



## DR. ALYSSA GRAY: ANCIENT LAW MADE MODERN AND SPIRITUAL

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**Joshua Holo:** Welcome to the College Commons Podcast. Passionate perspectives from Judaism's leading thinkers, brought to you by the Hebrew Union College Jewish Institute of Religion, America's first Jewish institution of higher learning. My name is Joshua Holo, Dean of HUC's Jack H. Skirball Campus in Los Angeles, and your host. You're listening to a special episode recorded at the URJ Biennial in December of 2019.

**JH:** Welcome to this episode of the College Commons Podcast where we have the pleasure of talking with my friend and colleague, Dr. Alyssa Gray. Alyssa Gray is Professor of Codes and Responsa Literature and the Emily S. And Rabbi Bernard H. Mehlman Chair of Rabbinics at the Hebrew Union College in New York. She's published widely in Talmud and Jewish law and her new book, "Charity in Rabbinic Judaism: Atonement, Rewards, and Righteousness," just came out in 2019 from Routledge Press. You can check out her Eli talk online called "Jewish Law as Great Literature". Alyssa, welcome to the College Commons Podcast.

**Alyssa Gray:** Thank you, Josh.

**JH:** It's great to have you. So I wanna talk about the role of religious civilization, in which a primary category is law. I think there's something about religions as understood by the English language in the way English speakers use the term that connotes spirituality, and law connotes other things. And I wanna ask you if there's a challenge for Jews themselves to connect with their own tradition because of the tradition's preference for legal thinking over spiritual thinking.

**AG:** Well, we have to interrogate some of these terms, "law" and "legal". I will say, yes, the Halachic tradition, the tradition of the Halacha, as it's called, whatever Halacha means. People like to say it means "the way", "the path". The late Bible scholar Tikva Frymer-Kensky pointed to a different route meaning of the term in the Acadian. Be that as it may, it's the way of Jewish behavior. It's the literature that describes Jewish acts, Jewish behavior. Let's say you were to do a College Commons podcast with one of our great jurists in the middle ages, or even one of our not so great high profile jurists in the middle ages, and you asked him what he was doing when he wrote "Responsa: The Legal Jewish Responses to Questions."

**AG:** He would tell you that he's explicating Torah. That that's what he's doing, he's talking about Torah, he's talking about the realm of Mitzvot in the Middle Ages. There's an abundant literature collecting the 613 commandments Mitzvot. The point that I'm

getting to is using the word "law" is a modern construct. It's not inaccurate, the way a construct doesn't have to be inaccurate, but the problem is, is you're hinting at in your question, it comes freighted with other baggage that we have to sort out. And I think that some of this other baggage is confusing, at the very least, and may be off-putting to some of our people.

**AG:** When I teach the great codes of Rabbinic law to our students, I make the point, the United States Code annotated is a code. Its constituent statutes were passed by a legislature, the Congress of the United States. They were signed by the chief executive, the President. The McKinney's Laws of New York, a similar type of thing. The great codes of Jewish law were produced by great scholars by themselves. They're authors. Now, their authorship isn't like what we today think of authorship. It's not creative writing. In some cases, there's a great deal of work they do in collecting and collating and sifting and representing, but they're basically authors. That's what they're doing. These are not codes. But we begin in the 18th century to think more in terms of law in the United States. Now, there are many scholars, there's a field of Jewish law. I, everybody, colloquially uses that term, but it's not law in the same sense and these compilations are not law in the same sense. There are different definitions of law. If one wishes a definition of law, one can avail themselves of other definitions. There's legal positivism, that law is what a sovereign says it is. I'm not sure that really works for Jewish law. It's also possible and desirable, I think, not necessarily to think of Jewish law as law at all.

**AG:** Again, it's the realm of Jewish behavior. It's the realm of Jewish doing. These compilations are, as I've argued in other venues, they are great literature. They have messages in them about how to approach the big questions of life. How to think about life. We don't have to think of them as law, per se. And if I take another piece of your question, to go back historically, when we look at what our jurists were doing from the time that the Babylonian Talmud becomes sort of accepted, so we're really looking at the late 10th, early 11th century, certainly, by the 12th century, various Jewish cultures see it as that, and the processes that jurists bring to bear. And I know I'm muddying the waters by using the word "jurists" but I like it better than competing terms. The processes the jurists used are interpretation. They interpret texts, they extrapolate from texts that may have been produced in a different time and place, that were produced at a different time and place, and they extrapolate the messages of those texts to their day.

**AG:** In other words, they're doing these processes that are not processes confined to what we might think of as of the legal process. But even if we stick with a model of law, let's say we want to be legal positivists, we want to think of the Halacha as the acts of a sovereign as what the sovereign has promulgated for us. Even if we want to do that, there is an ultimate goal. The ultimate goal is to see, if one is so theologically inclined, that these are the Mitzvot, the Commandments of God. And that these ways of working through these commandments and interpreting these texts and applying them to new days is our trying to do the best we can with our fallible human intellects to discern what God wants of us. So, I think it can work and it certainly does work. Certainly, many of our Jewish siblings do see Jewish law as commanded law in that way, but I don't think

it's absolutely necessary. And I do think that for certain liberal Jews, it has become a bit of a stumbling block and it need not be.

**JH:** Well, I appreciate very much your applying a literary lens to this genre corpus of literature, it does seem that the preponderance of the literature itself, although lending itself to the highest broadest questions of the human experience and the connection with God, etcetera, and great literary themes, no doubt. Though we may not call it just legal, it is packaged and is deployed in a legal way. They see themselves as judges on a court, and they see themselves as decisors, making decisions, and giving rulings that were intended to be followed as such. And indeed saw themselves as jurists. So, I get the expansiveness and I see why that cracks open more possibility, but I still find it difficult to get past the preponderant nature of the literature as closer to the code, legal code as we use it, or at least legal compendium than to great literature.

**AG:** You're a very good interviewer. You're not letting me get away from that core question. Very good. Okay, so I'll go back to it by saying, it's all very well and good. There's a statement in the mysteriously authored work, the Sefer ha-Chinuch. It comes from Spain. We don't know what century. The book is constructed as a fiction where the author is addressing someone he calls "My Son." And My Son asks at one point about the mitzvah, the commandment, not to break a bone of the past over offering. It's like the son has lost it by this point. "Why are we going to this level of detail? Why don't we just tell the story of the Exodus from Egypt? What's going on here?" And the author says, and it's apropos of your question.

**AG:** A human being is formed by his actions. And he basically goes into a bit of an expanded discussion where if I may now take the tag off from the Sefer ha-Chinuch, would that it were enough to just show people what it is they should do and have them do it. The reality is we all are also morally and spiritually educated by engaging in behaviors. There's sort of one hopes a virtuous circle. I want to do the right thing, hence I begin doing the right thing. Or I want to do something that I hope will bring me closer to God, so I do something that hundreds of generations have been confident has at least brought some of them closer to God. And I hope that does it. The point being that action educates attitudes and dispositions. Attitudes and dispositions have an impact upon actions. So again, if we want to ponder What is the place of law in this system, the place of law is to help to teach us how to behave like the people we know we ought to be, and ultimately want to be.

**AG:** And of course, with any other human product, is it going to work 100% of the time? No, but the fact that our ancestors have bequeathed this to us, it worked. It worked enough of the time that this is the case. Let's say, Oh, I'm not talking about myself personally, but let's say, the generic I may not naturally be inclined to be a generous person. Guess what? There's a mitzvah. There's a religious commandment to give, Tzedakah, as un-generous as the generic I may want to be, I have to do it. Well, eventually one hopes this cultivates a spirit of generosity. I don't want, let's say, to pray, if we're looking at the laws of prayer requiring three times a day prayer. The hope is that by forcing me to engage in the practice there may be times when I do that. So, the role in that sense of law, the advantage is that I do think it works with us as human beings.

We do need action as a way to help educate us, ethically, morally and spiritually. And I do think that's also a lesson that... Islam, for example, and I'm certainly no expert on Islam, but the same notion that it's doing what God wants helps to educate you to be the person God wants you to be.

[music]

**JH:** Before we return to the podcast, we wanna let you know about digital learning on the College Commons platform. Beyond this podcast, which is available to the public at large, check out the online courses at [collegecommons.huc.edu](http://collegecommons.huc.edu) for in-depth learning, digital syllabi, assignments, inspiration for teaching, and one of our most influential courses called Making Prayer Real. Subscribe with your synagogue for all this and more. Just click 'Sign Up' at [collegecommons.huc.edu](http://collegecommons.huc.edu). Oh, and one more thing. Help us out and rate us on iTunes. But whatever you do, do not give us five stars unless we deserve it. Now back to our podcast.

**JH:** You've brought me along on the question indeed, about the spiritual or psychosocial nourishment that we need from a category of thinking that we don't necessarily intuitively think will give us.

**AG:** Right.

**JH:** So thank you. I wanna move to a specific case of that, which is built into the title of your new book, Charity, because, A: I wanna learn about your book, but B: I wanna just stipulate for the moment that any Jewishly educated person, when they learn about charity, they will have learned young that Judaism doesn't practice charity, Judaism practices Tzedakah, which goes more to the legal side and it's kind of simpler. It says, there's a Mitzvah, you're obligated up to a certain degree to take care of the poor, to promote a habit, to actually engage in a practice, and you fulfill God's expectation of you by doing that practice no matter what the state of your mind might be. The tale of your book seems to challenge that. I wanna ask you about that in light of what we just spoke about, the impulse between the psychosocial and the spiritual on one hand and the legal on the other.

**AG:** In the first chapter of my book, I do mention briefly what I do believe is a polemic, and I use the term polemic, on the one hand, it's a Jewish perspective vis-a-vis a Christian perspective and a Christian perspective vis-a-vis a Jewish perspective. The Jewish side is, "Yes, this is Tzedakah, it's justice." The implicit message is, yes, it's superior, because it's commanded, because it's justice, it's superior to the notion of charity as Caritas is this kind of mercy, this kind of radical empathy. And that seems to me to be a Jewish response to a perceived Christian polemic that well, because your Jewish practice is commanded, it's inherently inferior to a practice which comes about through the welling up of the soul and the voluntary, right...

**JH:** Right, a spiritual evolution, yeah, yeah.

**AG:** And I note this polemic, I note that it is something interesting and I sort of move beyond it, but it definitely is, definitely is there, I do mention that mostly for reasons of

linguistic economy, in the writing of the book I opt for the word charity. I do point out a better term would be providing money assistance or assistance to the poor, but that would certainly become very clunky. You can't do that throughout the book, you have to opt for a word. But there is no question. Getting back to the idea of Tzedakah as a commanded behavior that there is something to that, that it is... There is an element there of the building of character. And something that has always impressed me is the Talmud's insistence that even the poor person still must give Tzedakah. Obviously, she's not gonna be giving in the same way as someone of greater means, but it still is a Religious commandment, it binds the poor person, the poor Jew no less than the Jew with means. And it says something about what it is.

**JH:** It doesn't just bind the poor person, it enfranchises the poor person.

**AG:** Exactly. I used a phrase in one of my biennial talks yesterday, participating in the Jewish narrative. And that is absolutely vital. The rabbis are very concerned that these sorts of differences not, as you put it, disenfranchise certain members of the Jewish community. So my last point in response to your initial question about the term Tzedakah itself is, it's fascinating to see it's multi-valance, how many shades of meaning it takes on in both the Hebrew Bible and in Rabbinic Literature, and my contention is that these various shades of meaning all shed light on each other, including the meaning of Tzedakah as charity. Tzedakah can mean giving someone something that they have no inherent entitlement to. So what am I doing when I do it Tzedakah with you, when I give you Tzedakah, what I'm essentially doing is I'm acting towards you with a sort of grace. This is not an idea we typically think of, but it is present in some of the Rabbinic sources.

**JH:** Because the idea of Grace is, theologically in Christianity, it's about something freely given, meaning the word grace implies that there's no contractual, transactional component.

**AG:** Right.

**JH:** That it is merely in the purest, purest possible sense a gift. And so what you're saying is Tzedakah when given to someone whom you owe nothing.

**AG:** Correct.

**JH:** Either externally by God's law or internally by contractual exchange, but simply to give, if it's called Tzedakah that means that the word Tzedakah contains within it this more spiritualized relational component.

**AG:** Right, and that applies... And again it's a shade of meaning, it applies even though I'm obligated to give Tzedakah, why?

**JH:** In general.

**AG:** In general, because I'm not obligated to give to that individual at that particular moment. So the fact that I choose that individual at that particular moment, I am doing a

Tzedakah, doing a Tzedakah is also then, if you take in another shade of its meaning, I'm acting out my righteousness, I am acting out my righteousness certainly towards that person, but also vis-a-vis God. So that's one meaning, there are others related, not maximizing one's allowances, sometimes if I behave with Tzedakah towards someone, it means I'm entitled to a certain behavior from them, but I pull back, I have a certain amount of forbearance. Again, all of these things play on that meaning aside from the fact that Tzedakah can mean merit and the accumulation of heavenly merit. All of these things come into play. How the Rabbis handle these things, the rabbis of the land of Israel versus the rabbis of Babylonia, that's my bread and butter, that's the rest of the book.

**JH:** Right. Or come to HUC, enroll as a rabbinical student and learn more. Right, but what you're saying is, these other uses of the word Tzedakah force us to understand that its meaning is more multi-faceted.

**AG:** Correct.

**JH:** And they color it in ways that are more spiritualized than the way we learned in Hebrew school.

**AG:** Yes

**JH:** Great. I wanna take a step back because you and I are officers of the institution of higher learning of the reform movement and why we are beholden to all of our fellow human beings and all of our fellow Jews, we have a special commitment to this phenomenon in Judaism that we call Reform Judaism, wherein autonomy has come up against commanded-ness in ways that we're constantly negotiating. I wanna ask you about that negotiation, not in terms of a specific rule, why or why not can I have a cheeseburger but why should our reform leaders, and hopefully, our reform participants and congregants, in general, learn the traditional corpus that you and I both teach, that except for nuggets of literary grandeur and ready access emotionally, are fundamentally not only opaque and take years of study to penetrate, but also could be argued, are only dubiously translated from our students when they become professionals, educators, rabbis, cantors, to the reform community in general. What's the value proposition for, forgive the crassness, in our specific context of Talmud and the codes, etcetera?

**AG:** Well, I think that an individual human being can't be healthy unless they have a sense of self that takes in all parts of their life, that takes in parts of their life about which they feel more ambiguous or ambivalent as well as parts of their life that are happier, etcetera and I think a culture or civilization cannot be healthy if it cuts off a part of what made it what it is, and just simply decides to write it off. Let's say you're dealing with some of the early reformers who, some of whom were scholars and that's another story. They studied the tradition, they had a sense of what they were accepting and rejecting, but for us as a culture and a civilization, I don't think it's healthy, unless we make a decision that we're going to start another religion, religion that looks very Judaic in form and content, that's maybe quite adjacent to Judaism, the Judaism of modernity, that's an air of Rabbinic Judaism, if we make a decision to do that, that's one thing, but if we

see ourselves as part of the historic Jewish civilization, we cannot be healthy unless we embrace this and we need to embrace it through study.

**AG:** Clearly, even the most traditionalist curricula don't necessarily embrace every aspect but we need to be engaging this literature. It is the ancient literature, the Medieval literature of the Jewish people, the Judaism we practice today, whatever label we put on it, is ultimately, an air of that heritage and we must study it. Now what people do with it, autonomy, that of course is an ever green headline that you and I, in this conversation, although I'm sure if we talked all day, we could solve it, we're not gonna solve it right now, but it is part of remaining part of the Jewish people, and we need to do it. What I have found, anecdotally, is that students who do get more into the study of...

[foreign language]

**AG:** Do reach a point where they do find themselves for want of a better word, "commanded", in ways they might not have otherwise. It doesn't mean they become orthopractic, necessarily in their behavior or orthodox in their beliefs, but I do find that they do take more seriously a notion that autonomy has to be informed and they just approach their Jewish behaviors in a more intentional way than they might have otherwise.

**JH:** Which in many ways is the reform ideal?

**AG:** Right, right.

**JH:** So I want you to take us out of this interview with a nugget, a great story or a beautifully composed idea from the literature that you study and teach, something that inspires you, that you have seen over the years really inspires your students.

**AG:** I would say one that inspires both me and my students also, because it happened fairly recently in a course that I taught, is having nothing to do with Tzedakah, is Maimonides, the great 12th century jurist and philosopher, his letter to a gentleman named Ovadiah the Ger or Ovadiah represents that he was sort of bloodied spiritually by a rabbi who sort of cast some aspersions on his previous faith commitments that he had come, he presumably had previously been Muslim, that there might have been some idolatrous elements in his past, he felt very bad, he wondered about could he say if he was praying in the synagogue, could he recite the phrase *eloheinu vei-lo-hei avoteinu*, our God and God of our ancestors and Maimonides launches into a beautiful, fascinating, lengthy description where he basically says, "Ovadiah, not only can you do it, you must do it. In fact Ovadiah, you're even one better than what we can call the genealogical Jew, you, we are descended from Abraham, Isaac, and Jacob.

**AG:** You are attached directly to God, you Ovadiah, sort of you having chosen this path, you are on this state." And I have students who read portions from the letter to Ovadiah the Ger when they serve on *batte din*, on gatherings for conversion and it is, I think, a

very, very beautiful statement, not only of Maimonides rationalism, the inherent spiritual and rational equality of all human beings, but also that sense that informing the people Israel, yes, those of us are born of Jewish parents, genealogical Jews, and those of us who choose to join us, we really are all one family and to hear that from no less a personage than Maimonides is very powerful. And I find that students, I'm always inspired by it and I find that the students are as well.

**JH:** That's a great one. Do you know the apocryphal story of Louis Brandeis?

**AG:** No, no.

**JH:** So Louis Brandeis was top of his class at Harvard Law School. My understanding is the story is apocryphal, but it goes like this. So he goes up to receive an award, some kind of commendation, this is in, would be in the late 19th century, if I'm not mistaken, at Harvard Law School, he's graduating and this is in the time when there wasn't actually a fully enshrined kind of anti-semitism, and he comes up to take the award and he's allowed a few words and he goes before the entire class and the professoriate and he says, "I'm sorry, I was born a Jew", to which everyone stands up shocked and begins to applaud and was like, "Great! He's got enough shame to know that he shouldn't be Jewish." And he says, "I'm sorry, I was born a Jew, because in being born a Jew, I was denied the privilege of choosing it."

**AG:** Wow, that's fantastic, yeah.

**JH:** So he's Maimonidian in this.

**AG:** Yeah.

**JH:** But I'm sure it's not true.

[chuckle]

**AG:** It sounds too good to be true.

**JH:** Too good to be true. I'll allude that as that this was.

**AG:** Right, right, yeah

**JH:** Alyssa Gray, thank you for joining me, it was really a pleasure to spend the time.

**AG:** Thank you Josh, thank you for having me.

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**JH:** You've been listening to the College Commons podcast produced and edited by Jennifer Howd and brought to you by the Hebrew Union College Jewish Institute of Religion. For this URJ biannual series, special thanks to Mark Palev and the URJ chief program officer and biannual director and Liz Grumbacher, Director of North American



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