lord and Benoit 2006; 3 Aggarwal and Williamson 2006; 4 Godfrey et al 2008; 5 Roberts and Dowling 2002; 6 Banker et al 2000

SOURCE: Ethics Radar team analysis

Illustration 4: The Ethics Radar, enabling supervision and management of corporate ethical dilemmas

The Ethics Radar is a supervision and management tool showing ethical dilemmas and how well a corporation is working to resolve them



SOURCE: Ethics Radar team

Illustration 5: A theoretical-methodological framework to assess the degree of legitimacy in applying talmudic sources to corporate practice

A theoretical-methodological framework reflects and strengthens the legitimacy of applying talmudic concepts in corporate practice

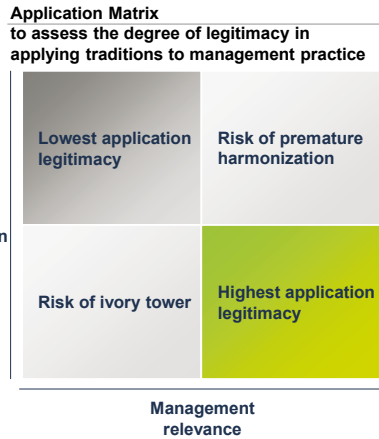
Methodological Aspirations
concerning three aspects of application

- 1 Interpretation: Avoiding a “voreilige Angleichung der Vergangenheit an die eigenen Sinnerwartungen” and attempting “die Überlieferung so [zu] hören, wie sie sich in ihrem eigenen anderen Sinne hörbar zu machen vermag.”¹

- 2 Selection: Developing a holistic perspective on all relevant talmudic traditions and positions regarding a certain issue instead of conducting selective “*Steinbruch Exegese*”

- 3 Implication: Presenting a talmudic perspective with practical relevance, as a source of inspiration and guidance to reflect Kant’s fundamental question of ethics: “Was soll ich tun?”²

Source abstraction



1 Gadamer, Hans-Georg, *Wahrheit und Methode: Grundzüge einer philosophischen Hermeneutik*, Tübingen, 1960, p. 289.
 2 Kant, Immanuel, *Logik. Ein Handbuch zu Vorlesungen*, Wiesbaden, 1800/1958, A26, p. 448.

Illustration 6: The methodology of this thesis

Capitalism, Judaism, Philosophy: A five-step methodology to develop a talmudic perspective on ethical dilemmas in corporate management

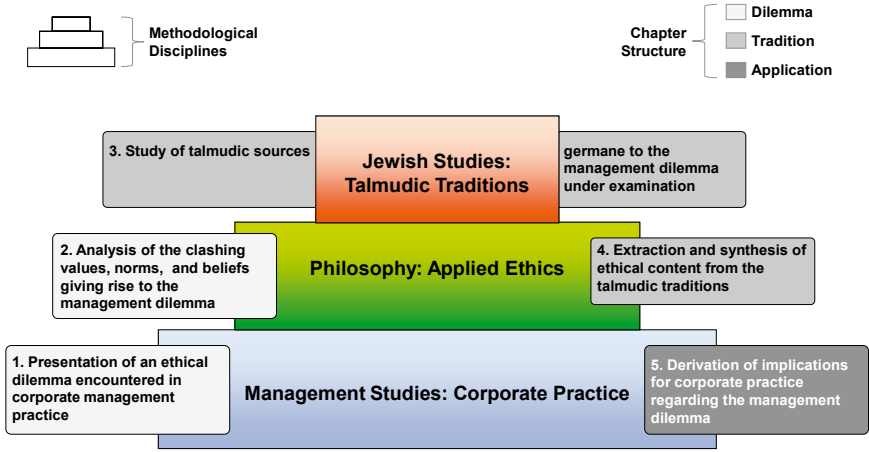


Illustration 7: The fused elements of the Talmudic Work Ethic and *Yeshivah* Culture

Corporate culture in the field of tension between the talmudic work ethic and the culture of the Yeshivah

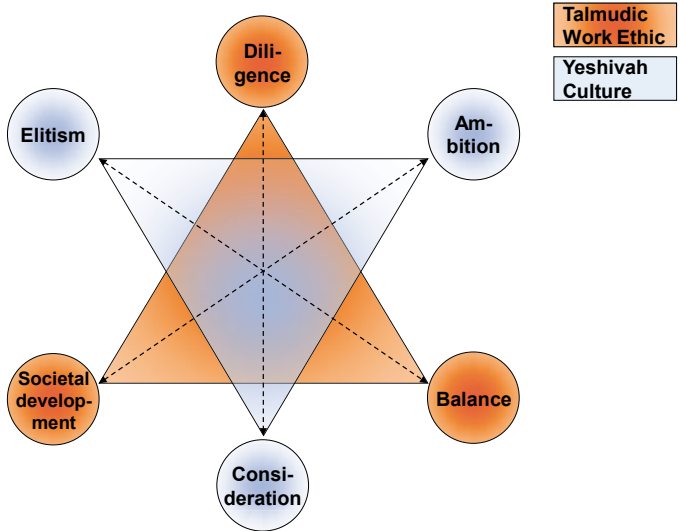


Illustration 8: The talmudic whistle-blowing dilemma

Whistle-blowing requires balancing obligations to protest and to protect

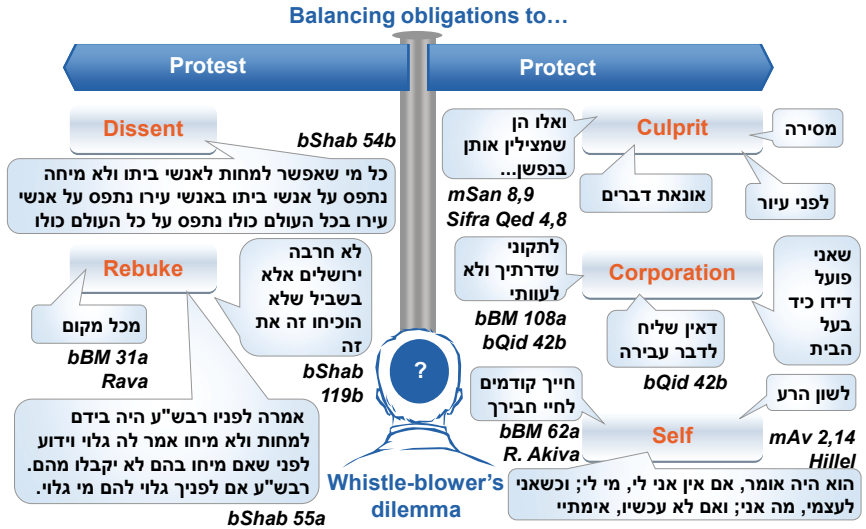


Illustration 9: Analysis of the השוכר את האומנין *Sugya* (mBM 6,1; bBM 76a)

The Talmud perceives four cases of justified causes for resentment in third-party wage determination processes

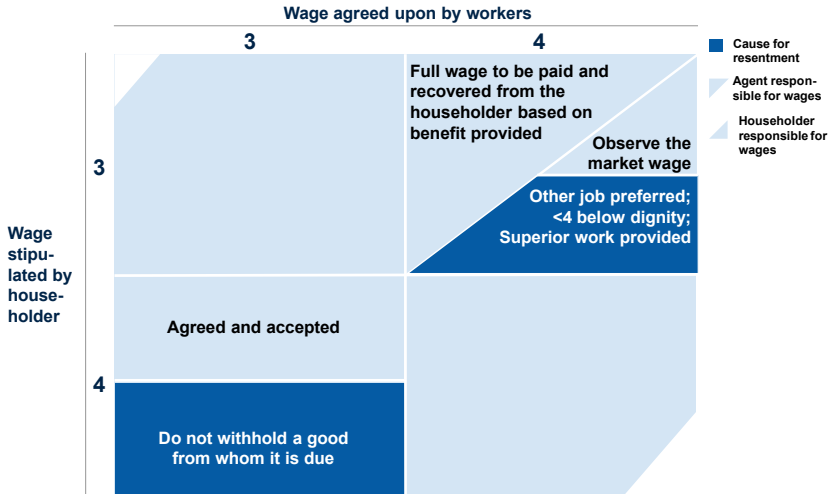
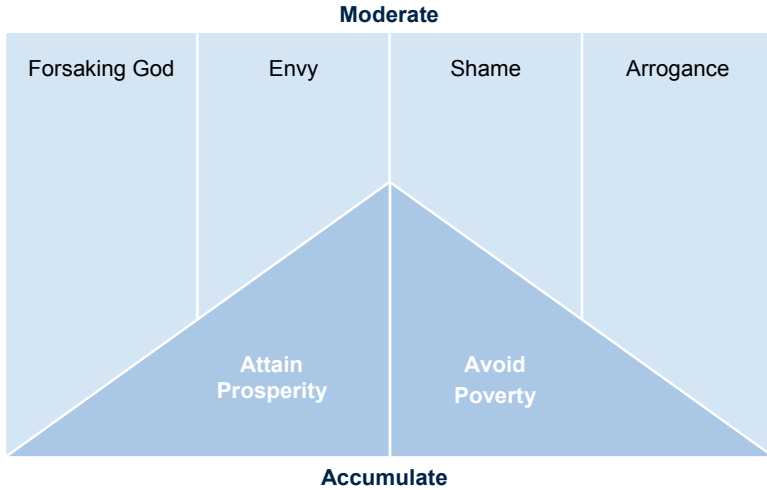


Illustration 10: The talmudic stance towards material wealth

The Talmud encourages the accumulation of wealth while urging moderation in light of the risks of riches



List of Abbreviations¹³¹¹*Biblical Books*

Gen	Genesis	Na	Nachum
Ex	Exodus	Hab	Habakkuk
Lev	Leviticus	Zep	Zephaniah
Num	Numbers	Cha	Chaggai
Deut	Deuteronomy	Zec	Zekhariah
Jos	Joshua	Mal	Malakhi
Jgs	Judges	Ps	Psalms
Sam	Samuel	Prov	Proverbs
Kgs	Kings	Job	Job
Isa	Isaiah	Song	Song of Songs
Jer	Jeremiah	Rut	Ruth
Ez	Ezekiel	Lam	Lamentations
Hos	Hosea	Eccl	Ecclesiastes
Joel	Joel	Est	Esther
Am	Amos	Dan	Daniel
Ob	Obadiah	Ezr	Ezra
Jona	Jonah	Nech	Nechemiah
Mi	Micah	Chron	Chronicles

1311 Based on Liss, Hanna, *Tanach – Lehrbuch der jüdischen Bibel, Schriften der Hochschule für jüdische Studien Heidelberg* Bd. 8, Heidelberg, 2005, p. 392; Schostak, Désirée, *Form-Megille. Die formale Gestaltung wissenschaftlicher Arbeiten*, Heidelberg, 2008, pp. 31-34 http://www.hfjs.eu/imperia/md/content/vorlesungsverzeichnisse/hfjs/sonstige/form-megille_2008-04-07.pdf; Chicago Manual of Style, *Books of the Bible in Text and Notes*, Chicago, IL, 1906/2010, Par. 10.46; Klein, Isaac, *A Guide to Jewish Religious Practice*, New York, NY, 1979, pp. xi-xiv.

Mishnaic and Talmudic Tractates

A	Av	Avot	B	BB	Bava Batra
	Ar	Arakhin		Bekho	Bekhorot
	AZ	Avodah Zarah		Ber	Berakhot
				Beit	Beitzah
				Bik	Bikkurim
				BM	Bava Metzi'a
				BQ	Bava Kamma
C	Chag	Chaggigah	D	Dem	Demai
	Chal	Challah			
	Chu	Chullin			
E	Ed	Eduyot	G	Git	Gittin
	Er	Eruvin			
H	Hor	Horayot	K	Kel	Kelim
				Ker	Keritot
				Ket	Ketubot
				Kil	Kilayim
M	Maas	Ma'aserot	N	Naz	Nazir
	Mak	Makkot		Ned	Nedarim
	Makh	Makhshirin		Neg	Nega'im
	Meg	Megilla		Nid	Niddah
	Me'i	Me'ila			
	Men	Menachot			
	Mid	Middot			
	Miq	Miqva'ot			
	MSh	Ma'aser Sheni			
	MQ	Mo'ed Qatan			
O	Oha	Ohallot	P	Pa	Parrah
	Orla	Orla		Pea	Peiah
				Pes	Pessachim

Q	Qid	Qiddushin	R	RH	Rosh Hashanah
	Qin	Qinnim			
S	San	Sanhedrin	T	Taan	Ta'anit
	Shab	Shabbat		Tam	Tamid
	Shevi	Shevi'it		TY	Tevul Yom
	Shevu	Shevu'ot		Tem	Temurot
	Sheq	Sheqalim		Ter	Terumot
	So	Sotah		To	Toharot
	Su	Sukkah			
U	Uk	Uqzin	Y	Yad	Yada'im
				Yev	Yevamot
				Yo	Yoma
Z	Zab	Zabim			
	Zeb	Zebachim			

Further Abbreviations of Rabbinic Literature

AvRN A/B	Avot de Rabbi Natan (Version A and B)	MidPs	Midrash Psalms
b	Talmud Bavli	PesR	Pesiqta Rabbah
DerER	Derech Eretz Rabbah	PesRK	Pesiqta Rav Kahana
DerEZ	Derech Eretz Zutta	PirRE	Pirquei de Rabbi Eli'ezer
DtnR	Deuteronomy Rabbah	RutR	Ruth Rabbah
EccIR	Ecclesiastes Rabbah	SedER	Seder Eliyahu Rabbah
EccIZ	Ecclesiastes Zutta	SedEZ	Seder Eliyahu Zutta
ExR	Exodus Rabbah	SedOR	Seder Olam Rabbah
GenR	Genesis Rabbah	SedOZ	Seder Olam Zutta
GenZ	Genesis Zutta	SedTA	Seder Tannaim veAmoraim
IggSR	Iggeret Rav Sherira Ga'on	SoSR	Song of Songs Rabbah
LamR	Lamentations Rabbah	SoSZ	Song of Songs Zutta
LeqT	Leqach Tov	SifD	Sifrei Deuteronomy
LevR	Leviticus Rabbah Mishnah	SifN	Sifrei Numbers
MekhY	Mekhilta de Rabbi Yishma'el	Sifra	Sifra
MekhS	Mekhilta de Rabbi Shimon b. Yochai	SifZ	Sifrei Zutta
MidG	Midrash haGadol	t	Tosefta
MidProv	Midrash Proverbs	Tan	Tanchuma
NumR	Numbers Rabbah	TanB	Tanchuma B
MidTann	Midrash Tannaim	y	Talmud Yerushalmi
		YalqS	Yalqut Shimoni

Examples of Abbreviation Usage

- Gen 18,3** Book of Genesis, Chapter 18, Verse 3
- mBer 2,5** Mishnah, Tractate Berakhot, Chapter 2, Mishnah 5
- tYev 4,3** Tosefta, Tractate Yevamot, Chapter 4, Halakhah 3
- bBer 2a** Talmud Bavli, Tractate Berakhot, Folio 2, Front side
- bBer 2b** Talmud Bavli, Tractate Berakhot, Folio 2, Back side
- yPes 1,1 27a** Talmud Yerushalmi, Tractate Pessachim, Chapter 1, Halakhah 1, Folio 27, Column a
- yPes 1,5 27d** Talmud Yerushalmi, Tractate Pessachim, Chapter 1, Halakhah 5, Folio 27, Column d