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Jewish Law and Socially Responsible Corporate Conduct

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JEWISH LAW AND SOCIALLY RESPONSIBLE CORPORATE CONDUCT

*Steven H. Resnicoff**

INTRODUCTION

The concept of “social responsibility” is quite broad, and, in the case of a corporation, could include such diverse issues as its relationship with: (1) its customers; (2) its employees (past and present); (3) its shareholders; (4) its competitors; and/or (5) the community or communities which it affects. Jewish law pervasively impacts corporate conduct, but does so without positing any distinct doctrinal rules pertaining to corporations. Instead, the foci of Jewish law are the individual, on the one hand, and the community as a whole, on the other. By restricting the conduct of individuals - such as those who serve as a corporation’s employees, managers, directors and shareholders - Jewish law controls corporate conduct from within. By authorizing and requiring communally imposed regulation, Jewish law controls corporate conduct from without.

A thorough exploration of the many Jewish law precepts that apply to commerce would require far more than the relatively few pages allotted for this paper. Our more modest intentions, therefore, are to survey some of the principal ways in which the rules Jewish law imposes on individuals and communities affect business ethics, generally, and then to examine whether the corporate context presents any unique questions.

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PART I: RULES REGARDING INDIVIDUALS AND COMMUNITIES

Even if a corporation is a separate legal entity, a question which is subject to considerable dispute as a matter of Jewish law, it must perforce act through individual human agents. Jewish law imposes important constraints on what such individuals may and must do. For convenience, we will separate Jewish law's rules regarding an individual's moral duties into three sets: (1) those that relate to the moral character of one's own independent conduct; (2) those that pertain to one's relationship to the wrongful conduct of others; and (3) those that affirmatively require one to help others.

Before mentioning specific Jewish law rules, it is critical to note just a few foundational propositions.¹ First, one axiom of Jewish law is that the Almighty communicated with Moses at Mount Sinai and transmitted commandments and data, some of which were to be written into the Pentateuch and some of which, comprising the Oral Tradition, were to be transmitted orally from generation to generation.² The Oral Tradition included not only definitive interpretations of certain Pentateuchal verses but also principles through which other verses were to be construed.³ The Talmudic interpretation of the Pentateuch, and not the Pentateuch's literal language, is deemed the authoritative biblical law, as supplemented by the Oral Tradition. In addition to biblical law, Jewish law also comprises: (1) rabbinic enactments; (2) communal legislation; (3) to a certain extent, the secular law of the host country in which Jews find themselves ("*Dina de-Malkhuta Dina*"); and (4) commercially established customs ("*Minhag ha-Soharim*").⁴ The detailed application of the last two processes is subject to debate and, except where otherwise indicated, this article does not take them into account. Second, even when Jewish law imposes an obligation, there is typically a limit as to the cost - in terms of money or physical risk - that

1. For a discussion of these principles, see generally Steven H. Resnicoff, *Jewish Law: Duties of the Intellect*, 1 U. ST. THOMAS L.J. 386 (2003).

2. *Id.* at 386.

3. *Id.* at 387.

4. For a discussion of *Dina de-Malkhuta Dina* and *Minhag ha-Soharim*, see Steven H. Resnicoff, *Bankruptcy - A Viable Halachic Option?*, XXIV J. HALACHA & CONTEMP. SOC'Y 5 (Fall 1992).

a person must expend in order to comply.⁵ Consideration of these parameters is also beyond our present scope.

Rules regarding an individual's own independent conduct

The Torah requires a person to emulate the Creator,⁶ to be holy because the Almighty is holy,⁷ and to do "the right and the good."⁸ In addition to the obvious proscriptions against cheating,⁹ stealing,¹⁰ or lying,¹¹ Jewish law contains a comprehensive set of sophisticated and nuanced prescriptions as to morally acceptable behavior. Consider, for example, commercial marketing practices. Jewish law not only specifically proscribes misleading methods of displaying or advertising goods, but actually requires the disclosure of known defects.¹² Jewish law entirely rejects the common law maxim of *caveat emptor*.¹³ Moreover, if, after a sale is consummated, a purchaser discovers that there were pre-existing defects, he or she is entitled to rescind the sale even if the seller had been totally unaware of the defects.¹⁴

In fact, under Jewish law, even if a buyer executes in advance a

5. These limitations are discussed in Steven H. Resnicoff, *Jewish Law Perspectives on Suicide and Physician-Assisted Dying*, 13 J.L. & RELIGION 289, 297-301 (1998-99).

6. See MAIMONIDES, *Hilkhot De'ot*, MISHNEH TORAH 1:6 (Heb.); AARON LEVINE, CASE STUDIES IN JEWISH BUSINESS ETHICS 184-85 (Ktav Publishing House Inc. 2000).

7. *Leviticus* 19:2.

8. *Deuteronomy* 12:28.

9. See YOSEF CARO, *Hoshen Mishpat*, Shulhan Arukh, 228:6-20, 231; SOLOMON GANZFRIED, CODE OF JEWISH LAW 72 (Hyman E. Goldin, trans., Hebrew Publishing Co. ann. rev. ed. 1998) (1993).

10. *Leviticus* 19:11.

11. *Exodus* 23:7.

12. BASIL F. HERRING, JEWISH ETHICS AND HALAKHAH FOR OUR TIME 221-74 (Norman Lamm ed., Ktav Publishing House, Inc. 2000); LEVINE, *supra* note 6, at 33-38; NAHUM RAKOVER, ETHICS IN THE MARKET PLACE: A JEWISH PERSPECTIVE 31-37 (Library of Jewish Law 2000); TZVI SPITZ, MISHPATEI HA-TORAH II, at 42-45, 80-82 (Heb.).

13. See RAKOVER, *supra* note 12 at 32.

14. *Id.* at 85-88; CARO, *supra* note 9, at 232:3; YAAKOV AVRAHAM COHEN, EMEK HA-MISHPAT, 287-90 (Heb.).

general waiver as to any unspecified defects that may subsequently be discovered, the waiver may be entirely ineffective.¹⁵ Other marketing practices may be forbidden because they are deemed immoral, even though they are neither false nor misleading. For example, although pointing out the advantages of one's own product is permitted, it is forbidden to belittlingly disparage a competitor's product.¹⁶

Various commercial practices are prohibited because they are deemed unfair to competitors. For instance, while competition is generally permitted,¹⁷ direct interference with someone else's established customers and the opening of a new business in a market insufficiently robust to permit both the preexisting and new enterprises to flourish are disallowed.¹⁸ Similarly, raiding another person's employees or suppliers is also prohibited.¹⁹ Furthermore, even non-malicious interference with a person's prospective economic gain may be proscribed.²⁰ Once a third party agrees with a seller as to terms, then, despite the fact that no binding contract has yet been entered, no other person is allowed to make a higher offer.²¹

Jewish law regulates other practices to ensure fairness to others. For example, creditors cannot harass - verbally or otherwise - those who are indebted to them. Similarly, an employer must pay employees on time²² and must treat them with respect. Generally, an employer cannot fire an employee without cause, even if the employee was hired for an indefinite duration and, under secular law, would be terminable "at-will." According to many Jewish law authorities, an employer must provide severance pay even if there is no contractual provision to that effect.²³

15. CARO, *supra* note 9, at 232:7.

16. See LEVINE, *supra* note 6, at 60-67; S. WAGSCHAL, TORAH GUIDE FOR THE BUSINESSMAN 26 (Feldheim Publishers 1990).

17. WAGSCHAL, *supra* note 16, at 25-26; see also MEIR TAMARI, WITH ALL YOUR POSSESSIONS 100-07 (Jason Aronson Inc. ed, 1998) (1987).

18. See TAMARI, *supra* note 17, at 107-09; LEVINE, *supra* note 6, at 204, 331.

19. AVROHOM EHRMAN, JOURNEY TO VIRTUE 397 (Artscroll 2002).

20. *Id.*

21. *Id.*

22. WAGSCHAL, *supra* note 16, at 34-37.

23. TAMARI, *supra* note 17, at 144-45 (discussing authorities); David J. Schnall, *The Employee as Corporate Stakeholder: Exploring the Relationship Between Jewish*

On the other hand, Jewish law requires that employees discharge their responsibilities faithfully and non-negligently.²⁴ Certainly, an employee may not accept a bribe or kickback in exchange for taking or recommending an action that is not in the employer's best interest.²⁵

Jewish law rules regarding privacy restrict the actions of everyone, including employers and employees. Consequently, employers must not reveal personal information obtained from their employees (or their customers),²⁶ and employees may not disclose confidential or proprietary information obtained from their employers.²⁷ Therefore, a current or former employee would not be permitted to reveal any of the employer's secrets, whether or not such information was protected by secular law.

Jewish law also forbids one from harming someone directly or indirectly and requires that a person take effective steps to ensure that his or her property does not injure anyone.²⁸ Consequently, one may not sell defective products that would cause such damage.²⁹ Similarly, an employer must take steps to ensure that the workplace is safe.³⁰ To the extent that a corporation, or corporate property, may be considered the property of individuals, as is discussed in Part II below, this rule may hold such individuals accountable for corporate conduct.

Tradition and Contemporary Business Ethics, in JEWISH BUSINESS ETHICS: THE FIRM AND ITS STAKEHOLDERS 59-62 (Aaron Levine & Moses Pava, eds., 1999); THE PRINCIPLES OF JEWISH LAW, at 317-18 (Menachem Elon ed.).

24. WAGSCHAL, *supra* note 16, at 40-41; EHRMAN, *supra* note 19, at 347.

25. WAGSCHAL, *supra* note 16, at 40-41.

26. LEVINE, *supra* note 6, at 68-71, 74.

27. *See, e.g.*, MEIR TAMARI, THE CHALLENGE OF WEALTH, at 102-03 (arguing that the employee would be stealing such goods, and that anyone paying for such information would be guilty of purchasing stolen goods and strengthening the hands of the wrongdoing employee).

28. *See supra* text accompanying note 13; *see also infra* note 29.

29. RAKOVER, *supra* note 12, at 32.

30. YONATON UZZIEL, MISHPATEI UZZIEL IV, *Hoshen Mishpat* 43 (Heb.). *Cf. Deuteronomy* 22:8.

An individual's responsibility as to the wrongdoing of others

Under Jewish law, not only is a person forbidden to violate the rules himself or herself, a person is also biblically proscribed from taking any action that would enable someone else to transgress Jewish law.³¹ In addition, even if a person's help is not *necessary* in order for someone else to contravene Jewish law, providing such help is rabbinically proscribed.³² Thus, one may not sell weapons to those who would misuse them to harm others.³³ Professionals - such as attorneys - should not assist clients to accomplish objectives that violate Jewish law.³⁴ Nor may one persuade someone to reveal corporate secrets, because such disclosure is proscribed by Jewish law.

Even simply encouraging a violation is banned.³⁵ Thus, it is forbidden to offer someone's agent a bribe in exchange for accepting one's contractual offer rather than a more favorable offer made by a competitor. Similarly, buying stolen goods is prohibited because doing so encourages the thief to steal again.³⁶ Indeed, some Jewish law authorities outlaw doing any business with a known thief because, by benefiting the thief through the business transaction, one strengthens the thief's hands.³⁷ Based on this argument, Jewish law might forbid a corporation - and the individuals acting on behalf of the corporation - from transacting business with a corrupt and oppressive government or business because doing so might strengthen the hands of such wrongdoers.³⁸

In fact, under Jewish law, a person is affirmatively obliged to

31. This is based on Talmudic interpretation of the verse, "Thou shalt not curse the deaf, nor put a stumbling block before the blind." *Leviticus* 19:14 (King James Version). See, e.g., BABYLONIAN TALMUD, *Kiddushin* 32a; see also TAMARI, *supra* note 27, at 39-44.

32. See TAMARI, *supra* note 27, at 39-44.

33. MAIMONIDES, *supra* note 6, *Hilkhot Rotzeakh* 12:12 (Heb.).

34. Steven H. Resnicoff, *Helping a Client Violate Jewish Law: A Jewish Lawyer's Dilemma*, in H.G. Sprecher (ed.), *JEWISH LAW ASSOCIATION STUDIES X*, at 191-227.

35. *Id.*

36. See RAKOVER, *supra* note 12, at 91-102.

37. *Id.*

38. See Walter S. Wurzbarger, *Covenantal Morality in Business*, in *JEWISH BUSINESS ETHICS: THE FIRM AND ITS STAKEHOLDERS*, *supra* note 23, at 39.

admonish a wrongdoer and to attempt to convince him or her to desist.³⁹ The commentators explain that if a person fails to provide such admonishment in a situation in which it would have been successful, it is as if that person were guilty of the same crime the wrongdoer commits.⁴⁰

Suppose a person neither enables, assists or encourages another to commit a wrong. In fact, assume the person earnestly remonstrates with the wrongdoer and endeavors to dissuade him or her from transgressing, but these efforts are unavailing. The person is not permitted to stop there. If the wrongdoer perseveres and the wrong would harm someone, whether physically, financially or spiritually, a person who knows the wrongdoer's intention must affirmatively act to restrain the wrongdoer or to warn the prospective victim. A person is not allowed to "stand idly by"⁴¹ while someone suffers harm.

To a large extent, secular law embraces the notion of role-differentiated morality based on one's occupation or profession. For example, even if an ordinary person might be morally expected to disclose information to prevent someone from victimizing another, in many United States jurisdictions an attorney or accountant is not typically expected to reveal a client's confidences to stop the client from perpetrating a fraud.⁴² Indeed, an attorney or accountant who did so

39. YONAH GERONDI, SEFER HA-YIREH, *Parshat Kedoshim* at 78 (Heb.); RABBI YEHUDAH HE-HASID, SEFER HASIDIM, *simon 5* (Heb.).

40. *Id.*

41. *Leviticus* 19:16.

42. *Compare Professional Responsibility Standards Rules and Statutes* 29-32 (John S. Dzienkowski ed., abr. ed. 2002-03) with the Sarbanes-Oxley Act which imposes an affirmative duty on both attorneys who practice before the SEC and accountants to reveal client fraud. *See Sarbanes-Oxley Act of 2002*, 107 P.L. 204; 116 Stat. 745 (2002) (codified as amended in scattered sections of U.S.C. Titles 15 and 18, the accompanying regulation is cited as 17 C.F.R. 205.3 [*hereinafter* Sarbanes-Oxley]) The Model Rules, adopted by many jurisdictions, now mirror Sarbanes-Oxley in this respect. The American Bar Association amended Model Rule 1.6 to include two financial harm exceptions to confidentiality and Model Rule 1.13 to incorporate a mandatory up-the-ladder reporting process that includes the possible revelation of confidential information under certain very strict circumstances and the possibility of withdrawal. Codified in the American Bar Association (ABA) Model Rules of Professional Responsibility in Thomas D. Morgan & Ronald D. Rotunda, *Model Rules*

could be sanctioned for violating applicable rules of “professional ethics.”⁴³

Jewish law rejects the proposition that one’s vocation alters one’s fundamental ethical duties. By choosing a particular job, a person may assume additional responsibilities - of loyalty or diligence - to clients or employers, but these additional responsibilities are limited; they cannot supplant pre-existing Jewish law responsibilities to protect prospective victims.

In part, this means that no person can justify violation of Jewish law responsibilities by saying that he or she is acting as an agent for someone else (including a corporation).⁴⁴ Nor can someone successfully contend that less exacting ethical rules apply because some secular code purportedly trumps the dictates of Jewish law. A corporate employee may not employ misleading marketing methods, a corporate salesperson may not engage in improper persuasion, a corporate negotiator may not resort to bribery, a corporate manager may not impermissibly discipline, terminate or otherwise maltreat an employee, and a debt collector may not engage in oppressive tactics. Nor, of course, may any of these people knowingly facilitate or enable the corporation to foist a harmful product on an innocent public, knowingly sell a dangerous product to someone who will misuse it, or enable or facilitate someone else’s violation of Jewish law. Anyone who witnesses others engaged in such actions must attempt to stop them. If such efforts are unsuccessful, the person may have to serve as a whistleblower, if necessary, to prevent such behavior.

An individual’s duties to affirmatively help others

We have already noted the duty not to stand idly by while a person suffers a loss. In addition, Jewish law imposes affirmative responsibilities to help others. For example, each individual Jew is

of Professional Conduct and Other Selected Standards (Including California & New York Rules) on Professional Responsibility, Foundation Press, New York, New York (2004).

43. See Dzienkowski, *supra* note 42, at 11.

44. See Wurzbarger, *supra* note 38, at 31.

obliged to engage in acts of kindness and charity. One of the highest forms of charity is to provide someone with the ability to earn a living.⁴⁵ The duty to engage in charity and other financial kindnesses includes giving money to the sick and the needy and making non-interest loans. The precise parameters of these obligations are complex.⁴⁶ Nevertheless, income derived directly or indirectly from a corporation - whether it be as dividends, from employment compensation, or profits from stock sales, etc. - will be factored into the calculus.

In addition, there are certain scenarios, including commercial cases, in which Jewish law requires people to do more than the strict letter of the law would otherwise demand. Thus, in one case, the Talmud not only rules that an employer could not hold his employees financially accountable for damage they had negligently done to his property, but requires the employer to pay the employees' wages.⁴⁷

Communal responsibilities for social welfare

Jewish law imposes a number of responsibilities on the community as a whole, which relate to the concept of "social responsibility," broadly defined.⁴⁸ For example, the public bears collective responsibility for the provision of the basic needs of the impoverished.⁴⁹ Thus, every city is obliged to appoint officials to collect and distribute funds to the impoverished.⁵⁰ Historically, Jewish communities have responded to these responsibilities by the creation of a multitude of public and private institutions that have provided a panoply of services. The community can impose taxes for publicly provided services.

A number of communal responsibilities require the regulation of

45. MAIMONIDES, *supra* note 6, at *Hilkhot Mat'not Aniyim* 10:7-14 (Heb.).

46. See generally MAASER KESAFIM (Cyril Domb ed.); EHRMAN, *supra* note 19, at 443-95.

47. Babylonian Talmud, *Bava Metzia* 83a. See generally LEVINE, *supra* note 6, at 258-62.

48. Thus, the Jewish nation as a whole are enjoined to be "a kingdom of priests and a holy people." *Exodus* 19:6. See Wurzburger, *supra* note 38, at 28.

49. MAIMONIDES, *supra* note 6, at *Hilkhot Mat'not Aniyim* 9:1-3 (Heb.).

50. *Id.*

commerce. Through its rabbinic court, for instance, each municipality is required to appoint officials to inspect and verify the accuracy of the weights and scales utilized by local storekeepers and, should such measures be found deficient, to sanction the storekeepers involved.⁵¹ Similarly, communal authorities are responsible for the fixing of prices for basic commodities, while allowing the market to establish prices for luxury items.⁵² In addition, the community is authorized to enact general legislation, including commercial regulations, to promote the general welfare.⁵³ Throughout Jewish history, such communal powers were used significantly to promote socially responsible business practices. Theoretically, such powers could be used to control modern corporate conduct.

Dramatic sociological changes, however, have caused the collapse of almost all Jewish communal self-governing structures. Therefore, as a practical matter, Jewish law's rules regarding communally imposed controls are unlikely, at least for the immediate future, to impact corporate conduct in any meaningful way.

PART II: DOES THE CORPORATE CONSTRUCT INVOLVE SPECIAL RULES REGARDING SOCIALLY RESPONSIBLE CONDUCT?

Jewish law authorities do not agree as to how, as a matter of Jewish law, a corporation is to be perceived.⁵⁴ Secular law largely regards a corporation as a distinct "legal entity," separate and apart from its shareholders. A strong argument can be made that Jewish law would regard corporations as legal entities because Jewish law seems to adopt the legal entity model in several contexts.⁵⁵ Nevertheless, there is relatively little reason to believe that Jewish law would impose any particular social responsibilities on such corporate entities. The burden

51. *Id.* at *Hilkhot G'neivah* 8:20.

52. *Id.* at *Hilkhot Mekhirah* 14:1-2; CARO, *supra* note 9, at 231:27 (Heb.).

53. MAIMONIDES, *supra* note 6, at *Hilkhot Mekhirah* 14:1-2 (Heb.).

54. For a comprehensive examination of how the secular and the Jewish legal systems regard modern corporations, see Michael J. Broyde & Steven H. Resnicoff, *Jewish Law and Modern Business Structures: The Corporate Paradigm*, 43 WAYNE L. REV. 1685, 1687 (1997).

55. *Id.* at 1748-53.

to prove the existence of such duties, and the extent thereof, would appear to be on those who would assert their existence. But no persuasive effort to carry such a burden of proof has yet been made.

In any event, the majority of Jewish law authorities seem to reject the corporate entity approach. Instead, they characterize a corporation, for purposes of Jewish law, as a type of partnership. One view considers all shareholders to be partners, while another treats only the owners of voting shares as partners. A third perspective contends that only those possessing enough shares to have meaningful input into corporate decision-making are partners.⁵⁶

If, under Jewish law, a corporation is a partnership, what are the implications regarding socially responsible corporate behavior? As discussed in Part I, above, Jewish law will profoundly affect what each person involved with the corporation may (or must) do in his or her daily role as employee, manager, director, or shareholder. In this way, Jewish law will promote socially responsible corporate action.

The question, however, arises as to how much discretion, if any, corporate actors enjoy under Jewish law to expend corporate assets for purposes they believe to be socially desirable if doing so is inconsistent with the goal of maximizing the partner's profits. After all, these individuals do not personally own these corporate assets. Instead, they serve as agents for the true owners, who, under Jewish law, would be the "partners."

Based on a few specific Jewish law precedents, Professor Aaron Levine argues that Jewish law requires that an agent in a business venture must act to maximize its principal's profit.⁵⁷ Although it is possible to question one or more specific steps in his analysis, his conclusion would in any event logically flow from the basic principle of Jewish agency law: an agent must act in the manner desired by the principal. In the context of a for-profit corporation - as opposed to a

56. *Id.* at 1695.

57. Aaron Levine, *Epilogue* to JEWISH BUSINESS ETHICS: THE FIRM AND ITS STAKEHOLDERS, *supra* note 6, at 273-77.

charitable or other not-for-profit corporation - the agent, absent clear instructions to the contrary, should assume that the principal desires him to maximize profits, subject, of course, to all applicable Jewish law constraints. This, of course, is the same principle underlying classical secular corporation theory: that the corporation and its agents are to serve the profit-maximization goals of the corporate shareholders.

For various reasons, however, secular theorists have argued that a corporation ought to be perceived in a different way, one which would allow (or perhaps require) corporate decision-makers to act in light of factors other than profit maximization. Specifically, they have contended that such decision-makers should take into account the best interests of other groups (“stakeholders”), such as corporate employees, managers, suppliers and affected communities.

There are two interesting things regarding those favoring this approach. First, many may have espoused it not for the purpose of promoting a socially responsible agenda but, instead, in order to create a smokescreen behind which an existing corporate management could take steps to ward off a prospective takeover.⁵⁸ Second, they have not relied on the courts to “find” that the law “naturally” permits corporate managers to consider non-profit factors. Instead, they have relied on state legislatures to enact statutes that specifically authorize such consideration.

As mentioned at the end of Part I above, Jewish communal enactments could regulate business and, theoretically, could impose special social responsibilities on a corporation. Nevertheless, as mentioned at the end of Part I, sociological developments have devastated Jewish self-governing institutions. As a result, Jewish law currently lacks the legislative process that would allow it to move in this direction.

Of course, it is possible that, in particular cases, pursuing socially desirable goals would be consistent with profit-maximization. Corporate decision-makers would presumably be justified in taking such

58. Kathleen Hale, *Corporate Law and Stakeholders: Moving Beyond Stakeholder Statutes*, 45 ARIZ. L. REV. 823, 831 (2003).

actions if they were correctly convinced that they would also lead to profit maximization. It is, however, difficult to determine what objective evidence might be sufficient to support such a belief. Wherever such evidence fell short, the profit-maximization motive would have to be followed.

In addition, if the corporate principals would expressly authorize their agents to pursue non-profit maximizing objectives, the agents could do so. As a practical matter, however, this raises two important questions. The first is whether such agreement would have to be unanimous, as Levine contends.⁵⁹ Such an express consensus is unlikely to be achieved. The second question asks who, exactly, are the principals who must agree. As already discussed, Jewish law authorities disagree as to which shareholders are to be regarded as partners.

There are, however, possible exceptions to the basic rule that corporate decisions be governed by profit-maximization, and they involve two of the controversial mechanisms, mentioned above, through which Jewish law may be supplemented. The first, *Dina de-Malkhuta Dina*,⁶⁰ provides that secular law can, in certain circumstances, be valid under Jewish law. Consequently, specific secular law requirements, many of which may be perceived as socially responsible, must be fulfilled irrespective of the profit motive. If a state has a statute (a "stakeholder statute") that *requires* corporate decision-makers to act for purposes other than profit-maximization and *Dina de-Malkhuta Dina* applied to the statute, such conduct would be justified under Jewish law. On the other hand, if a state has a statute that merely permits corporate-decision makers to pursue socially responsible objectives, it is arguably less clear whether such permission would be enough under Jewish law to justify deviation from profit-maximization policies. This would depend on a detailed inquiry into the *Dina de-Malkhuta Dina* doctrine that exceeds the purview of this paper. It is noteworthy that while most states have some form of stakeholder statute, most statutes are limited to certain scenarios and virtually all merely permit, and do not require, that

59. Levine, *supra* note 57, at 277.

60. See Broyde and Resnicoff, *supra* note 54, at 1696.

interests other than profit-maximization be considered.⁶¹

The second mechanism is commercial custom, *Minhag ha-Soharim*.⁶² Under Jewish law, corporations must comply with established commercial customs, including those that require socially responsible actions (such as those pertaining to employee benefits). Moreover, if there were an established custom entitling corporate decision-makers to devote corporate assets to what they regard as socially desirable purposes, then this custom may be valid as a matter of Jewish law. Persons investing in corporations may be regarded as having notice of the custom and as having implicitly consented to it. In jurisdictions in which there are state stakeholder statutes, such statutes support the argument that there is such notion and implicit consent.⁶³ Indeed, it has been argued that such a custom in fact exists and is valid under Jewish law.⁶⁴ Levine, for one, seems less sanguine as to this conclusion.⁶⁵

In summary, *Dina de-Malkhuta Dina* and *Minhag ha-Soharim* require adherence to specific secular laws and customs, whether they are socially "responsible" or socially neutral. In addition, they also may justify a corporate decision-maker's decision to utilize corporate assets to pursue other, unspecified objectives which the decision-maker regards as socially responsible.

CONCLUSION

Jewish law comprehensively controls corporate conduct from within by imposing pervasive rules on the actions that corporate employees, managers, directors, and shareholders may and must take. These rules prevent a panoply of socially irresponsible actions and require many affirmatively responsible deeds. Jewish law theoretically authorizes and, as to some matters, requires, Jewish communities to legislate additional measures to regulate commercial conduct. But

61. See Hale, *supra* note 58, at 837.

62. See Brody and Resnicoff, *supra* note 54, at 1763.

63. Levine, *supra* note 57, at 289.

64. Wurzbarger, *supra* note 38, at 42-43.

65. Levine, *supra* note 57, at 289-90.

sociological circumstances have, at least for the present, made this mechanism ineffective.

Jewish law does to a large extent recognize the validity of secular law. Consequently, the secular political process remains a viable way to impose socially responsible duties on corporations from without. Similarly, Jewish law regards commercial customs as binding. As a result, this process - albeit less formal, less structured and less controllable than legislation - also represents a viable method for creating additional social responsibilities for corporations.

Notes & Observations