

A Concurring Opinion to “Work, Workers, and the Jewish Owner,” by Rabbi Jill Jacobs
By Rabbi Elliot N. Dorff

This paper was submitted to the CJLS as a concurrence to Rabbi Jill Jacobs’s responsum “Work, Workers and the Jewish Owner” Concurring papers are not official positions of the CJLS

I voted for Rabbi Jacob’s responsum because I heartily support her conclusions (2), (3), (4), (7), and (8). Like Mr. Gary, I have some reservations about her conclusions (1), (5), and (6). In fact, because I do not have a background in economics, I actually showed her teshuvah to some friends of mine who are economists, including a professor of economics at the University of Southern California who is a member of the minyan I attend at our synagogue. In this process, I became aware that economics is like philosophy in that there are several schools of thought, each with its own lens on what counts as important and each with its specific approach to, and interpretation, of the facts on which it focuses. Thus although I appreciate the evidence that Rabbi Jacobs brings for her conclusions (5) and (6), I also appreciate the evidence that Mr. Gary brings. Even Mr. Gary, though, agrees with those conclusions now that they have been changed in their language to say that Jews should “strive to” provide a living wage to their employees and “strive to” enable their workers to join unions if they so choose. (I share Mr. Gary’s objections to the “card check” provision in Rabbi Jacobs’ teshuvah and his interpretation of the sources to indicate, contrary to Rabbi Jacobs’ conclusion #1, that our ancestors knew well of people who could not support themselves and nevertheless condoned a free market system.) In essence, then, I voted for Rabbi Jacobs’ teshuvah because I agree with almost all of it, including clauses #5 and #6 that state aspirations.

This leads me to object strongly to Mr. Gary’s questioning of using law to express

aspirations. He is certainly correct in stating that we have other ways of doing that. These include, I would suggest, stories, proverbs, and, perhaps especially, the way we depict God. We are to strive to be holy as God is (Leviticus 19:2), and that is quite a tall order.

Law, though, is another important way in which the Jewish tradition expresses its aspirations. Perhaps the most graphic proof of this is that our liturgy has us confess our sins – our violations of the law – three times each day in the *Amidah* for evening, morning, and afternoon. No legal system that establishes only minimal demands would produce such a need for constant confession. On the contrary, precisely because Jewish law expresses our moral aspirations we need to confess our inability to achieve them all and our intention to try yet again three times each day and then, even more intensely, during the High Holy Day season. My theory of Jewish law therefore strongly asserts that, in Judaism, law and morality are intimately entwined, and that both law and morality speak not only to what can be minimally expected of us but also to the kind of people that what we can and should aspire to become.¹ Jewish law is therefore entwined not only with moral ideals but with the theological convictions that shape and articulate them, as I demonstrate in my recent book, *For the Love of God and People: A Philosophy of Jewish Law*.² It is precisely because I take a much more robust view of the nature

¹See J. O. Urmson's classic 1958 article, "Saints and Heroes," for a demonstration that morality deals not only with minimal standards but with our aspirations to become "saints and heroes," in *Essays in Moral Philosophy*, Abraham Irving Melden, ed., Seattle: University of Washington Press, 1958, pp. 198-216.

²Elliot N. Dorff, *For the Love of God and People: A Philosophy of Jewish Law* (Philadelphia: Jewish Publication Society, 2007), Chapter Six.

of Jewish law than others do that I endorsed Rabbi Jacobs' statements of aspiration in her conclusions #5 and #6.