

FROM PRIVATE RIGHTS TO PUBLIC GOOD: THE COMMUNITARIAN CRITIQUE OF LIBERALISM IN JUDAIC PERSPECTIVE

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Contemporary communitarian thought critiques liberalism for the latter's anemic conception of community. Liberalism requires a doctrine of community and common good in order to ground its predilection for distributive justice. For communitarians, liberalism here tries to square a circle. Mishnah, Talmud, and Maimonides anticipate this contemporary debate by conceiving of community and common good in a way thick enough to allow for distributive justice, yet limited enough to preserve individual rights.

This essay first explores the roots of the argument between liberals and communitarians. After noting some of the basic issues which divide them, it then considers some Jewish legal texts which illustrate how the Jewish tradition, in a non-philosophical way, addresses the same concerns.

Democracy has been the most valued form of regime in the West for at least the past two centuries and liberalism has been its normative orientation. While not identical, democracy and liberalism have often been paired. Democracy requires liberalism — or something like it — for democracy is only a means and

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does not, by itself, constitute a set of unambiguous values. Liberalism, however, does denote a set of substantive ethical and political values, held together by an underlying philosophical anthropology.

While democracy answers the question "who shall rule," liberalism provides the values by which those in power shall rule. For although rule by the people goes some way toward alleviating the arbitrariness and unaccountability characteristic of non-democratic regimes, it cannot alone provide the restraints on power or the equality before the law which liberals affirm are necessary for the requirements of justice to be satisfied. One can speak of a "totalitarian democracy" as a true democracy insofar as a majority or the representative of a majority exercises unrestrained power in the name of a collectivity. In such a democracy, people might choose to surrender their freedom to a common purpose or to oppress an ethnic or ideological minority in their midst. This is compatible with democracy in a formal sense (although not in the elevated, morally charged sense in which we often use the term). Yet this would certainly not be a liberal democracy.

What liberalism provides is a theory and practice of limits. Beginning with thinkers such as Locke, liberalism envisages the polity as a voluntary contract created by free, sovereign individuals who are endowed — prior to their political relationship — with natural rights. They enter into political association, in Locke's view, in order to secure a more effective defense of their natural rights. Indeed, although they were free before their association, true liberty is only possible in political community because liberty depends on the mutual restraint achievable only under a civil law. Insofar as the voluntarist creators of the political order intend it solely as a way of protecting their several natural rights and endow it with only as much of their alienated private sovereignty as it needs for that purpose, the emergent polity is strictly limited in its power over its members. Its function is prophylactic: it protects the members from one another better than they could have done singly in the state of nature. Thus the liberal principle is born: the chief public business is to make the world safe for private business. State interference into the lives and projects of individuals is only justified

when it prevents wrongdoers from infringing the liberty of others.

When Locke speaks in the *Second Treatise* of the common or public good (e.g., sect. IX, para. 131, sect. XI, para. 134), he conceives of it as a state wherein every private good (more accurately, every private right) is respected. The common good results when just institutions function to protect citizens' lives and property. Where procedural justice is satisfied, the common good, that is, the cumulative defense of every private good, is achieved.

Locke's doctrine of common good as well as his conception of community are remarkably thin. From an internal point of view, community is an agglomeration of autonomous individuals who voluntarily agree to respect the same laws and institutions. From an external point of view, that is, from the point of view of individuals in the state of nature or other political entities, the community does appear to have a natural unity, to be "one body" (sect. XII, para. 145). This unity has however marginal implications for life "on the inside."

Locke's classical liberalism rests on a philosophical anthropology grounded in a post-teleological metaphysics. Seventeenth century science no longer conceived of the law of nature as a grand hierarchical ordering of a cosmos which culminated in the perfection of the divine. Nature is conceived rather as an ensemble of discrete entities governed by impersonal, mechanical laws. The cosmos has no direction or goal which could be discovered by rational inquiry. Inquiry rather is directed toward uncovering the principles of its mechanics. Reason turns from the exploration of ends to that of causes. Nature so conceived does not deposit within human beings any imperatives regarding their development or ultimate purpose, that is, human life *per se* has no determinate telos.

Rather than a divine endowment uniquely suited to respond to divine presence, mind becomes a product of sensory experience. With materialism, the emphasis in anthropology turns from reason to will. Humanity is not discovered: it is self-made. Existence, as Sartre would eventually put it, precedes essence.

Similarly, the design of the good society is not discovered in the nature of things by reason, but willed *ex nihilo* by human creators. Lacking any universal human good as the principle of

the good society — owing to the demise of the old Aristotelian teleology with its metaphysical biology — the human good, i.e., human ends, are to be infinitely diverse. The good society becomes one that acknowledges and facilitates that infinite localization of the good. Indeed, the good society is one that foreswears any but the most narrow public discourse about the good, for the ends of life are as varied as persons. All the State may do is secure the conditions under which persons may pursue them.

This set of individualist liberal values meets a formidable critic in Jean Jacques Rousseau. Although a contractarian and ostensibly concerned with serving the freedom of man (“who is born free, yet everywhere in chains”), Rousseau’s liberalism is heavily qualified. He rejects, at any rate, the thoroughgoing individualism of the British tradition and introduces an explicit doctrine of the common good.

Rousseau gives the community, i.e., the political association born of contract by free men emerging from the state of nature, its own reality. More than an agglomeration of discrete individuals pursuing their own private interests, the community has a unique, simple nature. A mob of individuals expresses a sum of interests (“the will of all”), but a political community is grounded in an identity of interests, that is, a voluntary surrender of private desires to a universal desire to serve the whole. Rousseau terms this the “general will,” and holds it to be the necessary condition for political association.

This distinction between the will of all and the general will serves to justify the coercive power of the state. If the state were not grounded in an act of radical identification with a common purpose, then the exercise of its power over its subjects would simply be suppression of some private interests in the name of other (more powerful) private interests. Political association creates, as it were, a new man: one who finds his own felicity in the common purposes of his new civil state.

Although using the language of natural rights in a Lockean sense, Rousseau contradicts this tradition (and himself) with his view that rights are really only the product of the political community’s attribution. Only the citizen, not natural man, is the bearer of rights. Rousseau accordingly neglects the topic of institutional checks on the coercive power of the community.

For Rousseau, the community is endowed with rights over the individual. The individual ought to believe (through the medium of "civil religion," a term first coined and advocated by Rousseau) that the general will can never err and that only by aligning his private will with the general will can he achieve freedom. For one who cannot so believe, his fellow citizens may "compel (him) to be free," which is to say compel him to conform to the general will (*Social Contract*, Book I, sect. VII). For those incapable of consummating this identification, the community "can banish from the State all who fail...as lacking in social sense, and being incapable of sincerely loving the laws and justice, or of sacrificing, should the need arise, their lives to their duty. Any man who, after acknowledging these articles of faith [in the civil religion], proceeds to act as though he did not believe them, is deserving of the death penalty" (Book IV, sect. VIII). In this doctrine of a common good "with teeth," liberalism finds its worst nightmare. Any adequate communitarian account of the common good will have to avoid the invitation to coercion provided by Rousseau.

Yet for all that, one must be ambivalent toward Rousseau's legacy. His articulation of the almost mystical reality of a community distinct from its membership did support, on the one hand, those benign, American concepts of republican or civic virtue whose decline has recently been studied by Robert Bellah and others. On the other hand, Rousseau lends support to an ominous collectivism. (The same ambivalence marks Hegel, whose formulation is even more extreme.) If Rousseau's darkest implications are totalitarian, the salvageable side of his thought, however, is communitarian. Far more pointedly than Locke (or Hume or Smith), Rousseau explores the anthropological, moral and political implications of a framework in which the reality of human derivativeness and interrelatedness predominates.

The contemporary communitarian critique of liberalism, found in the works of Michael Sandel, Alisdair MacIntyre, Barbara Rowland and others asserts the philosophical implications of an anthropology of radical human interrelatedness. A familiar target, as Amitai Etzioni points out, is John Rawls. Rawls typifies modern liberalism's individualist tradition: "Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason

justice denies that the loss of freedom for some is made right by a greater good shared by others."¹ For Rawls, the basic category is justice. Following Kant, the right is to take priority over the good. Justice is understood by Rawls in the sense of fairness. The institutions of society should be arranged in such a way that a) everyone has liberty and b) no one is hampered in their liberty by morally irrelevant disadvantages.

Rawls, basing his approach on Kant, affirms the priority of the atomistic rational subject vis-a-vis the situation in a community of rational subjects and vis-a-vis its own accidental attributes. He draws the strongest possible distinction between the self and any set of empirical qualities a self may "possess." Rawls' analogue to the state of nature, the "original position," envisions these atomistic rational subjects separated by a "veil of ignorance" from their eventual attributes (being black, Jewish, female, blind, rich, poor, etc.). Owing to this ignorance and to the non-essential quality of their attributes (that is, non-essential vis-a-vis their rationality), the subjects would choose a social arrangement in which they would have a right to the highest degree of basic liberties compatible with a like degree for all. Their eventual attributes, the empirical situation of the self, should not matter from the point of view of procedural justice.

But unlike classical liberals such as Locke, contemporary liberals, such as Rawls or Ronald Dworkin, go beyond a strictly procedural justice to a concept of distributive justice. They are concerned to justify both a high degree of personal rights-based liberty (through a procedural argument) and a welfare-oriented social policy (unlike traditional libertarians such as Hayek or Nozick, for example). In this scheme, the subject (conceived as a Kantian transcendental ego) precisely because it does not possess its attributes cannot claim any merit or legitimate desert on account of them. The "merit" of such desirable attributes as being wealthy or smart ought to be entirely irrelevant to how society distributes its shares of goods, because the subject of hypothetical merit is not, in fact, the subject of possession of those putatively meritorious attributes. They have been distributed by nature and circumstance in an arbitrary and morally irrelevant fashion — any given self cannot base a claim of special treatment on them. They must be harnessed by the proper subject of possession for morally justifiable ends.

All of a sudden, a more determinative concept of community has emerged. Community claims to, in some sense, possess the subject's attributes and to judge how the value of such putatively common assets are to be divided. The problem, as Michael Sandel points out, is that this latter agenda requires a doctrine of both an interrelated and derivative self and an empowered community at once fuller and thicker than individualist liberals want to affirm. If what is essential about the self is its radical, pre-empirical autonomy (the "unsituated self," as MacIntyre calls it), then any conjunction of such selves will remain logically and morally problematic. Community will appear, at best, a "necessary burden." Furthermore, how is a discourse about the good, particularly the common good, to find a secure footing in a language that emphasizes private right? Communitarians charge that even when liberals confront this problem directly their proneness to individualistic principles flaws their results.

Rawls' answer to this problem is the so-called "difference principle" and the notion of "common assets." He considers several ways in which differences in attributes which are socially salient may be justified. The one he prefers, "democratic equality," justifies differences only insofar as they work to the benefit of the most disadvantaged members of society. "Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out."² Since advantageous attributes belong to no one in particular, they belong to all in common. They are "common assets" which ought to serve common purposes. This is essentially a moral principle, arguing for a cooperative society.

An example of how this works can be found in Ronald Dworkin's argument for affirmative action. Dworkin argued that while discrimination is a real problem (you cannot enter law school because you are black), there is no such thing as reverse discrimination (we want this black to enter law school instead of this white). No one merits law school admission on the basis of any claim of "possession" of relevant attributes. "Reverse discrimination" is only society's selection of a worthy social goal (increased minority professionals). The attribute of minority status does not constitute a claim to special treatment any more than any other attribute. Society decides, in a utilitarian

fashion, how to maximize the value of this “common asset.” Of course, this process of distributing goods on the basis of socially constructed “merit” can only take place once basic procedural justice is secured.³

This sudden shift from a discourse of individual rights to a thesis about collective purposes depends upon the unexamined and unargued presupposition that the community (which community — the national one? a local one?) is the subject of possession of the self’s attributes. But why? If individuals are autonomous, what justifies their being used as means rather than ends for some collective purpose? Rawls and Dworkin believe that once basic liberties are secured, differences in wealth and status can only be justified by their reconciliation with the common good. Yet, as Michael Sandel points out, an argument for a common good that relies on a fully individuated conception of the self always suggests the exploitation and compromise of such a self. The way out, communitarians like Sandel argue, is to reinvent a self that understands itself as constituted by its community in the first place. Community is not an option undertaken from a pre-social original position. Community is the existence condition of the self in se.

Alisdair MacIntyre argues this thesis in his monumental critique of modern moral philosophy, *After Virtue*. MacIntyre believes that modern moral philosophy is an incoherent melange of inherited and invented concepts such as “rights,” “utility,” “persons.” Our moral debates are irresolvable and the various frameworks we subscribe to are incommensurable ever since the Aristotelian tradition fell into disrepute. MacIntyre contends that the Greek and medieval Christian traditions conceived of a human life as a “narrative unity” taking the form of a journey. The journey was made meaningful by the pursuit of virtues, discovered in the practices of communities. A “practice,” in MacIntyre’s technical sense, is a communally valued, shared activity which entails an internal good and supports the acquisition of a human excellence or virtue. (Think of the Jewish practice of *talmud torah lishma* as an apt example. It is valued, shared and promotive of the virtues of *yirat shamayim*, *hokhma*, etc.) For MacIntyre, our ancestors’ life’s work was to acquire the virtues esteemed by their communities through the pursuit of relevant practices. The key point is that private good was incon-

ceivable without common good. Personal meaning necessarily participated in shared understandings of the ends of life.

For if the conception of a good has to be expounded in terms of such notions as those of a practice, of the narrative unity of a human life and of a moral tradition then goods, and with them the only grounds for the authority of laws and virtues, can only be discovered by entering into those relationships which constitute communities whose central bond is a shared vision of an understanding of goods. To cut oneself off from shared activity in which one has initially to learn obediently as an apprentice learns, to isolate oneself from the communities which find their point and purpose in such activities, will be to debar oneself from finding any good outside of oneself.⁴

What education in the virtues teaches me is that my good as man is one and the same as the good of those others with whom I am bound up in human community. There is no way of my pursuing my good which is necessarily antagonistic to you pursuing yours because *the* good is neither mine peculiarly nor your peculiarly — goods are not private property.⁵

MacIntyre thus rejects, in the strongest form, the individualist liberalism of the past three centuries of moral and political philosophy. He affirms the radical interrelatedness and sociality of the self, and the axiological primacy of the common good.

For the contemporary communitarians then, the chief issues include: the critique of the autonomous, rational self of liberalism and its enlargement through constitutive attachments, the replacement of a rights and justice-oriented (i.e., deontological) discourse by a goods-oriented, teleological one, and an empowerment, both conceptual and practical, of community without a huge loss of those liberties made possible by liberalism.

Many of these issues are reflected in mishnah Baba Batra 1:5 and its gemara as well as in the *halakhot* Maimonides derives from them in Mishnah Torah, Hilkhot Shkheinin, ch. VI.⁶

The concern of the mishnah is with how citizens should live in community. The text adumbrates such questions as: What do they owe to one another? What do they owe to the whole? What common purposes override the liberties of individuals and what

justifies the primacy of common purpose over private purpose? The mishnah begins with the case of a resident of a courtyard and then applies its principle of justified coercion to the resident of a city. Significantly, it draws no distinction between the quality of public obligation required of each. Both neighbors and citizens are related to one another by a thick net of mutual obligation.

He [a resident of a courtyard] may be compelled [by the rest] to [contribute to] the building of a porter's lodge and a door for the courtyard. Rabban Simeon b. Gamliel, however, says that not all courtyards require a porter's lodge.

He [a resident of a city] may be compelled to contribute to the building of a wall, folding doors and a crossbar. Rabban Simeon b. Gamliel says that not all towns require a wall (Baba Batra 1:5).

Why should one be obligated to contribute to a "porter's lodge" or gate house? To understand the gemara's treatment of this mishnah (Baba Batra 7b) we must step back into the context of the larger discussion of the chapter on capital improvements which owners of adjoining property can require each other to make if the custom of the community mandates it. The general principle is that "all is according to the custom of the country." Mishnah and gemara assume that neighbors, following local tradition, can compel one another to participate in common projects such as building walls between their properties. The language of the mishnah oscillates between pure voluntarism ("if joint owners *want* to make a division in their courtyard..." (Baba Batra 1:1)) and compulsion ("in a place where it is customary to fence off an orchard, either can be *compelled* to do so" (1:2). The mishnah allows people to not participate only when it is not local custom to do so. Thus deference to local traditions, to MacIntyre's constitutive practices of the community, predominates.

This is not ironfisted collectivism however. The mishnah is concerned to specify what an equitable contribution to, e.g., the building of a wall should be so as to divide the neighbors' responsibility fairly and to insure that they share equally in the benefit the capital improvement provides. Thus individual interests are assumed to identify with common interests. The

scheme of responsibilities and benefits is so arranged that all gain and none loses.

To return to our mishnah, the gemara considers whether a gate house is another case of customary capital improvement. It immediately raises the public implication of the increase in privacy which this modification of a structure would bring. Perhaps building a gate house is morally problematic. What if it prevents the poor from coming in to beg? The gemara presents the case of a pious man whom Elijah the prophet used to visit until he built a gate house. Yet if gate house construction is morally objectionable, why does the mishnah seem to require it? The gemara's answer is to reconcile the apparent contradiction between the pious man's objectionable action and the mishnah's rule that gate houses are legitimate common projects by stipulating that the gate house must be built in such a way that it causes no problems for prospective beggars. Apparently, the pious man did not provide his gate house with a latch or handle such that the poor could simply open it and walk through! Thus the gemara adduces another level of public obligation for the neighbors: they are not only obligated to one another for participating in capital improvements, but they are obligated to the local poor to not impede them as they come to claim *tzedakah*. Their resources are not only to be pooled in relevant respects within their courtyard, but are to be pooled for the sake of relevant strangers as well.

Just when we might think that the rabbis have no regard for those constraints on public coercion which are central to liberalism, the gemara shows a streak of "liberal" concern. The text moves to Rabban Shimon b. Gamliel's caution that not all courtyards require gate houses. Rabban Gamliel would condition a resident's obligation not only on local custom, but on architectural factors. The gemara introduces a baraita that expands on his mishnaic statement. Not all courtyards require gate houses, only those that "abut on the public domain" because the privacy of the residents is most compromised in such cases. The rabbis disagree with Rabban Gamliel and add that even if the courtyard were set back from the street, a crowd of people could force their way in. Thus the rabbis allow the building of a gatehouse in all cases to minimize potential discomfort and intrusion. The "privacy rights" of the neighbors must be respected.

The neighborhood community thus reflects a delicate balance of private and public concerns. Turning from the gemara to Maimonides for a moment, we can see this balance in even higher relief. Maimonides is concerned to specify which commercial activities are permissible for residents of a courtyard (actually, an "alley"). Since in pre-modern times people worked in their homes, commercial and residential areas coincided. Most commercial activities will disturb the other residents and criteria need to be developed (zoning laws as it were) to balance the value of various enterprises against their negative "environmental impact." Maimonides ruled:

If one of the residents of a blind alley wishes to become a circumciser or a bloodletter or a weaver or a teacher of the children of heathen, the law is that residents of the alley can prevent him because he would increase the number of people coming in and going out.

If there is a shop in a courtyard the neighbors can protest, saying, "We cannot sleep because of the noise of the people coming in and going out." The owner of the shop may however do his work in his shop, but he must sell in the market. In that case they cannot protest, saying, "We cannot sleep because of the noise of the hammer or of the mill," since he has already established his right to have a workshop (Hilkhot Shkhehinim VI:11-12).

Maimonides also defers to custom. If one wishes to become a certain kind of craftsman and the consequence of that is significant public disruption, one can be prohibited. However, if one is already a craftsman who has a workshop in the courtyard, one's right to be there is assumed by the absence of prior public protest (*argumentum e silentio*). Maimonides solves the problem of the disruptive but legitimate craftsman by differentiating between manufacture and commerce and requiring the latter to occur in the marketplace. If one already has a right, grounded in custom, to ply one's trade, then the private matter of how one earns one's living, even when it entails some unpleasant public consequences, is not a public concern.

Yet although Maimonides would seem to protect "individual rights" in this case, he is not doing so for liberal reasons. His

concern rather is with the common good. Commerce is promotive of the economic welfare of the courtyard. This is clearly evident in the following ruling:

If there is among the residents of an alley a craftsman and the other residents do not protest, or if there is a bathhouse or a shop or a mill and someone comes and makes another bathhouse opposite the first, or another mill, then the owner of the first cannot prevent him on the claim that the second cuts off his livelihood. Even if the second is from another alley they cannot prevent him, inasmuch as there is already that trade among them (H. Shkheinim VI:8).

The concern here seems to be that commerce, indeed, competition is a good thing. If the residents have agreed, at least tacitly, to allow it (and profit by competition), then those who are most likely to feel the negative effects (the monopolist who must now compete) cannot protest. The criterion for the zoning regulation is the public good.

This is also clear from the following:

Thus he [i.e., a resident of an alley] may also teach Jewish children in his house, and the partners cannot protest with the claim, "We cannot sleep because of the noise of the schoolchildren" (H. Shkheinim VI:12).

Here, even though the residents of the courtyard are disturbed, the public good of talmud torah outweighs the public good of tranquility or any private inconvenience. If MacIntyre is correct, general agreement about the constitutive necessity of this practice would have prevailed and the residents would have agreed that their ultimate good did in fact reside in the studies of the noisy schoolchildren. It is important to note that Maimonides did not allow a Jew to establish a school for "heathen children," i.e., for secular studies. This is evidently not in the public interest.

To return to the mishnah and gemara, we take up the case of the residents of a town compelling one another to contribute to the building of a wall. Rabban Shimon b. Gamliel introduces an identical problem: are walls suitable for all cities? Rabban Gamliel

states in the gemara that only those cities adjacent to a frontier require a wall. The rabbis, once again, overrule him and state that all cities are liable to attack from roving bands.

Having established that all cities need walls, and thus that all may be compelled to contribute to them, the gemara tries to fix how the tax for construction should be levied. Should it be a poll tax since arguably all benefit equally from a wall? Should it be an income tax since the rich arguably have more to lose in a robbery than the poor? Or should it be a service tax since those who live near the edge of town are more vulnerable than those who live in the center of town and so should pay more for the service the wall provides? The gemara records two opinions in the name of the same Tanna, R. Johanan, that is, the tax should be both an income tax and a service tax. Tosaphot reconcile this in the following way: a poor man at the edge of town pays more than a poor man downtown, a rich man at the edge of town pays more than a rich man downtown, but a rich man regardless of location will always pay more than a poor man.

This taxation scheme accommodates both the requirement of procedural justice — only those who profit from an institution should contribute to it — and of distributive justice (that is, Rawlsian justice as fairness) — discrepancies in advantage should benefit the disadvantaged. All are obligated to contribute to the common good and to find their own good within it.

The dual criterion of income tax and service tax has both moral presuppositions and consequences. The citizen is understood to be someone who benefits from life in community. Life in community is clearly reciprocal: community gives and receives, as does the citizen. For the “situated” or “encumbered” self, this giving and receiving sustains both human dignity and selfhood as such. Dignity inheres in the practice of fulfilling one’s civic obligation. To take an analogous case, the poor have a right to collect ungleamed produce (*peah*), but they must pay a “price” for it insofar as they must wait until a designated hour when the farmer finishes his work to claim it. They must also harvest it themselves. This “workfare” system provides for their dignity by meeting their basic needs, but it also requires them to sustain their dignity by contributing to the practices of the community. Indeed, the poor must also give *tzedakah*.

These few *halakhic* discussions serve to indicate, I hope, that the Jewish tradition employs the concept of a common good as a regulative principle of political obligation. The sources presuppose and articulate a rich concept of community. Community is more than an agglomeration of private selves: it is an association of mutually obligated, interdependent selves who find their own good in common. This system, while not liberal and not necessarily democratic, also embodies a serious concern for those restraining arrangements liberal societies call "rights." Nonetheless (and despite its extraordinary fascination with laws), it did not collapse the concept of the good into a deontological framework of right. The common good takes precedence as a normative framework over issues of justice. Indeed, it is in terms of that framework that justice, the order of rules and rights, finds its point and purpose.

Notes

1. Rawls quoted in Amitai Etzioni, "Liberals and Communitarians," *Partisan Review* 57 (Spring 1990):215.
2. Rawls quoted in Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), p. 70.
3. Dworkin appears to be inconsistent. Why should discrimination be any more real than reverse discrimination on this account? His answer is that discrimination is based on the morally repugnant idea that one race is inherently inferior to another. "Reverse discrimination" however is simply society's choice of how to distribute its assets.
4. Alisdair MacIntyre, *After Virtue*, 2nd. ed. (Notre Dame: University of Notre Dame Press, 1984), p. 258.
5. MacIntyre, *ibid.*, p. 229.
6. All references to the mishnah and gemara are taken from *The Babylonian Talmud, Seder Nezikin*, vol. 2, trans. I. Epstein (London: The Soncino Press, 1935). All references to Maimonides are taken from *The Code of Maimonides, Book XII, The Book of Acquisition*, trans. I. Klein, Yale Judaica Series, vol. 5 (New Haven: Yale University Press, 1951).