

TRANSFORMING SOCIAL WELFARE POLICY: THE SAGES' RECONSTRUCTION OF THE INSTITUTION OF THE SECOND TITHE AS A MODEL FOR SOCIAL WELFARE POLICY

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ABSTRACT

The academic discourse regarding welfare policy has generally been dominated by views focused on the distribution of resources and welfare. In recent years, another school of thought, known as “relational egalitarianism,” has emerged and shifted the focal point of social welfare policy from traditional redistribution to other aspects of social status. In this article, I will analyze a similar paradigm shift that occurred in the fashioning of the institution of the second tithe in the classical sources of Jewish law. The institution of the second tithe is ostensibly irrelevant to social welfare policy both from the internal perspective of Jewish law and from the external general-theoretical perspective. From the Jewish law perspective, it is not normally conceived of as an institution with a social-welfare goal, and from the general theoretical perspective, it seems to be an anachronistic institution that cannot enrich the modern theoretical discourse. In this article, I will try to expose the social role that was imbued in this institution through its reconstruction by the Sages. I argue that the concealed and indirect mechanism for the promotion of social goals may promote the social status of individuals in society more effectively than conventional social welfare mechanisms. In this respect, the reshaping of the second tithe may provide inspiration for enriching the arsenal of possible relational egalitarian social policy prescriptions.

KEYWORDS: Jewish law, relational egalitarians, second tithe, social welfare policy

INTRODUCTION

The academic discourse on welfare policy is primarily concerned with the distribution of material assets and generally dominated by static metrics for measurement of income inequality such as the Gini and Atkinson Indexes. This academic discourse has permeated the political arena, strongly influencing policymakers in Western countries such as the United States.¹ This welfare policy

¹ For example, see the statement made by Obama Administration former Director of the Office of Management and Budget Peter Orszag regarding the centrality of studies on income inequality, such as the Thomas Piketty and Emanuel Saez study on income inequality, in guiding the Administration's social policy: “[Saez's]work on income inequality and taxation has helped me to shape my own thinking on these matters, and it had no small influence on the President's Budget.” Peter Orszag, *Congratulation to Emanuel Saez*, OFFICE OF MANAGEMENT AND BUDGET (Apr.

discourse is notably dominated by the analysis of material resource distribution, and particularly by versions of luck egalitarianism—the view that in order to achieve the optimal distributive pattern, one should aim to “eliminate the effect of brute luck from human affairs.”² In this article, I would like to focus on an alternative distributive model that emphasizes the dynamic element in resource distribution and, in particular, on how government distributive mechanisms affect the dignity and self-respect of recipients. This scholarly strand is best represented by the scholars Elizabeth Anderson and Jonathan Wolff, who both argue that pursuing the material aspects of resource distribution alone can undermine other aspects of equality that are no less important—namely, respect for individuals and their own sense of self-respect. Although Anderson, Wolff, and the luck egalitarians whom they criticize focus on the concept of equality, their work has significant applications for almost any theory of distributive justice, since it essentially addresses the normative underpinnings of theories of distributive justice. As scholars have noted, most arguments among luck egalitarians concern the proper “space” or “currency” for the application of egalitarianism.³ The work of Wolff, Anderson, and the luck egalitarians helpfully focuses social policy on the social phenomena with which it should primarily be concerned.

I will show that early Jewish law was motivated by a normative conception of welfare policy similar to the one adopted by Anderson and Wolff. Rather than simply applying a modern label to Tannaitic normative conceptions of welfare policy so as to mold it in the shape of a Wolffian-Andersonian concept, I highlight the unique model of the second tithe (*ma'aser sheni*), which Jewish lawmakers developed for promoting such normative welfare policy. This analysis of the second tithe aims to uncover the novelty of Tannaitic normative welfare policy and the principles guiding it. Even the few scholars who have turned to the Tannaitic sources in order to recover appropriate principles for guiding welfare policy have focused mostly on the poor tithe or the legal institutions of the Sabbatical and Jubilee, where the connection to welfare policy is more transparent.⁴ Their reasons for ignoring the institution of the second tithe seem understandable, because, at first glance, this institution appears to have an exclusively religious purpose of bringing the fruits to the holiest city rather than transferring resources to the poor.

I will show how the fact that an institution is not perceived as having a role in promoting social welfare, enhances its ability to achieve certain social goals. Although the second tithe is rooted in the context of a religious-agrarian society and thus may seem irrelevant to, and historically distant from, modern secular legal systems, I argue that it can fruitfully serve as a general, abstract model for the proper objectives of, and means for, achieving modern welfare policy. Indeed, the fact that welfare policy was not considered to be the chief focus of the second tithe might even have helped it to promote such objectives.⁵

27, 2009, 01:47 PM), <http://www.whitehouse.gov/omb/blog/09/04/27/CongratulationstoEmmanuelSaez/>. Although Piketty and Saez are economists and not philosophers, their work seems consonant with later-described philosophical views that social policy should focus on the redistribution of material resources. Annie Lowrey, *French Duo See (Well) Past Tax Rise for the Richest*, N.Y. TIMES, Apr. 17, 2012, at A1 (describing Saez's and Piketty's views).

2 Elizabeth Anderson, *What is the Point of Equality?*, 109 ETHICS 287, 288 (1999).

3 Anderson, *supra* note 2, at 287–88; see also G. A. Cohen, *On the Currency of Egalitarian Justice*, 99 ETHICS 906, 922–23 (1989). The “space” and “currency” refer to the attributes and characteristics with which a distributive theory is concerned and the units in which it measures and ranks different distributional outcomes.

4 See *infra* note 29 and accompanying text.

5 This argument is premised on the view that it is better to achieve redistribution through private law than to do so through mechanisms designed especially for redistribution, such as welfare payments. See Daphna Lewinsohn-Zamir, *In Defense of Redistribution through Private Law*, 91 MINN. L. REV. 326, 330–31 (2006–2007). There is, however, a fundamental difference between the principal argument critiquing the failure of

While some might question the attempt to enrich the modern philosophical discourse by analyzing an ancient religious practice, I follow Jürgen Habermas in claiming that philosophical encounters with religious traditions provide the potential for innovative stimulation:

Philosophy has recurrently found in its encounters with religious traditions, and they include Muslim traditions as well, that it receives innovative stimulation if it succeeds in liberating the cognitive substance from its dogmatic encapsulation in the melting pot of rational discourse.⁶

Habermas examines the process by which the “innovative stimulation” takes place:

Religious traditions have a special power to articulate moral intuitions, especially with regard to vulnerable forms of communal life. In the event of the corresponding political debates, this potential makes religious speech a serious candidate to transporting possible truth contents, which can then be translated from the vocabulary of a particular religious community into a generally accessible language.⁷

Such potential for “innovative stimulation” is especially strong for normative welfare policy, which is directly linked to a “vulnerable conception of communal life.”

In Habermasian terms, the project of this paper can be seen as an attempt to translate the religious conception of the second tithe into secular language, which Habermas believed would enrich the secular-philosophical discussion. Moreover, developing one’s “epistemic ability to consider one’s own faith reflexively from the outside and to relate it to secular views”⁸ can enrich discussion internal to a religious tradition as well.

In Part I of this paper, I will describe the Wolffian-Andersonian critique of luck egalitarians and their alternative concept of equality and its impact on welfare policy. Part II will introduce the biblical institution of the second tithe and demonstrate the innovations that the Sages initiated so it could function as a viable welfare scheme. Part III will place the second tithe in the broader context of Jewish social welfare law, arguing that the second tithe plays a role that complements the institution of the Sabbatical Year. I will show how, within this scheme, the second tithe is motivated by a normative conception of welfare policy similar to that of Wolff and Anderson. Part IV will conclude by pointing to a few general implications of the Sages’ model for modern policymakers attempting to apply a Wolffian-Andersonian normative conception of welfare policy.

THE WOLFFIAN-ANDERSONIAN CONCEPT OF EQUALITY AND ITS IMPACT ON WELFARE POLICY

Anderson and Wolff both direct their critiques toward luck egalitarians, a group that has been extremely influential in the scholarship on normative welfare policy. The scholarship on luck egalitarianism began with the writings of Ronald Dworkin in the early 1980s⁹ and was developed over

conventional welfare mechanisms to obtain the objective at which they are aiming and my argument. While the main argument for redistribution through private law is that it “disguises” redistribution and thus eliminates some of the harmful side effects of redistribution such as infringement of dignity and self-respect, my argument is not aimed at concealing the redistribution taking place; rather, it is aimed at other objectives, namely, promoting the status of the worst-off without redistributive tools.

6 Jürgen Habermas, *Religion in the Public Sphere*, 14 EUR. J. PHIL. 1, 17 (2006).

7 *Id.* at 10.

8 *Id.* at 9–10.

9 Ronald Dworkin, *What is Equality? Part 2: Equality of Resources*, 10 PHIL. & PUB. AFF. 283, 333 (1981).

the next twenty years by leading philosophers such as G. E. Cohen,¹⁰ Richard Arenson,¹¹ and Philippe Van Parijs.¹² The common denominator in these scholars' work is the central purpose of equality to "eliminate the effect of brute luck from human affairs."¹³ As Arenson claims, at its core "[t]he concern of distributive justice is to compensate individuals for misfortune."¹⁴

Anderson describes the common premise of all luck egalitarians as follows:

Luck egalitarianism relies on two moral premises: that people should be compensated for undeserved misfortunes and that the compensation should come only from that part of others' good fortune that is undeserved.¹⁵

These scholars differ in their considerations of what Anderson calls "the space over which they advocate equality"¹⁶ and what Cohen has labeled "the currency of egalitarian Justice."¹⁷ According to Dworkin, Rakowski, and Romer, egalitarians should seek to ensure equality of resources or assets.¹⁸ According to Van Parijs, the search for equality should be focused largely on real freedom: legal rights as well as the means to achieve one's ends.¹⁹ For Arenson, egalitarians should focus primarily on equal opportunities in promoting human welfare, while Cohen argues that egalitarians should concentrate on developing a combination of internal capabilities, opportunities to achieve optimum welfare, and resource distribution.²⁰ As Anderson notes, luck egalitarians may be divided into two camps: those who promote equality of welfare as the central concern of egalitarians (Arenson and Cohen), and those who promote equality of resources as their central concern (Dworkin and Van Parijs).²¹

Anderson criticizes luck egalitarians primarily because their criteria for identifying individuals to whom the government should transfer resources reinforce the hierarchical structure of society:

[E]quality of fortune makes the basis for citizens' claims on one another the fact that some are inferior to others in the worth of their lives, talents, and personal qualities. Thus, its principles express contemptuous pity for those the state stamps as sadly inferior and uphold envy as a basis for distributing goods from the lucky to the unfortunate. Such principles stigmatize the unfortunate and disrespect the fortunate by failing to show how envy can obligate them.²²

In Anderson's view, by reinforcing the hierarchical structure of society, luck egalitarianism becomes, in a certain sense, self-defeating: although it strives to reduce inequality through the transfer of material resources, it ends up increasing inequality by infringing on the dignity and self-respect of the recipients. Anderson demonstrates this point by describing a hypothetical letter

10 Cohen, *supra* note 3.

11 Richard Arenson, *Equality and Equality of Opportunity for Welfare*, 56 PHIL. STUD. 77 (1989).

12 PHILIPPE VAN PARIJS, *REAL FREEDOM FOR ALL: WHAT (IF ANYTHING) CAN JUSTIFY CAPITALISM?* (1995).

13 Anderson, *supra* note 2, at 288.

14 Richard Arenson, *Rawls, Responsibility, and Distributive Justice*, in *JUSTICE, POLITICAL LIBERALISM, AND UTILITARIANISM* 80, 80 (Marc Fleurbaey & John A. Weymark eds., 2008).

15 Anderson, *supra* note 2, at 290.

16 *Id.* at 293.

17 Cohen, *supra* note 3.

18 See Anderson, *supra* note 2, at 293 (summarizing the different views).

19 *Id.*

20 *Id.*

21 *Id.*

22 *Id.* at 289.

accompanying a welfare check, sent by a state with a welfare policy guided by a luck-egalitarian theory, to welfare recipients:

To the disabled: Your defective native endowments or current disabilities, alas, make your life less worth living than the lives of normal people. To compensate for this misfortune, we, the able ones, will give you extra resources, enough to make the worth of living your life good enough that at least one person out there thinks it is comparable to someone else's life.

To the stupid and untalented: Unfortunately, other people don't value what little you have to offer in the system of production. Your talents are too meager to command much market value. Because of the misfortune that you were born so poorly endowed with talents, we productive ones will make it up to you: we'll let you share in the bounty of what we have produced with our vastly superior and highly valued abilities.

To the ugly and socially awkward: How sad that you are so repulsive to people around you that no one wants to be your friend or lifetime companion. We won't make it up to you by being your friend or your marriage partner—we have our own freedom of association to exercise—but you can console yourself in your miserable loneliness by consuming these material goods that we, the beautiful and charming ones, will provide. And who knows? Maybe you won't be such a loser in love once potential dates see how rich you are.²³

Anderson summarizes her critique in one sentence:

Equality of fortune disparages the internally disadvantaged and raises private disdain to the status of officially recognized truth.²⁴

Wolff raises a similar objection to luck egalitarians' theory, arguing that their prescription of what equality requires is not compatible with "the egalitarian ethos," which is comprised of *two* central values: fairness and respect. Wolff claims that while the luck egalitarians' scholarship fully accounts for the fairness component of equality, they have ignored the values of both respect and self-respect, which are complementary elements of the egalitarian ethos. However, he notes that "the heart of my case in this article is that there can be a degree of tension between . . . [t]he two ideas [of] 'fairness' and 'respect.'"²⁵

Wolff criticizes luck egalitarians in particular and liberal egalitarians in general for their narrow-minded focus:

On the whole, liberal egalitarianism simply ignores many aspects of the economy. These include the ownership of the means of production; the management of production; the consequent distribution of income that follows more or less directly from the ownership of the means of production; banking; finance; and the ways in which different forms of work can be differentially a benefit and burden.²⁶

Anderson instead calls for concentrating on equality as a social relationship:

[F]ocusing on equality as a social relationship, rather than simply as a pattern of distribution, at least enables us to see that we have a choice between redistributing material resources and changing other aspects of society to meet the demands of equality.²⁷

23 *Id.* at 305.

24 *Id.* at 306.

25 Jonathan Wolff, *Fairness, Respect, and the Egalitarian Ethos*, 27 PHIL. & PUB. AFF. 97, 106 (1998).

26 Jonathan Wolff, *Fairness, Respect and the Egalitarian Ethos Revisited*, 14 J. ETHICS, 335, 339 (2010).

27 Anderson, *supra* note 2, at 336.

Anderson's view raises the following question: What other aspects of society, besides the distribution of assets, need to be changed to meet the demand of equality? Promoting equality through means other than distribution of assets requires creativity. The welfare policy of the Tannaitic sages as reflected in the institution of the second tithe is a possible source of inspiration for promoting equality through other means.

THE INSTITUTION OF THE SECOND TITHE

The second tithe is one of the several donations a person must give from his crops.²⁸ Other such obligations include:

- a. the heave offering (*trumah*): a donation of an unspecified amount that one must give to the priests, which the sages determined should range between 1/60 and 1/40 of the crop;
- b. the first tithe (*ma'aser rishon*): a gift of 10% given to the Levites;
- c. the tithe offering (*trumat ma'aser*): a donation by a Levite of 10% of the first tithe that he received, given to the priests; and
- d. the poor tithe (*ma'aser ani*): a gift of 10% of one's crops to the poor every third and sixth year of the seven-year Sabbatical cycle.

The second tithe under consideration requires one to take 10% of his crops in the first, second, fourth, and fifth year of the Sabbatical cycle and eat the produce in the city of Jerusalem.

At first glance, the second tithe seems to have nothing to do with welfare policy, for the eating of one's fruit in the city of Jerusalem seems to be a religious act that does not concern the welfare of others. Thus, while the poor tithe has received scholarly attention as a model modern tax and welfare policy, the second tithe has been viewed as irrelevant.²⁹ Yet the Sages reconstructed the second tithe as a welfare program by instituting its annual interchangeability with the poor tithe, thereby signifying to the owner of the produce that he is eating the fruit in a capacity equivalent to that of a poor man receiving the fruits of the poor tithe. The Sages further reconstructed the law of the second tithe to "peel off" the main elements constituting the landowner's right of ownership over the fruits. These two transformations complement each other in recasting the institution of the second tithe.

The Temporal Interchangeability between the Poor Tithe and the Second Tithe

The annual interchangeability between the poor tithe and the second tithe is quite conspicuous compared with other donations and even with the structure of Jewish law in general. This is the only example of a requirement to donate one's crops that is not an annual obligation.

28 As women were generally not landowners in early Judaism, I use the masculine form throughout.

29 For scholarship aimed at deriving tax policy applications of the biblical tithe, see Adam S. Chodorow, *Agricultural Tithing and (Flat) Tax Complexity*, 68 U. PITT. L. REV. 267 (2007). For an explicit statement regarding the irrelevancy of second tithe to modern public policy, see Adam S. Chodorow, *Biblical Tax Systems and the Case for Progressive Taxation*, 23 J.L. & RELIGION 51, 82 (2008) ("It is difficult to see how one could argue that this tithe reflected or rested on a judgment regarding the fair allocation of communal obligations.").

Furthermore, it comprises the only two commandments that feature interchangeability in different years and that apply to certain years only.³⁰

This scheme is particularly unique given that there appears to be no reference in the Pentateuch to the interchangeability of the two commandments by year. The Biblical verse that addresses the second tithe reads as follows:

Thou shalt truly tithe all the increase of thy seed, that the field bringeth forth *year by year*. And thou shalt eat before the LORD thy God, in the place which he shall choose to place his name there, the tithe of thy corn, of thy wine, and of thine oil, and the firstlings of thy herds and of thy flocks; that thou mayest learn to fear the LORD thy God always.³¹

The expression “year by year” (*shana shana*) seems to emphasize that the practice of the second tithe should take place annually.

In the verses concerning the poor tithe, there is also no indication that the second tithe and the poor tithe are interchangeable or connected in any way:

When thou hast made an end of tithing all the tithes of thine increase the third year, which is the year of tithing, and hast given it unto the Levite, the stranger, the fatherless, and the widow, that they may eat within thy gates, and be filled.³²

The Biblical source of the poor tithe³³ does seem to limit it to every third year as indicated by the words “the third year” (*bashana bashelishit*), which seems to include the sixth year of the cycle. However, there is no indication that a donor would be excused from the poor tithe in the years when the second tithe must be given.

Most likely, the Tannaim provided an interpretation of the law commanding the temporal interchangeability of the poor tithe and the second tithe as reflected in the following Midrash Halakhah:

30 Excluding commandments that are directly related to the Sabbatical (which are not interchangeable with any other commandments) there is an additional commandment that is not performed on an annual basis—namely, *Net'a Reva'i* (*Leviticus* 19:23). According to the commandment of *Net'a Reva'i*, after planting a tree, one cannot eat the fruits of the tree for the first four years. In the fourth year, one must bring the fruits to Jerusalem to be eaten—similar to the second tithe. Although one must wait four years, this cannot be seen as a non-annual commandment. The four years are only the lapse of time one must wait from the triggering event—the planting of the tree, but this is not a commandment performed on a non-annual cycle. It is interesting to note that in the case of *Net'a Reva'i*, there is no hint in the plain text of the Pentateuch that the fruit of the fourth year should be eaten in Jerusalem. The Sages are the ones who equated treatment of the fruit of *Net'a Reva'i* with the fruit of the second tithe—not only in how the fruits are eaten, but in general rules of how the fruit should be treated, for example, in sales. This might reinforce the argument that the Sages' motivation for requiring that the fruit be brought to Jerusalem is the counteraction of the practice of ownership derived from self-production. Such counteraction is especially relevant in cases of planting trees, the paradigmatic case of capital formation that can be used as a means of production.

31 *Deuteronomy* 14:22–23 (King James) (emphasis added).

32 *Id.* at 26:12 (King James).

33 The term *ma'aser ani* (poor tithe) was coined by the Sages. In the Pentateuch there is no mention of a donation that is directed only toward the poor; rather, the poor tithe is directed also toward the Levites and the widows, even if they are rich. Although the *Sifre on Deuteronomy* 109 has interpreted the verse to apply only to poor widows, it is possible to interpret “widow” as applying to any widow. R. Yehuda interprets the verse “do not take a widow's clothing on account of a debt” (*Deuteronomy* 24:17) as applying to any widow, even to a rich widow (*bBaba Mezi'a* 115a).

Which is the year of tithing ([Deuteronomy] 26:12) meaning the year which is liable to tithing One might think that two tithes must be set aside in the third year; hence the verse (26:24) states *The year of tithing*—only one tithe must be set aside in that year, not two. This obviously refers to none but the poor man's tithe, which is the subject of this verse. Whence do we learn that the other tithes are also to be included? From the verse (*All the tithe of thine increase* (14:28), which includes (the tithing of the entire increase).

. . . This leaves me in doubt as to which tithe is to be postponed, the first or second; therefore the next verse states, *And the Levite, because he hath no portion of inheritance (with thee . . . shall come)* (14:29): Let the Levite come and take his portion in any case; so taught R. Judah [Yehuda].³⁴

According to this Tannaitic interpretation, in the year in which the poor tithe is given, it must be the only tithe given, due the singular form used: “year of the tithe.” Then, the Midrash concludes that it is the second tithe that need not be given in the year when the poor tithe is due.

That the interchangeability of these tithes is a construction of the Sages not implied in the plain text of the Pentateuch is reinforced by an existing alternative interpretation of this period, which Josephus Flavius describes in his *Antiquities*. Josephus describes the different gifts given from one's crops in the time of the temple as follows:

Besides those two tithes, which I have already said you are to pay every year, the one for the Levites, the other for the festivals, you are to bring every third year a third tithe to be distributed to those that want; to women also that are widows, and to children that are orphans.³⁵

Josephus states explicitly that, based on the plain meaning of the Pentateuch text, the second tithe is given every year while the poor tithe is given only once every three years. Josephus's description suggests an alternative tradition for this text, although it is not clear whether or not such a tradition was actually practiced historically.

We might conclude that the Sages diverged from the plain meaning of the text in order to reconstruct the meaning of the second tithe so that it might play a role in welfare policy, in addition to serving as an act of devotion to God in the holiest place.³⁶ This reconstruction required the landowner to experience the same social status as the poor man who receives the fruits given him from landowners as a poor tithe. Indeed, the Sages shaped the details of second tithe in order to communicate as clearly as possible that the landowner's eating the fruit of the second tithe in Jerusalem is equivalent to the poor man's eating the fruit of the poor tithe.

“Peeling Off” Features of Ownership from the Fruits of the Second Tithe

The Sages most likely accepted the main features of ownership recognized in Roman law³⁷: *ius possendi*, “the right to possession”; *ius utendi*, “the right to use”; and *ius abutendi*, “the right to

34 SIFRE ON DEUTERONOMY 109 (Leuven Hammer trans., 1986) (emphasis added). The same source contains a disputing opinion from R. Eliezer ben Jacob regarding the source from which it is learned that the second tithe is interchangeable with the poor tithe and not the first tithe: “R. Eliezer ben Jacob, however, says: Not necessarily, for Scripture says elsewhere, *And Unto the children of Levi, Behold, I have given all the tithe in Israel for an inheritance* (Num[b]ers] 18:21)—just as an inheritance cannot move, so cannot first tithe move.” However, there is no dispute regarding the fact that the two are interchangeable. *Id.*

35 JOSEPHUS FLAVIUS, IV THE ANTIQUITIES OF THE JEWS, ch. 8, § 2. (William Whiston trans., 1777).

36 See *infra* note 63.

37 On the similarities between Roman law and Jewish law in both the Tannaitic and Amoraic sources, see BOAZ COHEN, I JEWISH AND ROMAN LAW: A COMPARATIVE STUDY 17–24 (1966).

waste,” which was translated into “the right of disposition.”³⁸ Modern legal theorists³⁹ such as William Blackstone similarly describe the conception of property as consisting of these elements: possession, use, and transferability,⁴⁰ which Blackstone describes as follows:

The third absolute right, inherent in every Englishman is that of property: which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land.⁴¹

The United States Supreme Court has accepted this definition as well: “Property rights in a physical thing have been described as the rights ‘to possess, use and dispose of it.’”⁴²

However, in the second tithing, the Tannaim uprooted these dimensions of ownership by imposing restrictions and limitations on each feature: the transferability of the fruit, the possession of the fruit, and even the space where one could possess and consume the fruit.

Limiting Transferability and Commodification

The strictures on transfer and commodification of the fruit of the land in the institution of the second tithing are described in the following Mishnah:

Second tithing may not be sold, nor may it be pledged, nor may it be exchanged, nor may it be used as a weight. One may not say to his fellow [even] in Jerusalem: here is wine, give me [for it] oil; this applies also to all other produce. But people may give it to one another as a free gift.⁴³

38 See BARRY NICHOLAS, *AN INTRODUCTION TO ROMAN LAW* 153–57 (1962); RICHARD A. EPSTEIN, *TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN* 59 (1985).

39 Chanoch Dagan has broken modern conceptions of property into three categories: The first is the formalist account of property, which defines property according to incidences. The second is the substantive account of property, such as Hohfeld’s bundle-of-sticks theory (i.e., the idea that property consists of several distinctive rights that are only nominally tied together by name). The third is the realist account that he himself suggests, which combines both elements. Although this account does not define property through a close list of incidences, it does find a connection among the different elements in the value that the property institution aims at promoting in the particular context. See CHANOCH DAGAN, *PROPERTY: VALUES AND INSTITUTION* xi–xii (2011). Although this paper is proceeding with the formalist conception in which the Sages have transformed the status of the landowner from an owner of the fruits to a non-owner of the fruits, there seems to be a deep connection between Dagan’s account of property and the reconstruction of the status of the landowner in relation to the fruits of the second tithing described above. One might claim that the Tannaim’s actions fit more neatly into an understanding of property as different institutions rather than as a lever that can only be turned on or off.

40 Regarding the link between the conception of property in Roman law and Blackwell’s conception of property, see EPSTEIN, *supra* note 38.

41 I WILLIAM BLACKSTONE, *COMMENTARIES* *138. Thomas W. Merrill notes that Blackstone’s definition of property is incongruent with the later definition of property he provides in 2 *COMMENTARIES* *2, where he describes property as the “sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.” Merrill places each one of these definitions into a distinct category of property conceptions. The former is categorized as a “single-variable version of essentialism,” which focuses on exclusion, and the latter is categorized as a “multiple-variable version of essentialism.” Merrill has also questioned the link scholars have claimed exists between the Roman conception of property and the three elements mentioned in Blackstone’s former definition, in which “free use” and “enjoyment” seem to be redundant. See Thomas W. Merrill, *Property and the Right to Exclude*, 77 *NEB. L. REV.* 730, 734–36.

42 *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982).

43 *mMa’aser Sheni* 1:1 (Soncino ed., 1952).

In addition to these Mishnah limitations on selling or using the fruit of the second tithe, the Tosefta imposes additional limitations on its commodification, including its transfer as a loan:

[Produce in the status of] second tithe:

[1] they do not sell it, [2] and they do not take it as a pledge, [3] and they do not give it as a pledge, [4] and they do not exchange it,

[5] and they do not reckon the weight of golden Dinars with it . . . ,

even to deconsecrate [other] second tithe [produce or coins] with them

And he may not give them [that is, coins in the status of second tithe] to a money changer to derive benefit from them or to loan them out to gain stature through them.

[But] if [he does so] in order that they not rust, it is permitted.⁴⁴

Indeed, the Mishnah prohibits even the weak commodification of the second tithe to create an economic partnership:

A man may not say to his fellow: carry up this [second tithe] produce to Jerusalem that you may have a share therein. But he may say to him: “carry it up that we may both eat and drink of it in.”⁴⁵

Moreover, the Mishnah significantly restricts monetization of the second tithe:

Beth Shammai say: one may not turn his Sela’s into gold Denars. But Beth Hillel allow it. R. Akiba said: once I turned silver coins for gold Denars for Rabban Gamaliel and R. Yoshua.⁴⁶

The owner may convert the second-tithe fruit into money to ease the process of bringing the second tithe to Jerusalem but may not further exchange silver coins for more valuable gold, a restriction that hinders its entry into the stream of commerce. Rabbi Meir seems to take the view expressed in this second chapter one step further:

If one changes for a Sela copper coins of Second Tithe, Beth Shammai say: he may change copper coins for a whole Sela. But Beth Hillel say: silver for one Shekel and copper coins for the other Shekel. R. Meir says: silver and produce may not be exchanged together for silver. But the sages allow it.⁴⁷

Rabbi Meir acknowledges that one is permitted to redeem fruit for money but rules that one cannot redeem a combination of both fruit and money for money, because doing so treats the fruit as a commodity and blurs the distinction between the use value of the fruit and the exchange value of money, and thereby reduces all forms of value to one unidimensional form.⁴⁸ In other words, commodification recreates the value of the fruit and thus recreates the dimensions of the landowner’s ownership over the fruit, enlarging his transactional possibilities and exacerbating the fruit’s marketization. Widening the landowner’s choices amplifies his ownership and thus his autonomy,⁴⁹

44 *tMa’aser Sheni* 1:1 (Jacob Neusner ed., 1986).

45 *mMa’aser Sheni* 3:1; see *infra* note 50.

46 *mMa’aser Sheni* 2:7 (Soncino ed., 1952).

47 *Id.* at 2:8.

48 The conceptual distinction between exchange and use value lies at the heart of the Marxist theory of value. See KARL MARX, *CAPITAL: A CRITIQUE OF POLITICAL ECONOMY* 138–77 (Ben Fowkes trans., 1990).

49 This dimension is reminiscent of the central feature of ownership that Hegel focuses on: property as the realization of the owner’s freedom. G. W. F. HEGEL, *ELEMENTS OF THE PHILOSOPHY OF RIGHT* §§ 41, 44–46 (Allen Wood ed., 1991).

and this is the most likely reason the Mishnah restricted the complete commodification of the second-tithe fruit.⁵⁰

Limiting the Owner's Personal Use

One of the central features of property is the ability of the owner to determine how the resource will be used. As James Penner writes: "The interest in property is the interest in exclusively determining the use of things."⁵¹

Although the right to exclude is also a central attribute of property, Penner points out that use is more fundamental to autonomy, and that the main purpose in recognizing the right to exclude is to enable the owner to effectively use the object.⁵² Similarly, Larissa Katz agrees that "[o]wnership's defining characteristic is that it is the special authority to set the agenda for a resource."⁵³

One of the central features of having "authority to set the agenda for a resource" is the ability to control the form of its usage. Yet the Mishnah restricts the ability of the owner to determine the use of second-tithe fruits; it thereby dictates the agenda for the resource and annuls the landowner's authority to do so, even when the fruit has been brought to Jerusalem:

Second tithe must be set apart for eating, for drinking and for anointing; for eating what is usually eaten, for drinking what is usually drunk, and for anointing what is customarily used for anointing. [Thus] one may not anoint oneself with wine or with vinegar, but one may anoint oneself with oil. Oil of second tithe may not be spiced, nor may spiced oil be bought with second tithe money; but wine may be spiced.⁵⁴

Of course, one might explain such a restriction as stemming from the sacred status of the fruit, which, like the heave offering given as a gift to the priests, should not be profaned by improper use.⁵⁵ Even if this is true, however, we must still consider why the second-tithe fruit was defined as sacred, and the reason may be different from the reason the heave offering was defined as sacred. The purpose of setting such fruit apart might be precisely to exclude it from the complete dominion of the owner. Perhaps a better argument is that the Biblical sources on the heave offering and the second tithe are quite different, as reflected in the following Mishnah in which both Rabbi Shimon

50 Regarding how commodification may enhance autonomy and personhood, see Tsilly Dagan and Talia Fisher, *Rights for Sale*, 96 MINN. L. REV. 90, 108–10 (2011). The Mishnah's distinction between "partial commodification," in which the fruits are exchanged for money, and "full commodification" in which the fruits are mixed with money in one side of the transaction, may serve as a good example for Dagan's main argument that on the spectrum between alienability and inalienability, there are several different combinations of the two that may be best in different contexts. This argument may overlap to some extent with the distinction Dagan and Fisher make between commodification of resources and commodification of interactions. *Id.* at 102–03.

51 JAMES E. PENNER, *THE IDEA OF PROPERTY IN LAW* 49 (1997).

52 *See id.* at 71.

53 Larissa Katz, *Exclusion and Exclusivity in Property Law*, 58 U. TORONTO L.J. 275, 290 (2008).

54 *mMa'aser Sheni* 2:1 (Soncino ed., 1952).

55 It should be noted that similar features could be found in additional *halachic* categories such as the limitations on use and transfer of the fruits of the Sabbatical and the geographic requirement of eating all *Kodashim Kalim* in Jerusalem. To sustain the claim that the purpose of each one of the restrictions in second tithe is to uproot ownership demands a thorough comparison to these other *halachic* categories. Nonetheless, the grouping of all restrictions in one institution and alongside the temporal interchangeability of second tithe with poor tithe reinforces the claim that the objective of these elements in the context of *ma'aser sheni* is the uprooting of ownership. The rabbinic agenda of uprooting ownership is also reflected in the literary structure of the tractate of second tithe. It is the only tractate in the Order of Seeds that opens with the list of restrictions that pertain to the fruit. *See mMa'aser Sheni* 1:1.

and the majority of the Sages agree that use limitations on the second tithe are more stringent than those on the heave offering:

R. Simeon says: one may not anoint oneself with oil of second tithe in Jerusalem. But the sages allow it. They said to R. Simeon: If a lenient ruling has been adopted in the case of heave-offering which is a grave matter, should we not also adopt a lenient ruling in the case of second tithe which is a light matter? He said to them: why, no; a lenient ruling has been adopted in the case of heave-offering though it is a grave matter, because in heave-offering we have adopted a lenient ruling also as regards vetches and fenugreek; but how can we adopt a lenient ruling in the case of second tithe though it is a light matter, when we have not adopted a lenient ruling in second tithe as regards vetches and fenugreek?⁵⁶

Thus, heave-offering clover may be used to make soap or oil, not just eaten, while this is not the case with the second-tithe fruits. Similarly, the Tosefta prevents the second tithe from being used for medical or magical purposes:

Produce in the status of second tithe:
they do not put it on a callous [Jastrow: on the sole of the foot] and not on a lichen . . .
And they do not make it [into] an amulet.⁵⁷

These prohibitions on use further restrict the owner's control.

Restricting the Location of Consumption and Possession

As noted earlier, any restriction on the location of one's use of one's property limits the extent to which one is the owner of the object and can set an "agenda" for it. Thus, limiting the location of a property's use considerably weakens the sense in which one is the owner of the object, especially if one accepts an understanding of property as a "despotic dominion"⁵⁸ or as an absolute right to determine the use or disposition of a thing.⁵⁹ The law of the second tithe not only dictates where the fruits must be used—i.e., only in Jerusalem—but also, according to some views, their location:

[Second-tithe] money may be brought into Jerusalem and be taken out again, but [second-tithe] produce may only be brought in, but may not be taken out again. Rabban Simeon B. Gamaliel says: produce also may be brought in and be taken out again.⁶⁰

Once he brings the fruits to Jerusalem, the owner's relationship to the fruits changes—he can no longer physically carry and possess them wherever he wants, at least outside Jerusalem.

⁵⁶ *mMa'aser Sheni* 2:2 (Soncino ed., 1952).

⁵⁷ *tMa'aser Sheni* 1:3 (Jacob Neusner ed., 1986).

⁵⁸ I BLACKSTONE, *supra* note 41, at *138.

⁵⁹ PENNER, *supra* note 51, at 103 ("We can now reformulate the right of property, or the right of exclusive use, to take account of the element of alienability: it is the right to determine the use or disposition of a thing in so far as that can be achieved or aided by others excluding themselves from it, and includes the rights to abandon it, to share it, to license it to others (either exclusively or not), and to give it to others in its entirety."); see HANOCH DAGAN, *PROPERTY AT A CROSSROADS* 23–34 (2005) (in Hebrew) (labeling such conceptions of property as "Property as Sovereignty" conceptions).

⁶⁰ *mMa'aser Sheni* 3:5 (Soncino ed., 1952).

His ownership is further restricted by the positive requirement that he eat the fruits in Jerusalem. According to the Tannaim, Jerusalem is the ultimate “no man’s land”—a territory that cannot be owned by any individual, is above the category of ownership, and cannot even be divided among the tribes:

The First Tanna is of opinion that Jerusalem was not apportioned to [any of] the tribes, while R. Judah was of opinion that it was apportioned to [certain of] the tribes; and their difference is the same as that of the following Tanna'im, as it has been taught: What [part of Jerusalem] was in the portion of Judah? The Temple mountain, the priestly chambers, and the courts. And what was in the portion of Benjamin? The hall and the sanctuary and the holy of holies . . . The following Tanna, however, held that Jerusalem was not apportioned to any of the tribes, as it has been taught: “People cannot let out houses in Jerusalem as they do not belong to them. R. Eleazar b. Zadok says: They may not hire out beds either. Therefore householders [who took in guests] would seize the skins of [visitors’] sacrifices forcibly.”⁶¹

As noted by the Babylonian Talmud, a central legal implication of this view is that no individual has a full property claim on the land; thus, those who dwell in Jerusalem are not permitted to collect rent payments from individuals staying on their “property.” In some senses, the property does not belong to the host any more than it belongs to the guest. The tractate of Bava Kama in the Babylonian Talmud lays out other implications of the view that Jerusalem belongs to no individual or tribe:

Ten special regulations were applied to Jerusalem . . .

That a house sold there should not be liable to become irredeemable—for it is written: “Then the house that is in the walled city shall be made sure in perpetuity to him that bought it throughout his generations” and as it is maintained that Jerusalem was not divided among the tribes.

That it should never bring a heifer whose neck is broken—as it is written: “If one be found slain in the land which the Lord thy God giveth thee to possess it,” and Jerusalem [could not be included as it] was not divided among the tribes.

That it could never be made a condemned city—for it is written, “[One of] thy cities,” and Jerusalem was not divided among the tribes.

That its houses could not become defiled through leprosy—for it is written, “And I put the plague of leprosy in the house of the land of your possession,” and Jerusalem was not divided among the tribes.⁶²

Following this interpretation, Jerusalem is the target destination for consuming the second tithe precisely because it transcends ownership. The abundance of the second tithe—ten percent of all the fruit and crops grown in Israel plus the produce of the Jerusalem area—will bring in large numbers of needy people who also need to enjoy the abundance of the crops. The impoverished landowner eats the fruit just as those impoverished souls do who receive their sustenance from others who have produced it. Indeed, he most likely eats his second-tithe fruits surrounded by and together with those landless individuals. Is the landowner thus sent as a recipient rather than a “producer” or benefactor?⁶³

61 *bMegilah* 26a (Soncino ed., 1952).

62 *bBaba Qamma* 82b (Soncino ed., 1952).

63 One might suggest that the reconstruction of the second tithe is part of a wider objective of watering down the role of the temple after the destruction and filling the vacuum with alternative practices and institutions in which the holiness of the temple plays no role. The classic example of such a move made by the Sages is the ordinances of Raban Yochanan Ben Zachai, *mRosh ha-Shanah* 4:1–4. The greater emphasis on practices linked to social ends after the destruction of the temple may be reflected in the following Mishnah in tractate Hands:

We can thus understand an apparently misplaced passage of the Tosefta that seems to relate to the propriety of the second-tithe exchanges in Jerusalem:

1:11. One who purchases a deer in Jerusalem [with money in the status of second tithe] does not need to eat [produce] in place of the hide. . . .

1:12. They do not rent houses in Jerusalem [to those bringing offerings] because they [i.e. the houses] are [the property] of [all the] tribes. . . .

1:13. The hides of sanctified animals [which they are themselves unconsecrated . . .]—innkeepers come and take them by force [if the guests do not leave them behind as gifts].⁶⁴

Halakhah 12 seems misplaced not only in the context of the chapter in the Tosefta, but in the tractate of second tithe in general—it does not refer at all to second tithe, unlike the halakhah before it and the halakhah after it.⁶⁵ Understanding the Tannaitic institution of the second tithe

R. Tarfon answered: Egypt is outside the land of Israel, Ammon and Moab are outside the land of Israel: just as Egypt must give tithe for the poor in the seventh year, so must Ammon and Moab give tithe for the poor in the seventh year. R. Eleazar B. 'Azariah answered: Babylon is outside the land of Israel, Ammon and Moab are outside the land of Israel: just as Babylon must give second tithe in the seventh year, so must Ammon and Moab give second tithe in the seventh year . . . R. Joshua said: behold, I shall be as one who replies on behalf of Tarfon, my brother, but not in accordance with the subject matter of his arguments. The law regarding Egypt is a new act and the law regarding Babylon is an old act, and the law which is being argued before us is a new act. A new act should be argued from [another] new act, but a new act should not be argued from an old act. The law regarding Egypt is the act of the elders and the law regarding Babylon is the act of the prophets, and the law which is being argued before us is the act of the elders. Let one act of the elders be argued from [another] act of the elders, but let not an act of the elders be argued from an act of the prophets. The votes were counted and they decided that Ammon and Moab should give tithe for the poor in the seventh year.

mYadayim 4:3 (Soncino ed., 1952). The Mishnah points to two prevailing practices regarding the tithe that should be given in foreign countries in the Sabbatical year. In Israel, no tithe is given because no one owns the land during the Sabbatical. One practice is the “old practice” in Babylon, in which second tithe is given in the Sabbatical, and the other practice is the “new practice” in Egypt, in which the poor tithe is given. The contrast between the “old practice” and the “new practice” may be connected to the historical function of the temple. The “old practice” dates to the time of the temple and, thus, emphasizes and prioritizes the religious act directed toward the holiness of the fruit, Jerusalem, and the temple. The “new practice” may have appeared after the destruction of the temple and, thus, prioritizes the social practice of giving to the poor. Such prioritization reflects the shift of the Sages from a focus on practices centered around the holiness of the temple and Jerusalem, to a focus on practices centered around social goals of giving to the poor. This account explains why the timing of the establishment of the practice is crucial for its form and scope of implementation. Regarding the literary structure of this Mishnah, see Menachem Kahana, *I'yunim Be'its'eva shel hamachloket bamishnah u've'megamoteha* 73 *TARBIZ* 51, 51–64 (2003) (in Hebrew). (I thank Dr. Haim Shapira for pointing out to me both this Mishnah and the article by Prof. Kahana.) The unique phenomena I have pointed to in the context of the laws of the second tithe is that the Sages do not attempt to undermine the centrality of Jerusalem in the practice, but they do alter the role of Jerusalem, from functioning as the most holy place to functioning as a “no-man’s-land.” Such remodeling of halachic institutions is very close to the mytonimization Ishay Rosen-Zvi points to in the Sages’ remodeling of the institution of *Sotah*. See ISHAY ROSEN-ZVI, *THE RITE THAT WAS NOT: TEMPLE, MIDRASH AND GENDER IN TRACTATE SOTAH* 257 (2008) (in Hebrew).

64 *tMa'aser Shevi* 1:11–13 (Jacob Neusner ed., 1986).

65 One might argue that it is linked to the second tithe, for the second tithe needs to be eaten in Jerusalem. In the standard case, a person will not be able to eat his second tithe, which consists of a percentage of his annual crops, unless he finds a place to spend the night in Jerusalem. Thus, a law concerning accommodation in Jerusalem is indirectly linked to the second tithe. Furthermore, one might argue that there is some connection between this list of laws. Halakhah 1:13 explains Halakhah 1:12: the skin of animals bought from the money

sheds light on the connection between these laws. The law that residents of Jerusalem cannot rent out their homes to others is one of the strongest manifestations of the notion that Jerusalem transcends the institution of property, which is central to the Tannaitic institution of the second tithe: eating one's produce in a "no-man's-land."

The Second Tithe as a Mirror of the Sabbatical (shmitah)

To understand the relationship between the second tithe and the Sabbatical commandment, one must think about the connection between the two central elements of the Sabbatical: the command that the fields should be open to all people to collect produce and the prohibition against cultivating the land. From a social justice perspective, it seems obvious why all are allowed to glean crops from the land, whether they own it or not: the commandment redistributes resources from the rich landowners to the landless poor and, as a consequence, decreases inequality in society. The reason for prohibiting landowners from cultivating their land to raise additional crops is more obscure, since the prohibition does not seem to further a social distributive goal but rather harms those who are worst off, since the right to pick crops from land that is not cultivated is relatively valueless.

A better distributive solution would have permitted landowners to cultivate their crops and required them to transfer a larger share of crops than in non-Sabbatical years, somewhat equivalent to raising their tax rate for the year. Although the share of crops going to the poor would have been smaller, the higher overall level of production would have left the poor with more crops.⁶⁶

Thus, we must conclude that the Sabbatical serves more than a redistributive function. Placing the landowner in the position of producing products for others creates a hierarchy of donor and beneficiary, but allowing both landowners and the poor to gather from an uncultivated field destroys the hierarchical social relationship between the owner/giver and the impoverished recipients, thus elevating the recipients' social status. Permitting owner cultivation, even with a more generous "tax" on the fruits of the land, would damage the recipients' self-respect by requiring that they live off the work of others rather than by earning their food by the sweat of their own brow in the field. Thus, the Sabbatical commandment, like Anderson's and Wolff's equality, is primarily concerned

of the second tithe can be taken by the owner's hosts because that permits the second tithe's owner to stay in Jerusalem and keep the commandment. (It is interesting to note that the Tosefta states that the skin is *taken* by the hosts and not *received* by the hosts also seems to undermine ownership by limiting the individual's ability to exclude others from making use of his meat.) The problem with these answers is that the need to stay in Jerusalem, or the ability to offer the skin of sanctified animals eaten in Jerusalem to hosts, is not unique to the second tithe; it is relevant to all festivals in which people are supposed to celebrate in Jerusalem, and to most sacrificial offerings requiring a lengthy stay. Thus, there is a need to provide some other explanation for the specific connection of this law to the tractate of second tithe.

66 Such a view is what Dick Parfit labeled as "leveling down" — reducing the welfare of all individuals for the sake of reducing inequality. In the case of Sabbatical, it is not necessarily true that giving a larger share of the crops to the worse-off will reduce inequality in society. Although it would definitely reduce inequality in the distribution of the produce of the Sabbatical year, it may also increase overall inequality of assets. For example, assume that the distribution for the Sabbatical year was such that the worse-off had two resource units and the better-off had ten resource units. A non-cultivated land in the Sabbatical year produced four units of resources that would be split evenly between the worse- and the better-off, making the distribution ratio 4:12. Cultivated land from which the owner received forty percent of the produce would produce ten resource units from which the worse-off individual would receive four resource units and the better-off individual would receive six resource units. The overall distributive ratio would be 6:16. In the former scenario, the better-off individual ends up with three times as much in resource units than the worst off individual, and in the latter scenario, he ends up with less than three times as much. Thus, although the distribution of resources in the Sabbatical year in the latter case is more unequal than in the former case, it may still decrease overall equality.

with the relationship between wealth and the social dignity of the recipients, with promoting social status at the expense of increasing material wealth.⁶⁷

The second tithe appears to be a mirror image of the Sabbatical institution. If the social purpose of the Sabbatical is to permit every individual to gain the respect accompanying the status of an independent landowner or producer for the year, the purpose of the second tithe is to require every person to experience the potentially shameful and subservient position of the recipient, who does not eat the fruit of his own labors but is, rather, dependent on others for his livelihood.

Both institutions—the Sabbatical and the second tithe—are thus intended to blur the boundaries between social ranks and to dismantle, at least temporarily, the hierarchical structure of society by reversing the roles of owner and non-owner, benefactor and recipient, and thereby reducing the sense of alienation experienced by the “have-nots” in Jewish society. Although this blurring is limited in both time and scope,⁶⁸ it has substantial social significance, because status differences are converted from qualitative to quantitative differences. Society is not divided between individuals who own and produce and individuals who receive resources—all individuals are owners of land to a certain extent, producers to a certain extent, and receivers to a certain extent. Rather, individuals differ according to the proportions of these elements in their identity and status.

CONCLUSION

This article has demonstrated that the Tannaim likely reinvented the role of the second tithe, in conjunction with the Sabbatical, to serve as a coherent welfare policy with unique features. Anderson emphasizes that equality in welfare policy should concentrate on social relationships, in contrast with luck egalitarians, who focus on equality in terms of distribution of resources. The normative view behind the Tannaitic welfare model corresponds to Anderson’s and Wolff’s view that dignity and self-respect should be central features of social equality, even at the expense of fewer material resources for those who are worst off.

Although the distribution of resources has a substantial impact on the social relationships between individuals in society, as relational egalitarians point out, it should not necessarily be the primary concern of welfare policy. This raises the question: With what *should* welfare policy be primarily concerned, according to the relational egalitarian view? As Christian Schemmel has noted, relational egalitarians have left a void in the actual positive implications of their view on welfare policy and have mostly focused on critiquing competing views.⁶⁹ The Tannaim seem to fill this void in the concept of relational egalitarianism: they believe that exposing each socioeconomic group to the experiences of other socioeconomic groups should be a central feature of welfare policy. Embedding in people a psychological recognition of different socioeconomic experiences helps to forge a sense of belonging among people of different classes, both landed and landless.

67 Such a view of the Sabbatical has been attributed to Maimonides by Rabbi Shagar. See Rabbi Shagar, *Holiness and Cessation from Work in the Sabbath and the Sabbatical*, in *ON THE ECONOMY AND ON THE SUSTENANCE—JUDAISM, SOCIETY AND ECONOMICS* (Itamar Brener & Aharon Ariel Lavi eds., 2008) (in Hebrew).

68 The second tithe applies only to the percentage of the produce, and the Sabbatical applies only to agricultural product.

69 Christian Schemmel, *Why Relational Egalitarians Should Care About Distributions*, 37 *SOC. THEORY & PRAC.* 365, 365 (2011).

From a philosophical perspective, this welfare policy is rooted in a Hegelian view that “thought is being”⁷⁰ and that social policy should be focused on how individuals perceive themselves and others, and on how others perceive them. Possession of material goods is socially significant to the extent that it affects the way members of society perceive themselves (engendering self-respect or shame) and whether or not others perceive them as worthy of social dignity. Such a perspective stands in contrast to the Marxist view, which would claim that the non-owners sense of elevated social status is a “false consciousness” created by the landowners in order to maintain their control over the means of production. Marx contrasted his view with that of Hegel (and others whose views he labeled “German Philosophy”), claiming that “life is not determined by consciousness but consciousness by life.”⁷¹

This paper has attempted only to propose a general direction for the evolution of welfare policy. Yet we might identify some possible applications for it. One possible implication of Tannaitic policy is an emphasis on maintaining high-quality universal public services, such as public transportation and public health systems, so that they are more attractive to individuals of greater means. Although investing more resources in promoting public goods among those who are better-off might increase material inequality in society, it might also decrease actual and symbolic segregation of individuals from different socioeconomic backgrounds and reduce a sense of social alienation.⁷² Ultimately, giving people more opportunities to mingle with others in different social strata might create a social value that is greater than any harm resulting from increased inequality in the distribution of material resources. Instead of transferring material resources, which causes real economic effects and has a substantial impact on the functioning of the market, policymakers might work harder at decreasing social alienation and increasing dignity and self-respect through more symbolic means, such as instituting taxation/redistribution schemes that apply only once every few years and do not interfere with the day-to-day functioning of the market. In summary, the social status of the most disadvantaged in society might be improved more by exposing those of greater means to their daily experiences than by transferring wealth from the better-off to the worse-off members of society.⁷³

70 See HEGEL, *supra* note 49, at 20 (“What is rational is actual; and what is actual is rational.”); *cf.* Emil Fackenheim, *On the Actuality of the Rational and the Rationality of the Actual*, 23 *REV. METAPHYSICS* 690 (1970).

71 Karl Marx, *The German Ideology: Part 1*, in *THE MARX-ENGELS READER* 155 (Robert C. Tucker ed., 1972).

72 One of the most prominent welfare scholars to call for the endorsement of universal welfare schemes at the expense of targeted welfare schemes is Theda Skocpol. See THEDA SKOCPOL, *THE MISSING MIDDLE: WORKING FAMILIES AND THE FUTURE OF AMERICAN SOCIAL POLICY* 30 (2000). Gøsta Esping-Andersen also endorses the universalistic model as part of his social-democratic regime version of the welfare state, but mostly as it is based on the political-economy rationale of maintaining broad support for welfare programs. GOSTA ESPING-ANDERSEN, *THE THREE WORLDS OF WELFARE CAPITALISM* 27–28 (1990).

73 Needless to say, such regulation would cause dead-weight loss, but it might still be desirable depending on the trade-offs between the promotion of social goals and the economic costs of such a policy.