

## Why Educate?: A Jewish Law Perspective

Michael J. Broyde

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# WHY EDUCATE?: A JEWISH LAW PERSPECTIVE

MICHAEL J. BROYDE<sup>†</sup>

## INTRODUCTION

In every legal system a gap exists between the law as it is actually enforced by the courts and the ethical categorical imperative.<sup>1</sup> Although it was rejected by Justice Holmes in his “bad man rule,”<sup>2</sup> a strong claim can be made that the measure of an enlightened and advanced legal system and society is its success in bridging this gap. Within a religious legal system<sup>3</sup> that rejects the clear separation of law and ethics, the severity of this problem is ameliorated. As illustrated by Jewish law, even such a system’s purely civil law must be influenced by ethical duties to a far greater degree than in secular legal systems.<sup>4</sup> Education law is one such area.

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<sup>†</sup> Professor of Law, Emory University.

<sup>1</sup> See, e.g., RABBI DR ISAAC HERZOG, *THE MAIN INSTITUTIONS OF JEWISH LAW* 381, 381–86 (1936) (providing a general analysis of the moral claims in Jewish law as compared with those in English common law); see also Michael J. Broyde & Michael Hecht, *The Return of Lost Property According to Jewish & Common Law: A Comparison*, 12 J.L. & RELIGION 225 (1995–96) (looking at these same findings in a different context).

<sup>2</sup> Justice Holmes subscribed to the view, extremely popular in its day, that the law should only attempt to provide guidance for acceptable “legal,” rather than proper, conduct. As such, Justice Holmes was of the opinion that:

If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vaguer sanctions of conscience.

Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 459 (1897).

<sup>3</sup> A “religious legal system” is a system in which law is but one component.

<sup>4</sup> This area of the law was chosen for a number of other reasons as well. First, it is an area of the law far distant from any apparent religious significance, thus making it an excellent paradigm for comparing the civil law of a religious system with the civil law of a secular system. Second, from the perspective of the common

Jewish law<sup>5</sup> 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, an obligation to refrain from abusing children, and an obligation to love one's children to the extent a legal system can mandate.<sup>6</sup> This paper explores an area of obligation not generally considered a "right" in the common law tradition, but which Jewish law views as a fundamental obligation that a parent (and society) owes to a

law, the field of education law is devoid of constitutional or federal interests, thus allowing the common law to develop in its historical manner.

<sup>5</sup> Jewish law (called "halakha" in Hebrew) is the term used to denote the entire subject matter of the Jewish legal system, including public, private, and ritual law. A brief historical review will familiarize the new reader of Jewish law with its history and development. The *Pentateuch* (the five books of Moses, the *Torah*) is the historical touchstone document of Jewish law, and, according to Jewish legal theory, was revealed to Moses at Mount Sinai. The *Prophets* and *Writings*, the other two parts of the Hebrew Bible, were written over the next 700 years, and the Jewish canon was closed around the year 300 B.C.E. The time spanning from the close of the canon until 250 C.E. is referred to as the era of the "tannaim" (the redactors of Jewish law) which period closed with the editing of the *Mishnah* by Rabbi Judah the Patriarch. The next five centuries was the epoch where the two Talmuds (Babylonian and Palestinian) were written and edited by scholars called "amoraim" ("those who recount" Jewish law) and "savoraim" ("those who ponder" Jewish law). The Babylonian Talmud is of greater legal significance than the Palestinian Talmud and is a more complete work.

The post-talmudic era is conventionally divided into three periods: the era of the "geonim," (scholars who lived in Babylonia until the mid-eleventh century), the era of the "rishonim" (the early authorities, who lived in North Africa, Spain, Franco-Germany, and Egypt until the end of the fourteenth century), and the "aharonim" (the latter authorities, which encompass all scholars of Jewish law from the fifteenth century up to this era).

From the period of the mid-fourteenth century until the early seventeenth century, Jewish law underwent a period of codification. This period led to the acceptance of the law code format of Rabbi Joseph Caro, called the *Shulhan Arukh*, as the basis for modern Jewish law. Many significant scholars, themselves as important as Rabbi Caro in status and authority, wrote annotations to his code that made the work and its surrounding comments the modern touchstone of Jewish law. The most recent complete edition of the *Shulhan Arukh* (1896) contains no less than 113 separate commentaries on the text of Rabbi Caro. In addition, hundreds of other volumes of commentary have been published as self-standing works, a process that continues to this very day.

For a more literary history of Jewish law, see generally MENACHEM ELON, *JEWISH LAW: HISTORY, SOURCES, PRINCIPLES* (Bernard Averbach & Melvin J. Sykes trans., The Jewish Publication Society 1994) (1988). For a shorter review of the literary history of Jewish law, see Suzanne Last Stone, *In Pursuit of the Counter-Text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory*, 106 HARV. L. REV. 813, 816-17 (1993).

<sup>6</sup> See generally SHOSHANA MATZNER-BEKERMAN, *THE JEWISH CHILD: HALAKHIC PERSPECTIVES* (1984) (providing a general and popular survey of the child-parent relationship in Jewish Law).

child: the duty to educate. As will be explained in this Article, Jewish law mandates that a parent—and if a parent cannot, then society—provide for the religious, moral, and secular education of children.<sup>7</sup> 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.<sup>8</sup>

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

## I. THE DUTY TO EDUCATE CHILDREN: A RELIGIOUS EDUCATION

Jewish law, like Canon and Islamic law, rules that there is a duty to provide for a religious education. The classical code of Jewish law, the *Shulhan Arukh* ("The Code")<sup>9</sup>, written by Rabbi Joseph Caro, codified the rule by stating that "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. . . ." <sup>10</sup> Indeed, it is quite impossible to imagine a faith

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<sup>7</sup> Indeed, to this very day, American constitutional law does not mandate that the government provide for the education of children; although once it provides for the free public education of some, it must do so for all. See *Plyler v. Doe*, 457 U.S. 202, 221–23 (1982). Until the mid-nineteenth century, education in the United States was almost solely administered by private entities, mainly the dominant Protestant sects. See *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 238 n.7 (1963).

<sup>8</sup> See *infra* notes 20–24 and accompanying text.

<sup>9</sup> See *supra* text accompanying note 5 (describing the *Shulhan Arukh* and its place in Jewish law); see also *infra* note 57.

<sup>10</sup> RABBI JOSEPH CARO, *SHULHAN ARUKH*, *Yoreh De'ah* 245:1 [hereinafter *SHULHAN ARUKH*]. In the Jewish tradition, a number of authorities note that even

group not imposing an obligation upon its adherents to seek out a religious education. Two contemporary scholars expressed similar notions when explaining the duty to educate in Canon 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."<sup>11</sup>

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."<sup>12</sup>

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 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.

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 tenets to adherents. 16 ENCYCLOPEDIA TALMUDICA 161-201 (1978) (on file with author).

<sup>11</sup> James Conn, S.J., *Duty to Educate—Fact Pattern, Roman Catholic Response, Symposium on Religious Law: Roman Catholic, Islamic, and Jewish Treatment of Familial Issues, Including Education, Abortion, In Vitro Fertilization, Prenuptial Agreements, Contraception, and Marital Fraud*, 16 LOY. L.A. INT'L & COMP. L. REV. 12, 13 (1994) (quoting CODEX IURIS CANONICI ch. 217 (Canon Law Society of America trans., 1983)).

<sup>12</sup> See Azizah Y. al-Hibri, *Duty to Educate—Fact Pattern, Islamic Response, Symposium on Religious Law: Roman Catholic, Islamic, and Jewish Treatment of Familial Issues, Including Education, Abortion, In Vitro Fertilization, Prenuptial Agreements, Contraception, and Marital Fraud*, 16 LOY. L.A. INT'L & COMP. L. REV. 22, 23 (alterations in original) (quoting *Qur'an* II:159 (A. Yusuf Ali trans., 1983)).

Afterwards one teaches him a little bit until he is six or seven at which point one sends him to elementary school.<sup>13</sup>

The Code also mandates that a Jewish school system be established in every community, stating that “[e]very 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.”<sup>14</sup>

Indeed, that broad mandate to educate is not the end of the discussion. The Code also addresses the details of classroom management. 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 aide; when there are more than forty students, a second teacher must be provided.”<sup>15</sup>

Finally, unlike other areas of Jewish law that impose some limitations on competitiveness,<sup>16</sup> in the area of education it is solely endorsed:

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 another school, so as to encourage the students to go to this institution [and not the first one], one cannot stop this conduct.<sup>17</sup>

In short, the Jewish tradition is unambiguous in that there is a duty placed on parents to educate their children. Furthermore, it seems clear that when that duty cannot or will not be fulfilled by the child’s parents, there is a community-wide obligation to provide for his education.<sup>18</sup>

<sup>13</sup> SHULHAN ARUKH, *supra* note 10, at Yoreh De`ah 245:5.

<sup>14</sup> *Id.* at 245:7. Islamic law adopts a similar principle. Islamic law accepts that if the members of one community in a Muslim state agree to abandon the education of their children, the ruler can compel the establishment of an elementary school by force if necessary. See Azizah Y. al-Hibri, *supra* note 12, at 23 n.9.

<sup>15</sup> SHULHAN ARUKH, *supra* note 10, at Yoreh De`ah 245:15.

<sup>16</sup> See generally AARON LEVINE, FREE ENTERPRISE AND JEWISH LAW (1980) (providing a survey of this area).

<sup>17</sup> SHULHAN ARUKH, *supra* note 10, at Yoreh De`ah 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.”

<sup>18</sup> BABYLONIAN TALMUD, *Bava Batra* 21b, and commentaries at 21b. There is an interesting dispute within the Jewish tradition as to exactly how this societal duty should be fulfilled. Most authorities maintain that the duty to educate, when not fulfilled by the parents, is then directly imposed on the court system (in Hebrew,

The purpose of this duty to educate is not merely an abstract commitment to aid in the acquisition 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.<sup>19</sup>

Given this educational framework, a focus on childhood education in preparation for adulthood makes clear that the parental duty to educate has a significant impact on other parental rights and privileges. One of the classic examples of this is in the area of child custody law. In the course of discussing the custody of children, Rabbi Asher ben Yehiel—one of the premier medieval commentators on Jewish law—asserts the theory that the right of parents to custody of their children appears to be a manifestation of the duty to educate them.<sup>20</sup>

Rabbi Asher states that since the *Talmud* ruled that one must educate children, it is intuitive and obvious that this "duty"

"beit din"). This was part of the court's duty to "orphans." See TOSAFOT, COMMENTARY ON THE BABYLONIAN TALMUD, *Nazir* 28b s.v. *beno*; RABBI ABRAHAM GUMBINER, MAGEN AVRAHAM 640:3; RABBI ISAAC BRUNA, TERUMAT HA-DESHEH 94; RABBI ABRAHAM DANZIG, HAYYAI ADAM 66:3.

The other approach argued that the court's duty was limited to appointing guardians to provide for the child's education. The courts did not supervise the educational process for these children. The obligation was, in essence, "privatized." See MAIMONIDES, LAWS OF INHERITANCE 11:1 (Arnold Bloch & Hyman Klein trans., 1950); RABBI JACOB REISHER, HOK YA'AKOV, *Orah Hayyim* 434:15; see also SHULHAN ARUKH, *supra* note 10, at Hoshen 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.

<sup>19</sup> See 16 ENCYCLOPEDIA TALMUDICA, *supra* note 10, at 161–62 (quoting *Deuteronomy* 11:19). Indeed, the Hebrew term used to discuss children's education reflects this notion. The term used ("hinukh") 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, *Menahot* 4:5.

<sup>20</sup> RABBI ASHER BEN YEHEL, RESPONSA OF R. ASHER (*ROSH*) 17:7; see also RABBI JUDAH BEN SAMUEL ROSANNES, MISHNEH LEMELEKH, *Ishut* 21:17.

to educate gives rise to a “right” of custody, which is necessary to fulfill the duty to educate.<sup>21</sup> He then asserts that one should use this obligation to educate in order to determine which parent should receive custody in cases where the marriage has ended. Whichever parent bears the primary duty to educate has the right of custody.<sup>22</sup> At the age of legal adulthood, when the duty to educate ends,<sup>23</sup> the concept of “custody,” like the duty to educate, disappears as a matter of law, and children are placed with the parent or stranger of their choice.<sup>24</sup>

## II. A MORAL EDUCATION IN THE JEWISH TRADITION

As noted by the medieval authority Rabbenu Manoah,<sup>25</sup> the obligation to provide for the religious education of one’s children has two different components. The first is to raise one’s children “on the straight and narrow path” of life and to convey to them the imperatives of moral people. This is the primary educational obligation of a parent. Furthermore, one is under a duty to provide for his children’s formal education in technical religious law and observances. This obligation, however, is only

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<sup>21</sup> See ASHER BEN YEHIEL, *supra* note 20, at 82:2. Support for this approach can be found in other early authorities. See RABBI JOSEPH GAON, GINZEY KEDEM 3:62; RABBI JEROHAM BEN MESHULLAM, TOLDOT ADAM VE-HAVAH 197a (“in the name of the geonim”); RABBI ISAAC DE MOLENA, KIRYAT SEFER 44:557 (“in the name of the geonim”). Of course, all of these authorities would agree that in circumstances where the parents are factually incapable, and thus legally unfit, to raise the children, they would not be the custodial parents. 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.

<sup>22</sup> 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 Broyde, *Child Custody: A Pure Law Analysis*, in JEWISH LAW ASSOCIATION STUDIES: THE PARIS CONFERENCE VII, at 1–20 (1994).

<sup>23</sup> The age of legal adulthood for girls is twelve, and for boys it is thirteen. See SHULHAN ARUKH, *supra* note 10, at Orah Hayyim 55:9, Even Ha-Ezer 155:12. To be considered a legal adult, the child must also show signs of physical maturity. *Id.*

<sup>24</sup> See RABBI EZEKIEL LANDAU, RESPONSA NODA BE-YEHUDAH, *Even Ha-Ezer* 2:89; RABBI ISAAC WEISS, RESPONSA MINHAT YITZHAK 7:113. Here, the decisors explicitly state that in a case where the mother is assigned custodial rights, but the father is granted the right to educate—an unusual arrangement—and his right then becomes incompatible with her custody claim, the father’s rights and obligations to educate supersede, and the mother’s custody will be terminated.

<sup>25</sup> Much of Rabbenu Manoah’s life remains clouded in mystery. See 11 ENCYCLOPEDIA JUDAICA 892 (1973).

secondary.<sup>26</sup> Indeed, in writing for the Rabbinical Court of Appeals in Israel, Rabbi Joseph Kapach notes that in modern times the technical aspects of education are almost always delegated to educational institutions. He further provides that 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.<sup>27</sup>

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

### III. 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*, written nearly 1,700 years ago, is quite explicit that there is a duty to teach one's children a way to earn a living.<sup>28</sup> The *Talmud* recounts in the name of Rabbi Judah, "Anyone who does not teach his children a profession, it is as if he has taught them robbery."<sup>29</sup>

The later Jewish law authorities note that the *Talmud* does not call for a parent to merely provide a child some method to

<sup>26</sup> RABBENU MANOAH, SHEVITAT HE-ASSOR 2:10; see also RABBI HAYYIM OR ZARUA, OR ZARUA 2:48; RABBI MEIR SIMHA OF DVINSK, MESHEKH HOKHMAH, *Genesis* 18:19. The correctness of Rabbenu Manoah's observation is quite significant, as it affects the practical obligations toward children in many cases. For example, Rabbi Meir Schlesinger ponders the educational policy one should adopt when the secondary duty to teach technical religious law conflicts with the primary duty to teach moral behavior. See Rabbi Meir Schlesinger, *The Duty to Educate*, 1 SHA'ALEI DA' AT (1988–89). Such a case arises when too much pressure is exerted upon a child to conform to the details of the religion, thus causing him to abandon the faith completely. Based on an insight of the late Rabbi S.Z. Auerbach, Rabbi Schlesinger asserts that one must ensure that the primary obligation is not abandoned in the process of teaching the secondary requirements—that is, technical religious law.

<sup>27</sup> 9 PISKEI DIN RABBANIYIM 251, 259 (Isr. Rabbinic Ct. 1974).

<sup>28</sup> Indeed, parents are under a more general obligation to teach children "survival skills" for life. Thus, the Babylonian Talmud recounts that parents are obligated to teach children to swim because they would otherwise be lacking a basic skill necessary to survive. BABYLONIAN TALMUD, *Kiddushin* 29b. Other authorities have understood the talmudic phrase "to swim" as an idiom directing a parent to teach children all things needed for survival. See 1 ENCYCLOPEDIA TALMUDICA 16–18 (1948).

<sup>29</sup> BABYLONIAN TALMUD, *Kiddushin* 29a, 30b.

earn a living or to simply give him money. Rather, Jewish law requires that a child be taught a “profession.”<sup>30</sup> As noted by Rabbi Joshua Boaz,<sup>31</sup> a parent does not fulfill this obligation 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 himself.<sup>32</sup> Rabbi Shlomo Yitzhaki (*Rashi*),<sup>33</sup> in his commentary on the *Talmud*, elaborates on the obligation to provide a trade or a skill—rather than just a source of income—to one’s child. 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.<sup>34</sup> Thus, according to this theorem, 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. This duty is part of the parent’s general obligation to educate his children.<sup>35</sup> 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.<sup>36</sup> So too, what particular

<sup>30</sup> In Hebrew, a “profession” (“*umenut*”) denotes specific skills and therefore appears to mean more than simply a way to earn a living.

<sup>31</sup> Rabbi Joshua Boaz was a decedent of a Judaeo-Spanish family who settled in Italy shortly after the Jews were banished from Spain. See Louis Ginzberg & Issac Broydé, *Baruch, Joshua Boaz Ben Simon Ben Abraham*, JewishEncyclopedia.com, at [http://www.jewishencyclopedia.com/view\\_friendly.jsp?artid=345&letter=B](http://www.jewishencyclopedia.com/view_friendly.jsp?artid=345&letter=B) (last visited Mar. 29, 2005).

<sup>32</sup> RABBI JOSHUA BOAZ, SHELTAI GIBBORIM COMMENTARY TO AL-FASI’S SEFER HA-HALAKHOT, *Kiddushin* 12a(1).

<sup>33</sup> Rashi is a medieval French scholar known for his commentaries on the Hebrew Bible and the *Talmud*.

<sup>34</sup> RABBI SHLOMO YITZHAKI, COMMENTARY ON THE BABYLONIAN TALMUD, *Kiddushin* 30b; see also RABBI ABRAHAM GUMBINER, *supra* note 18, at 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 him an income-producing farm, would certainly fulfill this obligation.

<sup>35</sup> See generally 16 ENCYCLOPEDIA TALMUDICA, *supra* note 10, at 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 *Shulhan Arukh*. 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 SHE’ELAT YA’AVETZ 2:68; see also RABBI OVADIA YOSEF, RESPONSA YEHAVEH DA’AT 3:75.

<sup>36</sup> See RABBI OVADIA YOSEF, *supra* note 35, at 3:75. Rabbi Yosef addresses the issue of whether one should send a child to a trade school or an institution of higher

type of secular education to provide for each child is left to the discretion of his parents. In the details of this, Jewish law provides little definitive direction. However, it is clear that such an obligation exists.<sup>37</sup> Moreover, this right to an education is not limited to children alone. Parents are also obligated to educate themselves, as discussed in the next section.

#### IV. THE DUTY TO EDUCATE: THE OBLIGATION OF AN ADULT

Unlike modern common or international law, Jewish law does not confine the duty to receive an education to children. In the chapter immediately following the rules related to teaching children, the *Shulhan Arukh* states that “[e]very 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.”<sup>38</sup> Adults, like children, have a duty to spend time educating themselves and have the right to receive an education. For example, the *Shulhan Arukh* 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.<sup>39</sup>

When a Jewish society allocates resources to education, adult education is no less a priority than children’s education.<sup>40</sup>

Indeed, it is an open issue how parents are supposed to balance their own needs to study with the needs of their children in the Jewish tradition. If a person cannot afford for both himself

study of Judaism. He concludes that the obligation to teach a child about Judaism supersedes the obligation to teach him to earn a living. *Id.*

<sup>37</sup> 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 generally NORMAN LAMM, *TORAH UMADDA: THE ENCOUNTER OF RELIGIOUS LEARNING AND WORLDLY KNOWLEDGE IN THE JEWISH TRADITION* (1992).

<sup>38</sup> *SHULHAN ARUKH*, *supra* note 10, at Yoreh De`ah 246:1.

<sup>39</sup> *Id.* at 246:4. The Code continues this discussion by addressing the circumstances under which a person may change this division of topics and the proper balance between economic and educational needs.

<sup>40</sup> Indeed, when the *Shulhan Arukh* discusses the laws of education, it touches upon the problems of educating adults, *id.* at 246:7–17, as well as the problems of educating children. *Id.* at 245:9–20.

and his child to receive an education, he is supposed to assign a higher priority to his child's education if he feels that the child will derive more benefit from it than he will.<sup>41</sup> However, even in a case where the parent's formal allocation of resources is to educate himself rather than 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 twenty-eight of the *United Nations Convention on the Rights of the Child* declares that:

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. . . .<sup>42</sup>

So too, article twenty-nine 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 . . . [t]he development of the child's personality, talents and mental and physical abilities to their fullest potential. . . ."<sup>43</sup>

However, international law does not impose a duty on an educated child to continue his education when he becomes an adult, nor does it impose a duty on society to foster it. There is no obligation to help adults in the development of their

<sup>41</sup> *Id.* at 245:2. It is worth noting that most authorities rule that there is no duty for a minor child to educate himself, and that the duty rests solely on the parents. See RABBI SHLOMO YITZHAKI, COMMENTARY ON THE BABYLONIAN TALMUD, *Berakhot* 48a, s.v. `ad; RABBI YOM TOV ISHBILI, RESPONSA OF RITVA 97; see also 16 ENCYCLOPEDIA TALMUDICA, *supra* note 10, at 162.

<sup>42</sup> *Convention on the Rights of the Child*, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Annex, at 288, U.N. Doc. A/RES/44/25 (1989); see also Roger J.R. Levesque, *International Children's Rights Grow Up: Implications for American Jurisprudence and Domestic Policy*, 24 CAL. W. INT'L L.J. 193, 217-19 (1994) (discussing the document's integration into American Law); Cynthia Price Cohen, Book Note, 87 AM. J. INT'L L. 477, 477 (1993) (reviewing THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: A GUIDE TO THE "TRAVAUX PRÉPATOIRES" (Sharon Detrick ed., 1992)).

<sup>43</sup> *Convention on the Rights of the Child*, *supra* note 42, at 288.

“personality, talents and mental and physical abilities to their fullest potential”<sup>44</sup> in international law. There is only an obligation to educate children.<sup>45</sup>

The same result is reached by modern American common law. While there has been a vast expansion of a child’s right to an education in America during the last decade, this has been almost<sup>46</sup> exclusively limited to redefining the state’s or parent’s duty to children.<sup>47</sup> There is no mention of the duty of adults to receive an education. When the requirement of parents or society to educate a child 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. Unlike the duty to attend elementary and (early) high school, there is no obligation for one to receive any form of post-high school education.<sup>48</sup> Logic would also suggest that when a young adult wishes to receive a higher education, he must negotiate with his

<sup>44</sup> *Id.*

<sup>45</sup> Indeed, others have noted that the United Nations’ *Convention 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*, 7 N.Y.L. SCH. J. HUM. RTS. 161, 162–63 (1989).

<sup>46</sup> “Almost” is used because there is one clear exception. States have created adult educational programs as a remedy for the victims of racial discrimination when they were children. See *Grutter v. Bollinger*, 539 U.S. 306 (2003) (reaffirming *Bakke*’s use of race in admissions decisions in order to achieve a diverse student body); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 272–76 (1978). Even when American society dictates that adults have a “right” to participate in educational programs, it does so only to provide compensation for those who were illegally deprived of an education when they were children. 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.” See SHULHAN ARUKH, *supra* note 10, at Yoreh De’ah 245:1.

<sup>47</sup> See Alexandra Natapoff, 1993: *The Year of Living Dangerously: State Courts Expand the Right to Education*, 92 EDUC. L. REP. 755, 755–56 (West 1994) (documenting 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.

<sup>48</sup> See *Quinn v. Johnson*, 589 A.2d 1077, 1079–80 (N.J. Super. Ct. Ch. Div. 1991) (noting that an adolescent who graduates high school prior to reaching majority is under no obligation to attend college, even though his divorced parents are under an obligation to support such education if he desires it).

parents over cost issues, and that his parents are fully within their rights to decline to pay for his college education. Indeed, this is the law.<sup>49</sup> 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 children, even though these “children” are under no obligation to receive such an education.<sup>50</sup>

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.<sup>51</sup> *However, the moment the obligation of the parents cease, 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: it is exceedingly difficult for one to adhere to a rigorous duty to provide for one’s own education without some financial assistance.<sup>52</sup> In various times and in various communities, different supplements were provided. For example, in 1944 the Chief Rabbinate of Israel decreed, “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.”<sup>53</sup> As such, the rabbinical courts in Israel mandate support until the age of fifteen.

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<sup>49</sup> See Kathleen Conrey Horan, *Postminority Support for College Education: A Legally Enforceable Obligation in Divorce Proceedings?*, 20 FAM. L.Q. 589, 590–94 (1987).

<sup>50</sup> See Richard C. Rusk, *Educational Obligations for Children of Dissolved Marriages*, 36 RES GESTEA 156–62 (1992).

<sup>51</sup> RABBI ASHER BEN YEHIEL, COMMENTARY ON THE BABYLONIAN TALMUD, *Nazir* 29b.

<sup>52</sup> Indeed, the Talmud clearly notes that there is a religious obligation to support one’s children when possible. BABYLONIAN TALMUD, *Ketubot* 49a.

<sup>53</sup> See ELON, *supra* note 5, at 831–32 (reproducing the 1994 decrees of the Rabbinical Court of Israel).

Based on the obligation of a person to give charity, other authorities have argued that parents are under an obligation to support their children's education before they are allowed to engage in any other charitable giving. A court can compel this distribution if the parents have any money available.<sup>54</sup> So too, many 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.<sup>55</sup>

More generally, the support of higher-learning institutions is perceived as a form of charity. Unlike almsgiving, which actually supports the impoverished, the Jewish tradition recognizes that one who cannot himself pursue his own education can share in the education of others by providing for their educational support. Thus, the *Shulhan Arukh* states, "One who cannot study, either because he is completely ignorant or because he is busy, can support others who are studying."<sup>56</sup> Furthermore, Rabbi Moses Isserless,<sup>57</sup> in his classical glosses on this code, adds that "[s]uch 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

<sup>54</sup> 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 additional 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 subjected to legal sanctions for failure to support his children, because such support constitutes the highest charity . . .

*Id.* at 116-17 (footnotes omitted).

<sup>55</sup> RABBI SHABTAI BEN MEIR, SIFTAI COHEN, *Yoreh De'ah* 245:1-3.

<sup>56</sup> SHULHAN ARUKH, *supra* note 10, at *Yoreh De'ah* 245:1.

<sup>57</sup> The identification of Caro as the author of the Code of Jewish Law is somewhat misleading. *But see supra*, text accompanying note 9 (identifying Caro as the author of the Code of Jewish Law). Rabbi Isserless wrote extensive glosses on Caro's work, citing opinions and traditions of European jurisprudence left out by the Middle Eastern Caro. Rabbi Isserless' glosses were nearly immediately incorporated into Caro's text, becoming an integral part of the Code; the two works together form the normative codex of Jewish Law.

they will split the rewards [the divine rewards of education and the profits from the business].”<sup>58</sup>

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

### CONCLUSION

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 Jewish law, an entitlement without an obligation is a sad, almost pathetic thing.<sup>59</sup>

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 many states in America, recognize a child’s “right” to an education. However, from a Jewish perspective this 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.<sup>60</sup> 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 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, Jewish law imposes a duty to be educated that is

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<sup>58</sup> GLOSSES OF RABBI MOSES ISSERLESS, *Yoreh De'ah* 245:1 .

<sup>59</sup> Robert M. Cover, *Obligation: A Jewish Jurisprudence of the Social Order*, 5 J.L. & RELIGION 65, 67 (1987).

<sup>60</sup> This is also not the approach of Canon or Islamic law, for that matter. See *supra* text accompanying notes 11, 12. The Jewish, Canon, and Islamic religious legal systems mandate a duty on people, adults and children, to be educated.

applicable to both adults and children. This is quite a different stance from international and common law, which consider the right to an education to be “child’s play.”