

The Duty To Educate In Jewish Law: A Right With A Purpose

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Jewish Law¹ demands of society that certain basic rights be provided for all children. Most of these rights are intuitive. There is an obligation to feed and care for children, to refrain from abusing children, and, to the extent a legal system can mandate, to love one's children.² This chapter explores an area of obligation not generally considered a "human right," but which Jewish law views as a fundamental obligation that a parent (and society) owes to a child: the duty to educate children. Jewish law mandates that a parent—and if a parent cannot, then society—provide for the religious, moral, and secular education of children.³ This obligation is as much a part of the parental duty as the obligation to feed and clothe. Indeed, according to many, the duty to educate is the basis for the right of parents to have custody of their child, and even custody rights can be affected by abandonment of the duty to educate.

It is the thesis of this chapter that the duty to educate—both oneself and one's children—is fundamental within the Jewish tradition. However, this right to an education is categorically different from the right to an education that one currently encounters in modern international law and in various states in America. Jewish law imposes a duty to educate children so that they—when becoming adults—will be equipped with the skills and knowledge to fulfill their own duty to be educated, as adults also are obligated to educate themselves according to the Jewish tradi-

¹ On the meaning of Jewish law (called *halacha* in Hebrew) see my chapter herein "Forming Religious Communities and Respecting Dissenter's Rights," at note 3.

² For a general and popular survey of the child-parent relationship in Jewish law, see Shoshana Matzner-Bekerman, *The Jewish Child: Halakhic Perspectives* (Hoboken, 1984).

³ Indeed, to this very day, American constitutional law does not mandate that government provide for the education of children, although once it provides for the free public education of some, it must do so for all; *Plyler v. Doe*, 457 U.S. 202 (1982). As noted in *Plyler*, 220, as late as 1960 there were areas of the United States where no public education was provided.

tion. International law and the various states in America that have granted children "rights" to an education have done so without imposing any duty on these children when they are adults to continue their own education.

The Duty to Educate Children: A Religious Education

Jewish law, like Christian canon law and Islamic Shari'a law, rules that there is a duty to provide for a religious education. The classical code of Jewish law, the *Shulchan Aruch*,⁴ written by Rabbi Joseph Caro, codified the rule when it states:

There is an obligation upon each person to teach his son Jewish law; if the father does not teach him, the son is obligated to teach himself. . . . One is obligated to hire a teacher to teach one's children. . . .⁵

Indeed, it is quite impossible to imagine a faith group not imposing an obligation upon its adherents to seek out a religious education. Two recent commentators expressed very similar notions when explaining the duty to educate in canon law and Islamic law. Father James Conn stated: "The relevant legislation on the issue of [the] right to be educated is found in the most recent Code of Canon Law, based on the teaching of the popes and of the Second Vatican Council. Specifically, there are sixteen canons that enumerate the obligations and rights of the Christian faithful. For example, Canon 217 assures all members of the Church "the right to a Christian education by which they will be properly instructed so as to develop the maturity of a human person and at the same time come to know and live the mystery of salvation."⁶ Professor Azizah Y. al-Hibri summarized the Islamic position by stating: "Many Islamic jurists viewed education as either completely or practically compulsory based on an *ayah* (Qur'anic verse) that states: "[T]hose who conceal [from people] the clear Signs and Guidance which we revealed, after we have made them clear to people in the Book [the *Qur'an*], shall be cursed by God and others who [are entitled to] curse."⁷

⁴ Israel, 1488-1575.

⁵ *Shulchan Aruch Yoreh Deah* 245:1. In the Jewish tradition, a number of authorities note that even when, for one technical reason or another, the formal verse-based obligation to educate one's children is inapplicable, there is an intuitive obligation to propagate the faith by teaching religious tenants to adherents. "Chinuch," *Encyclopedia Talmudica* 161-201 (Jerusalem, 1978), 16:165.

⁶ James Conn, "Symposium on Religious Law," *Loyola of Los Angeles International & Comparative Law Journal* 16 (1994): 9-106, at 13.

⁷ Azizah Y. al-Hibri, in *ibid.*, at 23.

In the Jewish tradition, the duty to provide for the education of children is discussed in considerable detail. Jewish law explains that the obligation to "teach" a child is not limited to reading and text skills, but also includes rudimentary Jewish philosophy and theology:

When does one begin to teach a child? When he begins to speak one teaches him that God commanded Moses on the Mount with the Law (*Torah*) and the principle of the unity of God. Afterwards one teaches him a little bit until he is six or seven at which point one sends him to elementary school.⁸

The Code also mandates that a Jewish school system be established in every community:

Every community is obligated to have an elementary school, and every community that does not have an elementary school should be shunned [until one is established] . . . since the world only exists out of the merit of the discourse found when small children study.⁹

Indeed, that broad mandate to educate is not the end of the discussion. The Code addresses the details of classroom management also. For example, it states:

Twenty-five children to a teacher. If there are more than twenty-five students and less than forty, one must provide a teacher's aid; when there are more than forty students, a second teacher must be provided.¹⁰

Finally, unlike other areas of Jewish law which impose some limits on the competitive nature of business,¹¹ in the area of education, Jewish law endorses only competition:

One landowner in a courtyard who wants to establish a school in his residence cannot be stopped [through zoning ordinances] from doing so. So too, when one teacher opens a school next to

⁸ Shulchan Aruch Yoreh Deah 245:5.

⁹ Shulchan Aruch Yoreh Deah 245:7. Islamic law adopts a very similar principle. Islamic law accepts that if the members of one community in a Muslim state agree to abandon education of their children, the ruler—by force if needed—can compel the establishment of an elementary school; see Azizah Y. al-Hibri, "Symposium on Religious Law," 23, n.9.

¹⁰ Shulchan Aruch Yoreh Deah 245:15.

¹¹ For a survey of this area, see Aaron Levine, *Free Enterprise and Jewish Law* (New York, 1980).

another school, so as to encourage the students to go to this institution [and not the first one], one cannot stop this conduct.¹²

In short, the Jewish tradition is unambiguous that there is a duty placed on parents to educate children. Furthermore, it seems clear that when that duty can not or will not be fulfilled by parents, there is a community-wide obligation to provide for the education of children.¹³

The purpose of this duty to educate is not merely an abstract commitment to aid in the acquiring of knowledge. Rather, as one recent article noted: "Jewish law imposed a duty to educate a child in those duties [and laws] that he will be obligated in as an adult, in order that he should be prepared and familiar with the commandments. . . . Even though a minor is not obligated to observe the law, he should do so as a form of preparation for adulthood. . . . The same is true for the study of religious texts. The early authorities note that the biblical verse 'and you should teach your children to speak about [Jewish law]' requires that one familiarize one's children with the study of Jewish law."¹⁴

Given this educational framework, a focus on childhood education in preparation for adulthood, the parental duty to educate has a significant impact on other parental rights and privileges. One of the classical examples of this is in the area of child custody law. Rabbi Asher ben Yechiel, one of the premier medieval commentators on Jewish law,¹⁵ in the course

¹² Shulchan Aruch Yoreh Deah 245:22. This stands in contrast to the general rule of Jewish law, which would allow competition in the same general geographical locale, but would prohibit competition "on the same block."

¹³ Babylonian Talmud Bava Batra 21b, Isidore Epstein, trans. (London, 1987) and commentaries *ad locum*. There is a very interesting dispute within the Jewish tradition as to how exactly this societal duty should be fulfilled. Most authorities maintain that the duty to educate, when it would not be fulfilled by the parents, was then a duty of the court system (in Hebrew, *beit din*), and the courts were directly responsible for the education of those children whose parents would not educate them. This was part of the duty of the court to "orphans." For an exposition of this theory, see Tosafot, comment on Nazir 28b s.v. *beno*; Rabbi Abraham Gambeiner, *Magen Avraham* 640:3; Rabbi Isaac Bruna, *Terumat Hadeshen* 94 (Jerusalem, 1989); and Rabbi Abraham Danzig, *Ha'ai Adam* 66:3 (Jerusalem, 1991). The other approach argues that the court's duty was limited to appointing guardians for children to provide for their education. The courts did not supervise the educational process for these children. That obligation was, in essence "privatized." For an exposition of this approach, see Maimonides, *Inheritance* 11:1; Rabbi Jacob Reisher, *Chak Yaakov*, Orach Chaim 434:15 (New York, 1961); and perhaps Shulchan Aruch Choshen Mishpat 290:15. While the theoretical differences between these two approaches are small (as in the end, all authority resides in the court system), the practical differences are quite significant in terms of how these children are educated.

¹⁴ "Chinuch," 161-162 (quoting Deuteronomy 11:19). Indeed, the Hebrew term used to discuss children's education reflects this notion. The term used (*chinuch*) means "beginning" or "preparation," as the focus of Jewish law's educational policies is to prepare children for their roles as adults. For more on this, see Maimonides, *Commentary on the Mishnah*, Minachot 4:5.

¹⁵ Germany and Spain, 1250-1327.

of discussing the custody of children, asserts the theory that the right of parents to custody of their children appears to be a manifestation solely of the duty to educate one's children.¹⁶

Rabbi Asher states that since the Talmud ruled that one must educate children, it is intuitive and obvious that this "duty" to educate gives rise to a "right" of custody, which is necessary to fulfill the duty to educate.¹⁷ He then asserts that one should use this obligation to educate to determine which parent should receive custody in cases where the marriage has ended. In those cases where the mother bears the primary duty to educate, the mother has the right of custody.¹⁸ In those cases where that duty falls primarily on the father, the father receives custody. When the duty to educate ends—at the age of legal adulthood¹⁹—the concept of "custody" (like the duty to educate) disappears as a matter of law, and children are placed with whichever parent or stranger they wish to be placed with.²⁰

A Moral Education in the Jewish Tradition

As noted by the medieval authority Rabbenu Manoach²¹ the obligation to provide for the religious education of one's children has two different components to it. The first is to raise one's children "on the straight

¹⁶ Rabbi R. Asher ben Yecheil, *Responsa of Asher (Rosh)* 17:7 (New York, 1957); see also Rabbi Judah ben Samuel Rosannes, *Mishnah Lemelech*, Eshut 21:17 (Jerusalem, 1992).

¹⁷ *Responsa of Asher*, 82:2. Support for this approach can be found in other early authorities; see e.g. Rabbenu Yerucham ben Meshullam, *Toldat Adam veChava* 197a, in the name of the gaonim; Rabbi Yitzchak deMolena, *Kiryat Sefer* 44:557, in the name of the gaonim; and Rabbi Yosef Gaon, *Ginzey Kedem* 3:62. Of course, all of these authorities would agree that in circumstances in which the parents are factually incapable of raising the children—are legally unfit—they would not be the custodial parent. However, Asher appears to adopt the theory that parents are custodial parents of their children based on the obligations to educate, subject to the limitation that even a natural parent cannot have custody of children if unfit to raise them.

¹⁸ For reasons that relate to the presence of a "tender years" doctrine, the mother also has custody rights in small children. The details of this are beyond the scope of this article. For more on this, see Michael J. Broyde, "Child Custody: A Pure Law Analysis," *Jewish Law Association Studies VII: The Paris Conference Volume* (Atlanta, 1994), 1-20.

¹⁹ Twelve for a girl and thirteen for a boy; Shulchan Aruch Orach Chaim 55:9 and Even Haezer 155:12. This age also requires signs of physical maturity. *Ibid.*

²⁰ For a longer discussion of this issue, see the responsa of Rabbi Ezekiel Landau, *Nodah BeYehudah* E.H. 2:89 (New York, 1955), and Rabbi Isaac Weiss, *Minchat Yitzchak* 7:113 (New York, 1992), where these decisors explicitly state that in a case where the mother was assigned custodial rights, but the father was granted the right to educate (an unusual arrangement), and this right was incompatible with the mother's custody claim, his rights and obligations to educate supersede hers and custody by the mother will be terminated.

²¹ Narbonne, end of 13th century to mid-14th century. Much of Rabbenu Manoach's life remains clouded in mystery; for more on this, see "Rabbenu Manoach of Narbonne," *Encyclopaedia Judaica* 11 (Jerusalem, 1973): 892.

and narrow path" of life and to convey to them the imperatives of moral people. This is the primary educational obligation of a parent. Secondly, one is under a duty to provide for one's children's formal education in technical religious law and observances. This obligation, however, is secondary in nature.²² Indeed, Rabbi Joseph Kaphach, writing for the Rabbinical Court of Appeals in Israel, notes that in modern times the technical aspects of education are almost always delegated to educational institutions, and the primary job of parents is to provide for the moral, rather than the textual, education of their children. He states:

Even if neither parent will educate the children in the study of Jewish law . . . still a parent owes his children—and children should receive from their parents—a close and robust relationship through which a child can develop into an adult with adult characteristics and an adult demeanor.²³

In sum, the Jewish tradition mandates a duty to educate oneself and one's children in religious law, religious observances, ethical principles, and theology.

The Duty to Educate Children: A Secular Education

The parental duties to educate are by no means limited to a religious (or moral) education. The Talmud, writing nearly 1700 years ago, is quite explicit that there is a duty to teach one's children a way to earn a living.²⁴ The Talmud recounts:

²² Rabbenu Manoach, *Shevitat Haessor* 2:10 (Lemberg, 1881). Similar such observations can be found in Rabbi Naphtali Tzvi Yehuda Berlin, *Meshech Chachma* (Jerusalem, 1949); Genesis 18:19; and Rabbi Chaim Or Zaruah, *Or Zaruah* 2:48 (Jerusalem, 1963). The correctness of this observation of Rabbenu Manoach is quite significant, as it affects the practical obligations toward children in many cases. For example, Rabbi Meir Schlessenger, in "The Duty to Educate," *Sha'alei Da'at* 1 (Israel, 5749), ponders what educational policy should one adopt when the secondary duty to teach technical religious law conflicts with the primary duty to teach moral behavior—such as the case when too much pressure is exerted upon a child to conform to the details, thus causing the child to abandon the faith completely. Rabbi Schlessenger asserts, based on an insight of the late Rabbi S.Z. Auerbach, that one must insure that the primary obligation is not abandoned in the process of teaching the secondary requirements—technical religious law. The duty to educate needs an assessment of what maximizes the total amount of proper behavior rather than what fulfills the technical obligations.

²³ Pseudonymous case, 9 Piskei Din Rabaniyim [Israeli Rabbinic Court] 251, 259 (1974).

²⁴ Indeed, more generally, parents are under an obligation to teach children "survival skills" for life. Thus, the Talmud, Kiddushin 29b, recounts that parents are obligated to teach children to swim, as a child who cannot swim is lacking a basic skill necessary to survive. Other authorities have understood the Talmud phrase "to swim" as an idiom directing a parent to teach children all things needed for survival. For more on this, see "Av," *Encyclopedia Talmudica* (Jerusalem, 1948), 1:16-18.

Rabbi Judah states: Anyone who does not teach his children a profession, it is as if he has taught them robbery.²⁵

The later Jewish law authorities note that the Talmud does not call for a parent to provide a child merely some method to earn a living or simply a gift of money. Rather Jewish law requires that a child be taught a "profession."²⁶ As noted by Rabbi Joshua Boaz,²⁷ a parent does not fulfill this obligation merely by providing a child with an ongoing source of income, such as a trust fund, or even with an income-producing business that the child cannot run, but merely derive income from.²⁸ The obligation to provide a trade or a skill—rather than just a source of income—is elaborated on by Rabbi Shlomo Yitzchaki (*Rashi*)²⁹ in his commentary on the Talmud. He states that Rabbi Judah's ruling that a profession need be taught was predicated on the belief that absent work to occupy one's time, a person might turn to mischievousness—or even crime—out of boredom.³⁰ Thus, a parent must provide a child with the skills that groom the child towards becoming a fine, upstanding adult.

In short, Jewish law requires that one teach his progeny a profession, and that this duty is part of the parent's general obligation to educate one's children.³¹ How precisely to teach a child to earn a livelihood, particularly when the needs to earn a living conflict with the obligation or inclination to study Jewish law or other aspects of Judaism, is itself unclear.³² So too, what particular type of secular education to provide for each child is left to the discretion of the parents. In the details of this,

²⁵ Babylonian Talmud, Tractate Kiddushin 29a, 30b.

²⁶ A "profession" (in Hebrew, *um'nut*) appears to mean more than a way to earn a living—it denotes specific skills.

²⁷ Spain and Italy, c. 1470-1557.

²⁸ Shelta Gibborim, commenting on Kiddushin 12a(1) (Rif pages).

²⁹ France, 1040-1105.

³⁰ Commenting on Kiddushin 30b; see also comments of Rabbi Abraham Gumbiner, *Magen Avraham*, on Shulchan Aruch Orach Chaim 156. This obligation, however, is not so narrow that it forces a parent to pick a particular profession. Thus, providing a child with the skills needed to be a farmer, rather than just giving them an income-producing farm, would certainly fulfill this obligation.

³¹ See generally, "Chinuch," 162. It is worth noting that the rule requiring that one teach his child a trade is not cited explicitly in either Maimonides' code or Shulchan Aruch. As demonstrated by Rabbi Jacob Emden, this does not mean that these authorities do not accept that there is such an obligation; see Rabbi Jacob Emden, *Responsa Shelat Yavetz* 2:68 (Lemberg, 1881), and Rabbi Ovadia Yosef, *Responsa Yachave Daat* 3:75 (Jerusalem, 1989).

³² See Rabbi Ovadia Yosef, *Yachave Daat* 3:75, where the author addresses the issue of whether one should send a child to a trade school or an institution of higher study of Judaism. Rabbi Yosef concludes that the obligation to teach a child about Judaism supersedes the obligation to teach them to earn a living.

Jewish law provides little definitive direction. However, it is clear that there is an obligation.³³

The Duty to Educate: The Obligation of an Adult

Unlike modern common or international law, which limit the right to an education to children, Jewish law does not confine the duty to receive an education to children only. In the chapter immediately following the rules related to teaching children, the classical Jewish law code, the Shulchan Aruch states:

Every Jew is obligated to study Judaism whether he be rich or poor, healthy or sick, single or married. . . . All are obligated to set aside a time for study every day and night.³⁴

Adults, like children, have a duty to spend time educating themselves and have the right to receive an education. For example, the Shulchan Aruch states:

A person [adult] must trifurcate his study and spend a third of his time on the study of the twenty-four books of the Hebrew Bible; a third of his time on mishnah, which is the oral law; and a third of his time on Talmud, which involves investigating and comprehending matters from beginning to end and being able to analogize from one matter to another . . . until one understands the essence of the law.³⁵

When a Jewish society allocates resources to education, adult education is no less a priority than children's education.³⁶

Indeed, it is an open issue, how, in the Jewish tradition, parents are supposed to balance their own needs to study with the needs of their children. A person who cannot afford for himself to study and also to pay for the education of his child is only supposed to assign a higher priority to his child's education if he feels that the child will derive more benefit

³³ It is beyond the scope of this article to explore the more general question of the theoretical relationship between advanced secular education and Jewish theology and philosophy; for more on this topic see Norman Lamm, *Torah Umaddah* (Northvale, NJ, 1992).

³⁴ Shulchan Aruch Yoreh Deah 246:1.

³⁵ Shulchan Aruch Yoreh Deah 246:4. The code continues this discussion by addressing under what circumstances a person may change this division of topics, and the proper balance between economic and educational needs.

³⁶ Indeed, when the Shulchan Aruch discusses the laws of education, it has some sections that discuss the problems of educating adults (Yoreh Deah 246:7-17) and some sections discussing the problems of educating children (Yoreh Deah 245:9-20).

from that education than he will.³⁷ (However, even in a case where the parent's formal allocation of resources is to educate himself, and not his children, it is clear that the obligation to provide a moral and religious education for one's children still applies.)

This right of adults to an education leads to one of the significant differences between Jewish law and the current approach of many countries. There is little doubt that modern international law recognizes the right of children to an education. For example, Article 28 of the United Nations Convention on the Rights of the Child declares:

States parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education;³⁸

So too, Article 29 of this same convention tells us the purpose of this right to an education:

States parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;³⁹

However, international law imposes no duty on an educated child when he becomes an adult to continue that education, and no duty on society to foster the education of adults. There is no obligation to help adults in the development of their "personality, talents and mental and physical

³⁷ Shulchan Aruch Yoreh Deah 245:2. It is worth noting that most authorities rule that there is no duty on a minor child to educate himself; the duty is solely on the parent to educate the child; see comments of Rashi, Berachot 48a (s.v. *ad*), Ritva, *Responsa* 97 (Jerusalem, 1973), and "Chinuch," 162.

³⁸ United Nations Convention on the Rights of the Child, Article 28. U.N. Doc. A/Res/44/23 (1989). For a discussion of this document's integration into American law, see Roger Levesque, "International Human Rights Grow Up: Implications for American Jurisprudence and Domestic Policy," *California Western International Law Journal* 24 (1994): 193-240. For an intellectual history of this document, see Sharon Detrick, *The United Nations Convention on the Rights of the Child: A Guide to the Travaux Préparatoires* (Dordrecht/Boston, 1992), 382-403.

³⁹ United Nations Convention on the Rights of the Child, Article 29.

abilities to their fullest potential" in international law. It is a right *only* to a child's education.⁴⁰

The same result is reached by modern American common law. While there has been a vast expansion of the rights of a child to an education in the last decade in America, this has been nearly⁴¹ exclusively limited to the redefining of the state's or parent's duty to children.⁴² There is no mention of the duty of adults to receive an education. When the requirement of parents or society to educate children ceases, the obligations of education cease, as the young adult is under no obligation to self-educate.

Indeed, American common law has repeatedly recognized this as an issue and has struggled with it. The most common area of difficulty is in the area of college education. Elementary and (early) high school education are mandatory; post-high school education is not.⁴³ Logic would indicate that when a young adult wishes to receive such an education, he must negotiate with his parents over cost issues, and parents are fully within their rights to decline to pay for the college education of their children. Indeed this is the law.⁴⁴ However, this line has been increasingly expanded in the context of divorced parents, with many courts imposing a duty on parents to assist in the college education of their

⁴⁰ Indeed, others have noted that the United Nations Declaration on the Rights of the Child sometimes grants children more rights than they have as adults; see Donna Gomien, "Whose Right (and Whose Duty) Is It? An Analysis of the Substance and Implementation of the Convention on the Rights of the Child," *Human Rights* 7 (1989): 161, 162-165.

⁴¹ "Nearly" is used because there is one clear exception. States have created adult educational programs as a remedy to the victims of racial discrimination who are now adults but who were deprived of education as children. See *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978). This is the exception that proves the theme of this article. Even when American society does mandate adult education programs and might consider it a "right" and a "duty," it is only as compensation for one who was illegally deprived of a child's right to an education. In the Jewish tradition, these two duties are essentially independent of each other. Immediately after the classical Code states that "there is an obligation on a person to educate his children," it states "if one's father does not teach one, one must teach oneself;" Shulchan Aruch Yoreh Deah 245:1.

⁴² See, e.g., Alexandra Natapoff, "1993: The Year of Living Dangerously: State Courts Expand the Right to Education," *Education Law Reporter* 92 (1994): 755-787, which documents the vast increase in the right to education given to children within the last ten years. This fine article, with its state-by-state survey of the changes wrought by educational reform, makes no mention of any concept of an adult's right to an education.

⁴³ *Quinn v. Johnson*, 589 A.2d 1077 (Sup. Ct. N.J. 1991) (noting that an adolescent who graduates from high school prior to reaching the age of majority is under no obligation to attend college, although divorced parents are under an obligation to support such an education if desired by the child).

⁴⁴ See Kathleen Conrey Horan, "Postminority Support for College Education—A Legally Enforceable Obligation in Divorce Proceedings?" *Family Law Quarterly* 20 (Winter, 1987): 589, 590.

children, even though these "children" are under no obligation to receive such an education.⁴⁵

Simply put, the modern common law has increasingly stretched the duty of parents to educate, so as to insure that *someone* is still responsible for the furthering of the "child's" education. In the Jewish tradition, the duty of a parent to educate his children certainly ceases at the time when the child enters legal adulthood.⁴⁶ *However, the moment the obligation of the parents ceases, the obligation resides directly on the adolescent himself.* Jewish law can just as easily force the adolescent to comply with its mandate that he receive an education, as it can force a parent to comply with the mandates of Jewish law to educate a child.

However, the Jewish tradition recognizes the economic reality of modern times, which is that it is exceedingly difficult for one to adhere to a rigorous duty to provide for one's own education without some financial assistance.⁴⁷ In various times and in various communities, different supplements were provided. For example, in 1944 the Chief Rabbinate of Israel decreed that:

Whoever looks at this fairly will conclude that the situation [regarding support for adolescents] requires appropriate remedial legislation. In our time, even adolescent children (girls as well as boys) under the age of fifteen face serious moral dangers if their support is not assured on a legal basis.⁴⁸

Thus, the rabbinical courts in Israel mandate support until the age of fifteen.

Other authorities, based on the obligation of a person to give charity, have argued that parents are under an obligation to give charity to their children who are engaged in study before the parents be allowed to engage in any other charitable giving, and that a court can compel this disbursement if the parents have any money available.⁴⁹ So too, many

⁴⁵ Richard C. Rusk, "Educational Obligations for Children of Dissolved Marriages," *Res Gestae* 36 (October, 1992): 156-162.

⁴⁶ Rabbenu Asher, commenting on Nazir 29b.

⁴⁷ Indeed, the Talmud (Ketubot 49a) clearly notes that there is a religious obligation to support one's children when possible.

⁴⁸ Decrees of the Rabbinical Court of Israel, 1944, reproduced in Menachem Elon, *Jewish Law: History Sources and Principles* (Philadelphia, 1994), 831-832.

⁴⁹ Justice Menachem Elon of the Israeli Supreme Court described the process of forcing parental support as follows:

The law prescribes that the giving of charity can be compelled, i.e., when a court is convinced that an individual is financially able to give charity and there are people dependent on charity funds, the court . . . may compel the individual to give charity in an amount that it determines he is able to pay. The law relating to charity contains an addi-

authorities recognize that grandparents have an obligation to provide for the education of their grandchildren (when parents cannot) before they can engage in other charitable activities.⁵⁰

More generally, the support of higher-learning institutions is perceived as a form of charity. Unlike alms-giving, which actually supports the impoverished, the Jewish tradition recognizes that one who cannot himself pursue his own education, shares in the education of others by providing for the support of those who are studying. Thus, the Shulchan Aruch states:

One who cannot study, either because he is completely ignorant or because he is busy, can support others who are studying.⁵¹

Rabbi Moses Isserless,⁵² in his classical glosses on this code adds:

Such a person [who supports others who are studying] is considered as if he himself is studying. A person can arrange a partnership in which one studies and the other supports, and they will split the rewards [the divine rewards of education and the profits from the business].⁵³

In sum, Jewish law provides for a right to an education for adults as well as children and created support mechanisms to encourage adults to educate themselves or support other adults who were being educated.

Professor Robert Cover of Yale Law School noted a crucial difference between the rights-based approach of common law countries and the duties-based approach of Jewish law. He remarked:

Social movements in the United States organize around rights. When there is some urgently felt need to change the law or keep it in one way or another a "Rights" movement is started. Civil rights, the right to life, welfare rights, etc. The premium that is to be put upon an entitlement is so coded. When we "take rights seriously" we understand them to be trumps in the legal game. In

tional rule that establishes priorities of entitlement for recipients. That rule states: "The poor of one's household have priority over the poor of one's town, and the poor of one's own town have priority over the poor of any other town." The combination of these two rules yielded the conclusion that a father could be subject to legal sanctions for failure to support his children, because such support is the highest form of charity.

Elon, *Jewish Law*, 116-117 (footnotes omitted).

⁵⁰ Rabbi Shabtai ben Meir, *Seftai Cohen*, Shulchan Aruch Yoreh Deah 245:1-3.

⁵¹ Shulchan Aruch Yoreh Deah 245:1.

⁵² Crakow, 1520-1575.

⁵³ Comment of Rabbi Moses Isserless, Shulchan Aruch Yoreh Deah 245:1.

Jewish law, an entitlement without an obligation is a sad, almost pathetic thing.⁵⁴

The difference in the rights and duties surrounding education between Jewish and common law is as clear an example of this phenomenon as one can encounter. International law and the law of many states in America recognize a child's "right" to an education. However, from a Jewish perspective, this type of right would be a lonely right, as it is not connected to any duty imposed on the child to be educated. It gives a child the right to something that this child will not have when he becomes an adult.

Such is not the approach of Jewish law.⁵⁵ The Jewish tradition recognizes a child's right to an education. However, this right is part of a broader picture within the Jewish tradition that focuses on the duty of each and every person to be educated. Children possess a right to be educated so that they can be in the best position to fulfill their duty to continue that education as adults. In sum, in Jewish law, there is a duty to be educated that is applicable to adults and children. According to international and common law, the right to an education is "child's play."

⁵⁴ Robert M. Cover, "Obligation: A Jewish Jurisprudence of the Social Order," *Journal of Law and Religion* 5 (1987): 65, 67 (footnotes omitted).

⁵⁵ Nor, for that matter, of canon or Islamic law; see the discussion in text accompanying notes 6 and 7. Jewish, Christian, and Islamic religious legal systems mandate a duty on people (adults and children) to be educated.