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OUR POOR AND THEIR POOR: PHILOSOPHICAL REFLECTIONS¹

Supermarkets in Houston have red barrels at their exits. You can purchase pre-packed bags of food staples to place in these barrels, and these bags are sent to local food banks. It has been my practice for many years to buy one such bag when I do the big weekly shopping. Some time ago, I was shopping with a friend, who objected to my doing so. “It’s going to non-Jews, and that’s not our problem.” His remarks did not grow out of any miserliness; he is an “easy touch” for any charity. They reflected, instead, his belief that Jews should confine their charity to helping fellow Jews and that the Houston food banks serve few, if any, Jews. My quick response was just a rhetorical observation that “hunger doesn’t hurt less when you’re not Jewish.” That ended the conversation. But should it have? That’s the question this paper is going to address.

While our discussion was about Jews and non-Jews, the question it raised was much broader than that. I like to think of the broader question as the “us-them” question. People see themselves as belonging to several identity-creating groups (“us”). They can differentiate those groups from others to which they belong but which don’t define their identity, and still others to which they don’t belong at all (“thems”). Which group is seen as the relevant us-group may vary from one context to another. It is widely believed that there are, in different contexts, morally legitimate differences between how an individual should behave towards fellow

¹ I am greatly indebted to David Shatz both for encouraging me to do this paper for this occasion and for providing me with a detailed review of an earlier draft. I have adopted most of his suggestions except for his suggestion to include footnotes referencing the philosophy of halakha literature. I don’t know that literature well enough to feel comfortable selectively referencing it.

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members of the relevant “us” group (hereafter the “us-s”) as opposed to the “thems” groups. But is charitable support which helps people meet basic needs an area of legitimate differences? May we or must we support poor us-s to the exclusion of poor them-s? Alternatively, may we or must we prioritize supporting poor us-s over supporting poor them-s, supporting poor them-s only with left over funds? Jews can ask those questions about supporting poor non-Jews, but members of any identity-creating group can ask themselves those questions about supporting those who are not members of their identity-creating group.

This question is of lesser importance for people who hold one of two views:

- 1) The withering away of charity—charity to meet the basic needs of the poor should be replaced by tax-supported programs that meet the basic needs of all poor members of the state. Basic justice requires that those needs be met, and the requirements of basic justice should be met by state programs funded by compulsory taxes rather than by private programs supported by voluntary giving. Unfortunately, those demands of justice have not yet been met in our society and in many others; that is why there are red barrels and food banks. Our efforts should focus on advocating for the needed social programs, and these questions of how charity should be distributed, while necessary, should not distract us from our main obligation;
- 2) Cosmopolitanism—identity-creating groups are a relic of the past which should disappear and be banished from our moral thinking. To be sure, we all belong to many groups and belonging to them adds value to our life. I was, for many years, a Trollopian, committed to reading a significant portion of Trollope’s novels each year, and that activity was a valuable portion of my life in those years. But, as the Stoics advocated, the only identity-creating group we should belong to is that of the human race, and perhaps even that group should be replaced by the group of sentient creatures (as many animal-rights theorists suggest), by the group of all living things (as advocated by Schweitzer), or by the group of all natural objects (as advocated by deep ecologists). On that way of thinking, there is no room for our question to arise.

For the purpose of this paper, I will assume that neither of these views is correct so that our question retains considerable significance, but I will have something more to say about both of those views below.

My plan for this paper is as follows: I will in the first section present a framework I have developed for thinking about moral issues. In the

next section, I will examine ways in which us-them considerations may be incorporated into this framework. In the final section, I will use this analysis to reformulate our questions. My goal in this paper is not to settle the general dispute between my friend and me, although I do argue that I was correct in that case. Instead, my goal is to present a proper framework for thinking about those types of disputes.

In this paper, I present neither a halakhic analysis of these issues nor an analysis that draws upon a larger class of traditional Jewish sources.² This is a philosophical paper. But I believe that the philosophical framework presented here would be relevant to developing such Jewish analyses, whether or not one thinks that general moral thinking plays a role in such Jewish analyses. This is because the framework I present here provides a set of categories that would be helpful in developing such Jewish analyses. At the end of the paper, I will say a little more about how my philosophical framework could identify the direction for such Jewish analyses.

I. A FRAMEWORK FOR MORAL THOUGHT

It is very important to distinguish between a moral framework and a particular moral theory. A moral framework, as I use that term, is an account of ways of plausibly thinking about moral issues, or an account of the plausible moral appeals. Different moral theories are different specifications of the moral framework. For example, a moral framework may contain as one of its moral appeals the appeal to individual rights. Different moral theories will offer different accounts of who has what rights in what circumstances (with the possibility that some theory might deny that anyone has any rights in any circumstances).

The moral framework I have been developing over the last 20 years³—it remains a work in progress—is a pluralistic moral framework. By saying that, I am not referring to a descriptive pluralism, one which simply notes that many people have many different moral views. It is rather a normative

² I do not mean to be drawing a distinction between a legal analysis and a moral analysis. I only mean to distinguish an analysis that draws upon one set of texts as opposed to an analysis which draws upon a larger set of texts.

³ The framework was first presented in Baruch Brody, *Life and Death Decision Making* (New York: Oxford University Press, 1987). The latest version is presented in the introduction to Baruch Brody, *Taking Issue* (Washington: Georgetown University Press, 2003). It remains a work in progress because I have long held the view that consistency over time is the mark of a small mind (a view attributed to Bertrand Russell by philosophical folklore).

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pluralism, a view that there are different legitimate moral appeals, different legitimate ways of thinking about moral issues, and that a comprehensive moral analysis must consider all of those appeals before drawing any moral conclusions. Naturally, different moral theories will understand these appeals differently, and will therefore be led to different moral analyses and different moral conclusions.

This moral framework is also a *casuistic* (case-specific) judgment-based moral framework. I mean by that the following: suppose you have adopted a specific moral theory and are now trying to apply it to a particular case. When you apply your theory to the particular case, the different moral appeals may each, taken alone, support different conclusions. There is no algorithm to decide which of the appeals have priority in a given case. This is a matter for judgment, and not for mechanical reasoning. Moreover, slight differences between the facts in two cases may lead to different judgments and that is why such judgments are always case specific. As a result, even adherents of the same moral theory may be led to different moral conclusions because they make different judgments about priority.

As a result of these factors, the framework I have developed offers a straightforward account of why we face so much deep intra and interpersonal moral ambiguity. Some moral ambiguities can be resolved by a closer examination of the facts and/or by a closer attention to what are the relevant moral appeals. Others cannot, and these are the deep moral ambiguities. They may be due either to uncertainties about how to understand the relevant moral appeals or to uncertainties about what judgment of priority should be made. The latter type of uncertainty plays an extremely important role in explaining both deep intrapersonal moral ambiguity and deep interpersonal moral ambiguity among people sharing the same moral theory.⁴

My framework incorporates six types of moral appeals: appeals to consequences, appeals to rights, appeals to virtues, appeals to deontological constraints, appeals to special obligations and appeals to justice. These are, of course, the appeals recognized by Mill, Locke, Aristotle, Kant, Ross, and Plato. Each of these great thinkers recognized the importance of one of these appeals. My pluralistic moral framework accepts the importance of all six. I have no transcendental argument to prove that all plausible moral arguments can be incorporated into this framework, but I would say

⁴ In the case of deep interpersonal ambiguity, each adherent may suppose that his conclusions are the only ones acceptable to adherents of that theory, although outside observers may see that there really are several legitimate alternatives available to adherents of that theory. However, more modest adherents, while supporting their own conclusion, may recognize the legitimacy of alternative conclusions, saying such things as “those who reach an alternative conclusion have good reasons for their view.”

only that these appeals consider the motives leading to the action (appeal to the virtues), the action itself (appeal to deontological constraints), its consequences (appeal to consequences), its impact upon the distribution of benefits/burdens (appeal to justice), and the general/specific obligations of the actor (appeals to rights and to special obligations).

We need to have a clear understanding of all six before we ask which, if any of them, might accept the moral significance of us-them considerations. I want to be clear that there are certainly ways in which you can graft us-them considerations onto all of them, but I hope to explicate these six appeals in a way that will make it clearer in the next section when exactly these would be foreign grafts.

The Appeals

1) Consequences: It is common to say, as the name suggests, that the fundamental feature of appeals to consequences is that they judge moral rectitude by the results of actions. This is true as far as it goes, but it leaves out one crucial element of that appeal. The appeal presupposes that there are certain states of affairs which are inherently good, and it is the production of these states of affair which gives particular actions moral rectitude. Consequentialists differ about which are those states of affairs, some being hedonists, some being desire satisfaction theorists, and some having an objective list of one or more inherently good things (e.g., the possession of truth). But any appeal to consequences must presuppose some theory of the inherently good. In appeals to consequences, the right is dependent upon the good.

2) Rights: The appeal to rights invokes very different considerations. People have rights (at least rights of the type I am talking about) in the case where other people have obligations *to them*. Those who have lent money have a right to the return of their money just because those who have borrowed that money have an obligation to return it to them. A much more complicated case is people having a right to the food they need. People would have that right only in the case where others have an obligation to give them that food (What makes the case complicated is that it is hard to figure out who these others actually are). Four crucial points to note: (i) it might be thought that some moral systems emphasize rights while others emphasize those obligations, and great significance has been attributed to this distinction. On my account, so long as we are talking about these types of obligations and corresponding rights, this is a distinction without a difference. It may make a difference if we are talking about other types of obligations which we will discuss below

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under appeal (4); (ii) that to which you have a right and which others owe to you is something that you control, not something with which you are stuck. I am a will theorist of rights, not an interest theorist of rights. Consequently, as part of that control, you can release others from that obligation, and from that point on you have no right to that thing. As I argued many years ago,⁵ active voluntary euthanasia is not wrong because you deprive the persons killed of that life to which they have a right. They have waived that right. If, as I believe, active euthanasia is wrong, its wrongness is based on a different moral appeal; (iii) a much more complex question is whether you can involuntarily lose rights. Believers in capital punishment might seem to be committed to the view that the guilty parties have lost their right to life. Perhaps not; it may be that the beneficial consequences in maintaining social order might outweigh their existent right to life.⁶ This is because (iv) there is nothing in the appeal to rights which requires that rights have priority over all other moral appeals.

3) Virtues: The appeal to virtues invokes still further considerations. Virtuous people are motivated by certain feelings to behave in certain ways, and we appeal to the virtuousness of an action as a moral reason to do an action when virtuous people would do that action in those circumstances. The apparent circularity is avoided when the feelings and the ways of behaving are spelled out for specific virtues. Compassionate people alleviate the suffering of others because that suffering by others troubles them. An action which alleviates the suffering of others is a compassionate action, one that it is appropriate to do, regardless of the motivation of those who do the acts, but performing those actions does not make one a compassionate person unless one is in general motivated by those feelings. (Kant was very wrong on this point, although a Kantian person might be displaying other virtues by performing those actions out of a sense of duty).

The important thing to note for our purposes is that individual virtues are defined by the relevant feelings (e.g., being troubled), the relevant object of those feeling (e.g., the suffering of others), and the relevant actions (e.g., alleviating that suffering).

4) Deontological Constraints: The fourth of the appeals is the appeal to deontological (rule-based) constraints. Certain actions by their very

⁵ Baruch Brody, "Voluntary Euthanasia and the Law" in M. Kohl (ed.) *Beneficent Euthanasia* (Buffalo: Prometheus Books, 1975) pp. 218-32.

⁶ This is the preferable theory if you are willing to allow for capital punishment in special cases where the law does not normally allow for the death penalty or where normal procedural safeguards cannot be provided.

nature are wrong and morality constrains us from doing them. This gives rise to the negative prohibitions and positive requirements found in many moral theories, depending upon whether it is an action or an inaction that is inherently wrong. Invoking this appeal, for example, explains the view that voluntary active euthanasia is wrong. The person being euthanized by his or her consent eliminates the violation of their right not to be killed, but that still leaves a deontological constraint of not killing. Since it is not an obligation *to* that other person, just an obligation that applies to your treatment of him, he cannot eliminate it by releasing you from that obligation.⁷

Some moral theories recognize at least some absolute deontological constraints, such that the action is wrong no matter what. Others recognize that many, perhaps not all, constraints can be overridden in certain cases by other factors present in the circumstances in question. On this account, contra Kant, you can recognize a deontological constraint on lying, while allowing that some lies (e.g., to preserve family harmony) are morally permitted.

For our purposes, the most important thing to note is that there does not seem to be one general basis for these constraints. Different theories introduce them on the basis of different considerations, and sometimes on the basis of brute intuition. This explains the very wide variety of deontological constraints found in different moral theories, many of which are not found in most moral theories (e.g., the constraint of not destroying the genetic integrity of individuals and/or species found in certain “green” moral systems).

5) Special Obligations: The fifth moral appeal is the appeal to special obligations. People stand in a wide variety of morally significant special relations to each other, and these give rise to a wide variety of special obligations and special permissions. Some include familial obligations, obligations of friendship, and obligations of gratitude. These types of relations should give cosmopolitans pause, for it seems implausible that special permissions for, and obligations to, these relations do not exist. Even Peter Singer, Princeton’s well known utilitarian ethicist who has insisted that morality, by its very definition, requires impartiality, admitted to expending considerable resources to place his mother in an excellent nursing home rather than donating those resources to Oxfam to alleviate world hunger. It is unclear whether he meant to be admitting to a moral wrong.

⁷ Is it an obligation to anyone? It need not be. Why can’t there be free standing obligations? But depending upon your views of the ontology of morality, it might be an obligation to society or to your deity.

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There can be much doubt over what are these morally significant moral relations. Of special relevance to our discussion is the question of whether belonging to the same religion is one such morally significant relation. I am inclined to think that these questions of the moral significance of relations are related to the question of which relations are constitutive of our self identity, which is why I think of these relations as identity-creating relations, but perhaps there is a more objective basis. Of further relevance to our discussion is the question of whether these special obligations are obligations *to* people that can be waived by them (like the obligations correlative with rights) or whether they are obligations *related* to other people which cannot be waived by them (like deontological constraints). Are you obliged to care for your elderly parents who need the care, even when they insist that they don't want the help because they don't want to be a burden? Are you obliged to honor your teachers, even when they modestly decline the honors?

6) Justice: The final moral appeal, to justice, introduces a number of additional considerations. Its fundamental theme is that the rightness of acts of distributing benefits and burdens is a function of the fairness of the resulting distribution.⁸ As there are different contexts of justice (e.g., general distributive justice, justice in the allocation of specific scarce resources, compensatory justice, retributive justice, justice in transactions), this appeal will need to invoke different notions of fairness in the different contexts. In any case, it is possible to identify factors which are relevant to fairness in at least some contexts. These include need, prior positive and negative actions, and potential for benefiting. A crucial question about justice is whether the consent of the person-being-treated-unfairly to being treated unfairly can make that treatment permissible (just as one can waive rights), or whether distributing benefits and burdens unfairly remains wrong regardless of the consent of the parties (just as deontological constraints remain in effect), in part because the unfairness of the resulting distribution is to be treated as an objective wrong-making feature of distributive acts. In order to allow for consensual mutually advantageous exploitative injustices, the latter account seems required.⁹

This then is my moral framework. It is a pluralistic casuistic judgment based framework which incorporates the six moral appeals outlined above.

⁸ I find that formulation more illuminating than the formulation which talks of justice as giving each his due.

⁹ The philosophical importance of this point was stressed by Alan Wertheimer in his book *Exploitation* (Princeton: Princeton University Press; 1999). It was, of course, well known to legal theorists working in a framework in which there is a requirement not to charge unfair prices.

It is my claim that this is a general moral framework because all plausible moral theories involve some or all of these appeals. I have also used this framework to develop my own moral theory for some contexts, but that will play no role in this paper. The question I want to examine in the next section is which of these appeals allow in a natural way for the introduction into a particular theory of us-them considerations. That will lead us to a reconsideration of the “food barrel controversy” in the final section.

II. THE MORAL APPEALS AND US-THEM CONSIDERATIONS

Can the appeal to consequences incorporate us-them considerations? Initially, it might seem clear that it cannot. To see why, imagine that one’s specific moral theory incorporates the appeal to consequences by (i) adopting a hedonistic or preference satisfaction theory of the good, (ii) viewing actions as right providing that no alternative could produce better consequences, (iii) determining what action has better consequences by adding the consequences of all those affected (in short, a simple act-utilitarian appeal). Since those affected can be thems as well as us-s (they also experience pleasure/pain and the satisfaction/frustration of their preferences), and since we are adding the good produced, it would seem that there is no room for these us-them considerations. That is why, of course, act utilitarians since Bentham have extended a consideration of consequences to equally cover affected animals. Similar arguments could be used if one had more complex theories of the good or if one averaged rather than added consequences.

But matters are not that simple. It is formally possible to get quite amazing results from appeals to consequences, suitably structured. One can, for example, claim that it is only pain as suffered by us-s that is a bad state of affairs. While technically possible, this seems quite implausible. There is a reason why Cartesian physiologists insisted that their animal subjects were not suffering any pain (being mere machines) rather than admitting that the animals were suffering pain but claiming that their suffering is not a bad state of affairs. But there is a more plausible way of incorporating us-them considerations into an appeal to consequences. This involves discounting in the aggregating process the value of the bad states of affairs when they occur to thems, so that aggregation is not the same as addition. The suffering of thems is, of course, a bad thing, but when we aggregate all the good things and bad things, it counts for less. Perhaps, although this does seem to be contrived, and suggests discrimination

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rather than moral discernment. This is why animal rights theorists talk about speciesism. In short, one's moral theory can involve an appeal to consequences which incorporates us-them considerations, but one should hesitate before adopting such a theory.

Incorporating us-them considerations into the appeal to rights and their corresponding obligations is a very different matter. Here, the issue seems to be a matter of the source of the right and the corresponding obligation. The borrower has an obligation to repay the loan, and the lender has a right to that money because the borrower promised to pay the loan back. Whether the lender is an us or a them seems irrelevant; respecting the right is part of the honesty and trust that makes human relations possible (as in Hume) or is required as part of respecting humans as ends (as in Kant). Similar remarks can be made about the right of legitimate property holders and the obligations of others not to take their property.

But not all rights are the same. This brings us, of course, to the familiar issue of negative and positive rights, for the rights mentioned until now are all negative rights. What about positive rights, such as the right to aid, material and otherwise, in times of need? Libertarians, insistent upon the independence of individuals, deny that there are such rights. Contra Kant, they would agree that they too would have no right for aid in time of need, and could only appeal to people's sense of good will. But for those who think that there are such rights and their corresponding obligations, there is a need to identify their source. If the source is in the dignity and respect due to all human beings (perhaps because they are all created in the divine image), there seems to be little room for us-them considerations. But there may be more particularized accounts, even the account that says that only us-s are created in the divine image, and those accounts may leave room for differentiating us-s from them. So one's moral theory of rights may plausibly allow for the relevance of us-them considerations, but only for some rights and only if those rights have certain types of sources.

I believe that the appeal to at least some of the virtues leaves little room for us-them considerations. In the case of compassion, for example, it seems natural to say that compassionate people are troubled by suffering and should be led by that emotion to try to alleviate that suffering. Some might object, saying that in their theory it is only the sufferings of us-s that is troubling; the suffering of them should be alleviated, if at all, only as part of our moral training. Think of Kant on animal suffering. But this seems no more plausible than did the analogous view about good consequences discussed above, and it is not surprising that Kant's view has been rejected by so many.

Virtues, however, are not all the same. Consider the virtues of loyalty and of gratitude. They seem relevant to our behavior towards some but not others. They seem structured around us-them considerations. Here is a hypothesis: virtues that are consequence-based allow less room for us-them considerations while virtues that are relation-based allow for more.

It is extremely difficult to say anything general about deontological constraints. Different moral systems contain very different constraints, and the bases of the deontological constraints found in different moral systems are very diverse. Many different moral bases have been offered for the validity of these different constraints, ranging all the way from epistemological bases (e.g., it is intuitively clear that such behavior is wrong or we have it as a divine revelation that such behavior is wrong) to ontological bases (e.g., such behavior violates the natural order or is incompatible with the natural function of the relevant activity) to psychological bases (e.g., such behavior is psychologically offensive—the so called “yuck” factor—or cannot co-exist with normal human feelings). With such a diversity of bases for such a diversity of constraints, we cannot say much about the general plausibility of incorporating us-them considerations into such constraints.

It is very easy to see that us-them considerations are always relevant in our appeals to special obligations. In connection with any particular special obligation, we, together with those to whom we have those obligations, form an us, and everyone else is a them. It is important to note that people who are part of the them in some contexts may be part of the us in other contexts. Families form an us whose members have special obligations to each other which are different from the obligations the family members owe to anyone else, even their friends. This is true even though in other contexts it is our friends who form an us to whom we have special obligations. Note, parenthetically, that saying this is perfectly compatible with saying that it is best when those obligatory actions are performed out of love than out of a sense of obligation, and that their being performed out of a sense of obligation is a sign of pathology. While both families and friends concern relatively small groups being an us, I see no reason in principle why larger groups (e.g., communities, fellow citizens, co-religionists) cannot form an us whose members have special obligations to each other and only to each other. Naturally, cosmopolitans have to deny all of this, but, as noted above, it is unclear what they are then to say about families and circles of friends. In the meantime, it suffices to note that any theory which incorporates special obligations necessarily incorporates us-them considerations.

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We turn finally to considerations of justice, of fairness in the distribution of benefits and burdens. In many of the contexts of justice (e.g., compensatory justice, retributive justice, transactional justice), it is clear that us-them considerations are irrelevant to the determinants of justice. To take the simplest case, the person who wrongly injures me must compensate me or else he has unfairly imposed a burden on me (think of the language of making me whole). All that is relevant is that I have been wrongfully injured and that the compensation makes up for that wrong. To claim that us-them considerations are relevant is to make one of two implausible claims: there is no wrongful injuring of them or there is nothing unfair about them bearing the burdens of being injured. But is this true for the contexts of distributive justice, especially general distributive justice? Here, a lot depends upon the basis of one's claims that certain general distributions are unfair. Most of the familiar bases (utilitarian, Rawlsian, left libertarian, etc.) seem to allow no room for us-them considerations. But moral practice seems to involve special attention to the needs of members of one's society, even if some attention is paid to the needs of the others. Either the familiar bases are wrong or ordinary moral practice is wrong. So there may be a basis for us-them considerations in the context of general distributive justice, even though it is not well understood. Alternatively, there is none, but ordinary moral practice is justified by other moral appeals (e.g., the appeal to special obligations).

In short, some moral appeals seem to leave room for us-them considerations while others do not. Appeals to special obligations, to relation-based virtues, to deontological constraints, to positive rights and to general distributive justice may involve us-them considerations, while appeals to consequences, to negative rights, to consequence based virtues and to many particular justices do not. Of course, this does not mean that particular moral theories must incorporate us-them considerations. It just means that they have several opportunities for doing so. With this in mind, let us return to the "food barrel controversy" to see: (1) why both the claims of my friend and me have some plausibility, depending upon how they are interpreted; (2) why both are incomplete analyses of the issue; (3) how the question under dispute needs to be fully analyzed.

III. FOOD BARRELS AND OTHER ACTS OF CHARITY

What type of moral appeal is invoked by the claim that "hunger doesn't hurt any less when you're not Jewish?" Reflecting back on that remark in that context, I think that it is best to see it as an appeal to compassion.

Buying the food bag is an attempt to relieve the suffering of hunger which is equally potent regardless of who is hungry, compassionate people do that sort of thing, and the action is morally meritorious as a compassionate act. Note that all of this is perfectly compatible with the action being done by rote; as Aristotle noted, moral training often involves developing the habit of doing virtuous actions. The proper emotion is not required in each case. It is also plausibly construed as an appeal to consequences. On any plausible theory of the good, hunger and its attending suffering are bad, and it is so irrespective of who is hungry. So relieving hunger by buying the food bag is the right thing to do. In light of the discussion in the previous section, these two appeals don't plausibly admit us-them considerations, so as long as my moral theory admits (as it does) the virtue of compassion and the legitimacy of appealing to consequences, I had good moral reasons for buying the food bag. My moral theory also contains a constraint of not neglecting suffering, so that adds to the case. And given that my friend's moral theory admits those appeals as well, he was wrong in denying the moral value of buying it.

My own moral theory actually contains two additional moral reasons that might be offered for buying the food bags: a left libertarian theory of distributive justice and a human dignity based theory of positive rights. Neither of these, as noted above, admits of us-them considerations. But I would not want to buttress my claim by appealing to those considerations. In part this is due to the dialectical point that many others, perhaps including my friend, do not recognize these considerations as part of their moral theory. There is, however, a larger substantive point. I am sensitive to the claim, raised by the withering away of charity view, that demands of justice and of rights should not be met in our society through acts of private charity, although I believe, contra that view, that there may still be a place for private charity in some societies even when that organized society does everything it is required to do.¹⁰

So was my friend just wrong? More generally, are those who give charity only to meet the needs of their us-s just wrong? If we understand those particularistic claims as denying any moral merit to helping them, those claims seem to me to be just wrong. But there may be a different

¹⁰ My reason for thinking this is based on my version of left-libertarianism developed in "Redistribution without Egalitarianism," *Social Philosophy and Policy* vol 1 (1983) pp. 71-87. In that version, the redistributive obligations imposed on a given society by justice are proportional to the resources of that society. That may result in basic needs of the poor not being fully met. This leaves an important place for acts of private charity intended to meet basic needs of the poor. None of this is applicable to affluent societies like ours in which the need for private charity reflects a societal failure.

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way of construing what my friend said, one that makes his remark a more serious remark. That construal interprets the remark as follows: (1) there are other moral appeals that assign special moral value only to aiding our poor; (2) these additional moral appeals have priority. This way of thinking cannot be dismissed so easily. So let us look at it more carefully.

Claim (1) seems easy to defend. The appeal to special obligations to us-s will do the job, so long as one's theory recognizes that one of those special obligations is the obligation to relieve the suffering of us-s. Including such a special obligation in one's moral theory seems very plausible, since it certainly exists in the paradigmatic cases of families and circles of friends. This claim can also be supported by an appeal to relation-based virtues, so long as one's theory recognizes such virtues as loyalty and solidarity and thinks that such virtues are displayed by acts of relieving suffering. And it can be supported, if one's theory admits such a constraint, by a constraint to not neglect the suffering of us-s. Certain conceptions of the foundations of general distributive justice and of positive rights might also be invoked, but I once more leave them out because it might well be the case that private charity is not the appropriate way to deal with the demands of justice and rights.

The much harder issue is claim (2). In my framework, claims of priority are judgment based claims, and there is no algorithm for deciding whether they are correct. Moreover, as a casuistic approach, it insists that we need to be careful about extrapolating judgments from one type of case to another. So we need to judge claim (2) as it applies to our type of case, and not as a general claim.

We need a typology of cases in which priority issues arise to help in this discussion. I would suggest that at least the following distinctions are relevant to our discussion: (a) Recurring cases versus one time cases—there are types of cases that regularly recur while there are other types that do not or cannot. Giving charity to aid a poor person in need is a recurring case while the donation of a kidney by a living donor to someone in renal failure is not. This is obviously a relevant distinction. In a recurring case, you can give priority to us-s in many cases while giving priority to thems in some cases. The cases need not be very different. The change in priority may just reflect a judgment that you should be attending to both types of moral considerations, and the choice of when to pay attention to which consideration may be arbitrary. Note that the more priority you assign to us-s, the fewer the cases in which you should attend to considerations involving thems. By contrast, in the one time case, priority is complete priority; (b) Cases in which a very substantial portion of the relevant available resources are exhausted versus cases in which they are not—the

kidney donation case illustrates the extreme of former type of case. Once having donated the kidney, you have no further kidneys to donate. By contrast, buying one food bag leaves over most of the funds available for helping the poor. You can buy one to help them while still buying another (or donating the equivalent funds) to helping us-s. Once more, all that this requires is the judgment that we should be attending to both types of moral considerations, and your judgment of the extent of priority will determine how much of the resources should be devoted to us-s and how much to them; (c) Cases in which great sacrifice is required versus cases in which the sacrifice required is modest—undergoing surgery, even laparoscopic surgery, to donate a kidney is an example of the former, since it involves considerable preoperative distress and real concerns about the future (hypertension, avoiding many medications, constantly remaining well hydrated, etc), while buying a food bag is a clear example of the latter. Like many others, I think of buying a food bag as just a nice way to spend one's leftover change after one is done shopping. This is also a relevant difference. Great sacrifices should be confined to responding to moral considerations which have high priority, but even those moral considerations which are of lesser significance should be attended to when what is at stake is a matter of modest significance. Further distinctions might be mentioned (e.g., the responsibility of the needy them for their own need and the extent to which other them are also helping), but I don't see them as being relevant to the analysis of our case.

So claim (2) as applied to the red food barrel case is in serious trouble. The red food barrel case is a recurring case in which purchasing a food bag is a very modest sacrifice which hardly exhausts one's charitable resources (the food banks are smart for many reasons in limiting the bags to \$4-\$5 worth of food). There is plenty left over for helping us-s even if one makes this modest sacrifice, and there will be many other cases in which one can give preference to us-s. So my friend's claim of priority is implausible in this case, unless he intends to give absolute priority to the claims of us-s. But his doing so means, in light of my arguments above, that he could not incorporate into his moral theory such moral considerations as the virtue of compassion, or that he could incorporate them without their having much force. That would be a very high price to pay.

It is important to remember that this will not be true in all cases. As a good casuistic framework, my framework suggests that the analysis will be very different in other cases. In one-time cases, cases of considerable sacrifice or cases which exhaust a considerable portion of the available resources, the us-specific moral considerations may be the only ones to which we should respond. It depends on the extent of the sacrifice and

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the percentage of the available resources exhausted in that case. It also depends upon just how much priority your particular moral theory assigns to us-related moral considerations.

IV. CONCLUSION

In this paper, I have:

- Presented a framework for thinking about moral issues. The framework involves six types of moral considerations. Some of them allow for us-them distinctions and for giving preference to us related moral concerns, and others do not.
- Developed an account for when preference should be given to us-related moral concerns by showing how the relevant facts about particular cases, together with the details of one's moral theory, determine what preferences are appropriate.

In light of this analysis, my friend was wrong in the red barrel case unless us-related considerations are given absolute priority, a prioritization which would entail major implausibilities. But that was an easy case. Much harder cases remain to be analyzed in light of the approach outlined in this paper.

I promised at the beginning of the paper that I would suggest how a halakhic analysis of these issues might proceed employing my framework. I think that the steps would be clear, as would the difficulty of carrying it out:

1. Consider, as a general question, which of these types of moral appeals are recognized in halakha in at least some contexts
2. For those that are recognized (I hypothesize that all of them are), define the versions of them that relate to the question of helping the poor
3. Analyze when us-them considerations are relevant and when they are not
4. Develop an account of the factors determining priority among these considerations
5. Apply all of this to particular cases.

It seems reasonable to suggest that various attempts to carry out this program would lead to different analysts reaching different conclusions about a particular case. Remember that my framework predicts and explains the existence of deep interpersonal (and even intrapersonal) moral ambiguity. But this should not be surprising to anyone who has ever studied any halakha.