



FROM THE SOURCES: TEXTS ON JEWISH SOCIAL JUSTICE

Sukkot:

The stolen *lulav*, ethical consistency and funding for global justice

How to Use this Publication

From the Sources is designed to facilitate holiday text study around issues of social justice. We invite you to engage in the texts and use them in your community to teach and take action. Use *From the Sources* to:

- **Learn with others.** Read through this text study together with a friend or a group of friends and discuss the issues it raises.
- **Enrich your own learning.** This resource aims to inspire thought-provoking and challenging perspectives on the holiday texts.
- **Teach.** Invite others to share in this learning. Use it as the basis for a *dvar Torah* or to motivate action in support of advocacy or *tzedakah* initiatives in your school, synagogue or Hillel.

Introduction

The festival of Sukkot is also known as *chag ha-asif* (the harvest festival), and during it, we are commanded to bring together four agricultural species, the *arba minim*, to bless and use in prayer services. A discussion in Mishnah Sukkah, however, indicates that one is prohibited from fulfilling this *mitzvah* if it comes at the expense of other ethical considerations. The text places restrictions on the means of obtaining the *lulav*, the palm branch at the center of the *arba minim*, introducing challenging questions about whether and when the ends justify the means, questions that are important in our daily lives and, increasingly, in philanthropy, international development and global justice. Through wrestling with this provocative question—“Can unjust means be used to pursue justice?”—we can explore some of the tensions surrounding the imperative for ethical consistency and the desire to act and be a force for change in the world.



The stolen *lulav*—*lulav hagazul*

Mishnah Sukkah 3:1

A stolen *lulav*, or one that is all dried out, is invalid [for use to fulfill the *mitzvah* of waving the four species]. If it comes from an *asheirah* [a tree used for idolatry] or a city condemned for idolatry, it is invalid. If its tip is cut off, or its leaves are split, it is invalid. If its leaves are separated, it is valid.

משנה סוכה ג:א

לולב הגזול והיבש פסול של אשירה ושל
עיר הנדחת פסול נקטם ראשו נפרצו
עליו פסול נפרדו עליו כשר:

- In the Mishnah text, the stolen *lulav* is grouped with a number of other *lulavim* that are designated invalid. What are the various reasons for this designation? What do you make of this?
- What general rules could you infer from this Mishnah about what invalidates a *lulav*?

Rambam's commentary on Mishnah Sukkah 3:1

A *mitzvah* that is done by committing a transgression is not a *mitzvah*. Therefore, a stolen *lulav*, or one that comes from an *asheirah* [a tree used for idolatry] or a city condemned for idolatry, is invalid [for use].

פירוש המשנה לרמב"ם סוכה ג:א

מצוה הבאה בעברה אינה מצוה, ולפיכך לולב הגזול ושל אשרה ושל עיר הנדחת פסול.

- Rambam groups the first set of invalid *lulavim* together by explaining that a *mitzvah* is annulled if it is facilitated by a transgression. What are some reasons for that general principle?
- Can you think of any contemporary applications of the same principle? Based on your reading of the Rambam text, how would you recommend responding?



To put this principle into modern terms, the ends of fulfilling the *mitzvah* do not justify sinful means. However, is this always true, or are there cases in which this principle is less clear? Are there cases in which using money or goods acquired through unjust means can—or should—be tolerated?

Babylonian Talmud Nazir 23b

Rabbi Nachman bar Yitzhak said: A transgression that is done for the right reasons is greater than a *mitzvah* that's done for the wrong reasons. But didn't Rav Yehudah say in the name of Rav: A person should always engage in Torah and *mitzvot* even if it's for the wrong reasons, because doing something for the wrong reasons leads to doing it for the right reasons? Rather, say that a transgression done for the right reasons is equal to a *mitzvah* done for the wrong reasons.

תלמוד בבלי נזיר כג:

אמר ר"נ בר יצחק גדולה עבירה לשמה ממצוה שלא לשמה והאמר רב יהודה אמר רב לעולם יעסוק אדם בתורה ובמצוות אפ"י שלא לשמן שמתוך שלא לשמן בא לשמן אלא אימא כמצוה שלא לשמה.

- This text asserts that "a transgression done for the right reasons is equal to a *mitzvah* done for the wrong reasons." Do you agree? Are there any transgressions you can think of that should be viewed in this light?
- How does the principle presented in this text contrast to the principle of *lulav hagazul*?

Babylonian Talmud Nazir 23b, cont.

As it says, "Most blessed of women be Yael, wife of Heber the Kenite, most blessed of women in tents" (Judges 5:24). Who are the women in tents? Sarah, Rebecca, Rachel and Leah.

תלמוד בבלי נזיר כג:

דכתיב (שופטים ה: כב) תבורך מנשים יעל אשת חבר הקני מנשים באהל תבורך מאן נשים שבאהל שרה רבקה רחל ולאה.

- This text refers to Yael, who commits adultery with Sisera, a general whose army threatened the survival of the Israelites. Yael intentionally transgresses in order to have the opportunity to kill Sisera. How do the Rabbis view Yael's act? What do you think of her decision?
- What differences can you think of between the *mitzvah* of *lulav* and Yael's sleeping with and killing Sisera that might explain the different principles?

The principle explored in Nazir 23b is that the right "ends" may in some cases justify unjust "means." As George Bernard Shaw wrote in his preface to *Major Barbara* in 1906, referring to the Salvation Army's decision to accept money from a distiller and a cannon founder, "as one of its officers said, they would take money from the devil himself and be only too glad to get it out of his hands and into God's."

One way of reading these texts is to say that an individual can't use illegitimate means to fulfill an individual *mitzvah* but that an individual *can* use illegitimate means to fulfill a *mitzvah* that helps the community. Applying this principle to the philanthropic sector raises a question of whether the ends of pursuing justice justify using money acquired through unethical means. The donation by a large tobacco company to a university offers an interesting case study.¹

In 2000, British American Tobacco, a leading tobacco company that controls over 15 percent of the industry's market, donated £3.8 million to the University of Nottingham in the United Kingdom to fund the establishment of an International Centre for the Study of Corporate Responsibility, including a chair in Corporate Social Responsibility, as well as coursework and research in the field. In the *British Medical Journal*, Simon Chapman and Stan Shatenstein argued that "[a] chair in ethics, funded by tobacco money, can only collapse under the weight of its own shame."² However, supporters argued that the funding would promote ethical practices in business and support labor and environmental standards in corporate practices. The debate sheds light on whether the product of a morally questionable business—tobacco, which is the fastest growing cause of death in the world and, without further prevention methods, could become the leading cause of premature death globally by the 2020s³—can be used to “do good.”

Sir Colin Campbell, then Vice Chancellor of the University of Nottingham⁴

The University of Nottingham[’s]...diverse sources of funding help to keep it at the leading edge of research and teaching in the United Kingdom and, increasingly, overseas. Corporate funding has long been a feature of the university's balance sheet. After consultation both within and outside the university, it was agreed that the university could and should make good use of monies from British American Tobacco...Many countries have decided to tax tobacco products to help fund housing, health and social services. In Britain, the government collects around £8bn in tobacco tax revenues annually; it is doubtful that the current quality of social services could be maintained without these revenues... Specifically, the International Centre for Corporate Social Responsibility will develop world-class management education for future business leaders.

- What are the implications of a university funding research into corporate responsibility using wealth that was earned unethically? Is tobacco money inherently unethical?
- Would you take money from the devil and give it to God? Where would you draw your line? Is there a difference if the act is committed by an individual or an organization?



Other rabbinic sources offer a different perspective on this question of “dirty money.”

Rambam, Mishneh Torah, Laws of Theft 5:1

One may not buy stolen goods from a thief; to do so is a great transgression because it strengthens the hands of those who violate the law and causes the thief to continue to steal, for if the thief would find no buyer he would not steal, as it says “He who shares with a thief is his own enemy” (Proverbs 29:24).

רמב"ם, משנה תורה, הלכות גניבה ה:א

אסור לקנות מן הגנב החפץ שגנב ועון גדול הוא שהרי מחזיק ידי עוברי עבירה וגורם לו לגנוב גניבות אחרות, שאם לא ימצא לוקח אינו גונב, וע"ז נאמר (משלי כט:כד) חולק עם גנב שונה נפשו.

- Is this a separate justification for prohibiting *lulav hagazul*, or can it be connected to Rambam's earlier commentary on *lulav hagazul* (above)?
- Are there times when this principle might not apply?

¹ Another interesting example involves a recent critique of the Bill & Melinda Gates Foundation, a significant force in global health, poverty-reduction and development funding in the Global South. The foundation has simultaneously funded a \$218 million program in the Niger Delta that provides polio and measles vaccines and invested in oil companies to grow its endowment, including \$423 million in investments in major oil companies whose actions in the Niger Delta are linked to major health problems there. (Jenny Price, “Against Philanthropy: The business of giving is doing more harm than good,” *GOOD Magazine*, August 2007, <http://tinyurl.com/kmft5u>.)

² <http://tinyurl.com/l53ojh>

³ World Health Organization, <http://tinyurl.com/ll2pkx>

⁴ <http://tinyurl.com/mc2u9e>

Applying these principles to the case of British American Tobacco yields a strong critique of the University of Nottingham's decision.

Dr. Richard Smith, then editor of the *British Medical Journal*⁵

By taking money from the tobacco industry, the University of Nottingham debases itself. It offers the industry—at a cheap price—a respectability it doesn't deserve. Using the money to support an international centre for the study of corporate responsibility is especially unfortunate because the industry has repeatedly behaved irresponsibly. Whatever the internal justification for taking the money, the name of Nottingham University is besmirched... I believe that if the leaders of Nottingham University could begin to feel emotionally the human misery caused by tobacco then perhaps BAT's money would be sent straight back.

- What is the reasoning behind these strong critiques of taking tobacco money?
- How do these critiques relate to the reasoning given the original *Mishnah Sukkah* text?
- How do you think these critics would respond to the argument presented in Nazir 23b, arguing that a sin done for a good purpose can be greater than a *mitzvah* done for the wrong reasons?



Conclusion

The principle of *lulav hagazvul* helps frame important questions about our everyday actions and our efforts to fund and fight for justice. If, as Babylonian Talmud Nazir 23b suggests, “a transgression done for the right reasons is equal to a *mitzvah* done for the wrong reasons,” we should prioritize raising funds with which to do justice, regardless of the provenance of those funds. Yet, if we take the principle of *lulav hagazul* and apply it to philanthropy, many projects and programs would come under suspicion.

The principles underlying *lulav hagazul* and the efforts of the rabbis to make sense of Yael's actions give us pause to consider that sometimes our actions may not be judged simply on their own merit, but also based on the motivations and earlier decisions that determined those actions. One commentary on *lulav hagazul* asks, “What standards are necessary to serve God with integrity?”⁶ On Sukkot, we can take this opportunity to reflect on our own standards and the ethics we hold in our everyday lives and our work toward global justice.

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⁵ <http://tinyurl.com/mc2u9e>

⁶ Rabbi Daniel Nevins, http://www.masorti.org.uk/past_reflections.htm