

## EPILOGUE

### *Human Rights and Human Duties in the Jewish Tradition*

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The Jewish tradition, as each of the chapters in this book has observed, is a duty-based legal system; rights are not the fundamental coin in the realm of Jewish law. While it is true that almost all "rights" can be expressed as "duties," and the reverse as well, it is equally clear that legal systems make statements about their core values when they express legal norms in one form or another. In Jewish law, the core value is a legal "duty."

Thus, at some level, were this work to be exclusively grounded in the linguistic norms of the Jewish tradition and system, the term "human rights" would be replaced throughout by "human duties." This is not merely a linguistic slight-of-hand maneuver; rather, the substantive rules are expressed as individual and personal obligations. Thus, there is no "right to an education," but rather a "duty to educate"; there is no "right to be fed," but rather a "duty to feed." Indeed, even such commonplace phrases as the "right to divorce" is expressed in the Jewish tradition as a "duty to divorce." Within the Jewish tradition, the expression of legal norms as duties almost inevitably creates a specific duty imposed on a person or group of people obligated to act to fulfill this duty. It is rare that one finds generalized societal obligations in the Jewish tradition—the imposition of a duty requires that one answer the question "Whose duty?" In rights-based systems, frequently this question goes unanswered, and thus rights go unfulfilled.

**RIGHTS AND DUTIES IN THE JEWISH TRADITION:  
THE EXAMPLE OF EDUCATION**

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

[In the United States] [w]hen 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, and so on. 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>1</sup>

Cover's insight is worthy of exploration, since—while the Jewish tradition clearly has a notion of human rights<sup>2</sup>—they are much more clearly expressed as a human duty to act to help others than as a right to be helped.

A classical example of how the rights–duties dichotomy affects how rights and duties actually are implemented can be found in a comparison of the modern human right to an education with the ancient Jewish version of the parent's and society's duty to educate children. Jewish law mandates that a parent—and if a parent cannot, then society—must provide for the religious and moral education of children, and in addition that each person is under a duty to be educated. This obligation is as much a part of the parental duty as is the obligation to feed and clothe. The classical code of Jewish law, the *Shulchan Aruch*, written by Rabbi Joseph Caro, codified the rule: "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>3</sup> In the Jewish tradition, the duty to pro-

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<sup>1</sup>Robert M. Cover, "Obligation: A Jewish Jurisprudence of the Social Order," *Journal of Law & Religion* 5:65 (1987): 67 (footnotes omitted).

<sup>2</sup>See, for example, Haim Cohn, *Human Rights in Jewish Law* (1984).

<sup>3</sup>*Shulchan Aruch*, *Yoreh Deah* 245:1.

vide 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. Afterwards, one teaches him a little bit until he is six or seven, at which point one sends him to elementary school.<sup>4</sup>

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."<sup>5</sup>

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 aide; when there are more than forty students, a second teacher must be provided."<sup>6</sup>

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

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<sup>4</sup>*Shulchan Aruch, Yoreh Deah 245:5.*

<sup>5</sup>*Shulchan Aruch, Yoreh Deah 245:7.*

<sup>6</sup>*Shulchan Aruch, Yoreh Deah 245:15.*

[Jewish law]<sup>7</sup> requires that one familiarize one's children with the study of Jewish law.<sup>8</sup>

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 *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."<sup>9</sup>

Adults, like children, have a duty to spend time educating themselves and have the right to receive an education. When a Jewish society allocates resources to education, adult education is no less a priority than children's education.<sup>10</sup> 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 from that education than he will.<sup>11</sup>

In sum, the Jewish tradition mandates a duty to educate oneself and one's children. This creates first and foremost a duty to educate, and then a resulting right to education. The emphasis, however, remains on the duty. There is well nigh no discussion of the "right" in the Jewish tradition.

<sup>7</sup>Deuteronomy 11:19.

<sup>8</sup>"Chinuch," *Encyclopedia Talmudica*, pp. 161–162, note 5. 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.

<sup>9</sup>*Shulchan Aruch*, *Yoreh Deah* 246:1.

<sup>10</sup>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).

<sup>11</sup>*Shulchan Aruch*, *Yoreh Deah* 245:2.

Given this parental duty to educate, it is not surprising to discover that the abandonment of this duty affects many other parental rights. One of the classical examples of this is in the area of child custody law. Rabbi Asher ben Yecheil, one of the premier medieval commentators on Jewish law, in the course 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.<sup>12</sup> 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. 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; when the father bears the duty, he has the right.

The Jewish duty-based approach stands in contrast to the rights-based approach of modern legal theory. 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;<sup>13</sup>

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:

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<sup>12</sup>Rabbi R. Asher ben Yecheil, *Responsa of Asher (Rosh)* 17:7; *Responsa of Asher* 82:2.

<sup>13</sup>United Nations Convention on the Rights of the Child, Article 28, U.N. Doc. A/Res/44/23 (1989).

(a) The development of the child's personality, talents, and mental and physical abilities to their fullest potential;<sup>14</sup>

However, international law imposes no duty on a child to be educated, and certainly imposes no duty on adults to continue their education. Indeed, it is unclear whether parents have any duty to educate their children at all. 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 nearly exclusively limited to the redefining of the child's *right to an education*.<sup>15</sup> When the requirement of society to fulfill children's rights to education ceases, the obligations of education cease, as the young adult is under no obligation to self-educate. Indeed, while a child has a "right to an education," he does not have a duty to receive that education, either as an adult or a child.

Thus, the secular human rights tradition has created a right without a duty, and the Jewish tradition has come close to creating a duty without a right.

### ***RIGHTS, DUTIES, AND RELIGIOUS OBLIGATIONS***

A focus on duty alone as the Jewish form of rights, however, risks the loss of the essentially religious character of the Jewish tradition. People were "created in the image of God" (Genesis 1:27); an innate conceptualization of humanity that focuses merely on the technical legal rules—whether they be rights or duties—misses one of the fundamental purposes of the Jewish tradition: to provide a sense of the Divine in the lives of people. In this regard the essential characteristics of Jewish law differ from those of any secular legal tradition, as Jewish law is predicated on the duty to imitate the Divine. As one of the essays in this book puts it so well, Jewish law provides a medium in which the top of Jacob's ladder, which

<sup>14</sup>United Nations Convention on the Rights of the Child, Article 29.

<sup>15</sup>See, for example, 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.

reached into the heavens, interacts with our daily life on the bottom of the ladder.<sup>16</sup>

Indeed, one can point to a variety of doctrines that are part of the Jewish tradition, whose purpose is to facilitate the moral development of people. Thus, the prophet Isaiah (Isaiah 42:6) directs that the Jewish people should be a "light unto the nations of the world." As noted by Rabbi David Kimchi in his classical commentary, "because of the influence of the Jews, the Gentiles will observe the laws they are directed to observe and follow the right path."<sup>17</sup> So, too, the mandate to correct the failures of the world (*tikkun olam*) provides clear evidence that the Jewish tradition recognizes a place beyond the technical legal formulations found in Jewish law and instead directs the Jewish tradition to participate in the world around it.

Indeed, this spirit imbues even legal issues that are central to the Jewish tradition and clearly demonstrates that the outer parameters of that which Jewish law dictates as permissible do *not* establish that which is morally laudatory or preferred. For example, it seems well established that, for a variety of reasons, the Jewish tradition averred that one was under no legal obligation to stop a gentile from violating even basic tenets of morality.<sup>18</sup> But yet, the

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<sup>16</sup>See chapter by Berger and Lipstadt herein.

<sup>17</sup>For other examples of this phrase in rabbinic literature, see *Bava Batra* 75a; *Midrash Rabbah Esther* 7:11; *Midrash Berashit* 59:7; and *Midrash Tehilim* (Bubar) 36:6. For a sample of its use in the responsa literature, see Tzitz Eliezer 10:1(74); Yavetz 1:168; and particularly Chatam Sofer 6:84; see also Responsa of Rosh 4:40, which is also cited in Tur OC 59. This concept plays yet a more prominent note in kabbalistic literature; see *Sefer Rasesai Layla*, §57, *s.v. techlat* and *vezehu*. For a defense of this beacon-like (i.e., Jews behave properly and this illuminates the world) understanding of the verse as the proper understanding of the literal meaning of the Bible itself, see Harry Orlinsky, "A Light unto the Nations: A Problem in Biblical Theology," in Neuman & Zeitlin, *The Seventy-Fifth Anniversary Volume of the Jewish Quarterly Review* (1967): 409–428.

<sup>18</sup>See my "Public Policy and Religious Law: Assisting in a Deliberate Violation of Noahide Law That Is Permitted by Secular Law," *Jewish Law Association Studies 8: The Jerusalem 1994 Conference*, vols. 11–20 (Scholars Press, 1996).

Jewish tradition is replete with moralistic dicta encouraging one to engage in this conduct. Thus, Rabbi Judah the Pious, writing in the middle of the Crusades, states: "When one sees a gentile erring, if one can correct him, one should, since God sent Jonah to Nineveh to return them to his path."<sup>19</sup> Indeed, Rabbi Joseph B. Soloveitchik continues the theme of Rabbi Judah the Pious when he states:

There may be an additional reason for [the prophet] Jonah's association with Yom Kippur . . . Nineveh was the capital city of pagan Assyria . . . It was a country which would later, under Sennacherib in 722 B.C.E., besiege Jerusalem and exile the ten tribes. Yet God's compassion embraces all of humanity . . . It is, therefore, characteristic of the universal embrace of our faith that as the shadows of dusk descend on Yom Kippur day . . . the Jew is alerted . . . that all of humanity are God's children. We need to restate the Universal dimension of our faith, especially when we are sorely persecuted and are apt to regard the world in purely confrontational terms.<sup>20</sup>

In short, the Jewish tradition has a clear religious model for involving itself in the broader community for the betterment of the whole community—which is the fundamental concept of human rights.

### **THE TASK AHEAD**

On July 4, 1994, on receiving the Liberty Medal in Philadelphia, President Vaclav Havel of the Czech Republic noted—with the flair of the dramatic poet that he is—the challenge for human rights in the world today. He stated:

[T]he only real hope of people today is probably a renewal of our certainty that we are rooted in the Earth and, at the same time, the

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<sup>19</sup>Rabbi Judah the Pious, *Sefer HaChasidim* (Jerusalem, 1964), 1124.

<sup>20</sup>*Reflections of the Rav: Man of Faith in the Modern World* (adaptations of the lectures of Rabbi Joseph B. Soloveitchik), by Abraham Besdin (New York, 1984), 142–144.



cosmos. This awareness endows us with the capacity for self-transcendence. Politicians at international forums may reiterate a thousand times that the basis of the new world order must be universal respect for human rights, but it will mean nothing as long as this imperative does not derive from the respect of the miracle of being, the miracle of the universe, the miracle of nature, the miracle of our own existence. Only someone who submits in the authority of the universal order and of creation, who values the right to be a part of it, and a participant in it, can genuinely value himself and his neighbors, and thus honor their rights as well.<sup>21</sup>

The essays in this book have each attempted to provide a uniquely Jewish answer to this challenge. Together they paint a picture that outlines much about how the Jewish tradition views human rights, both on a political level and on a religious one. As *Ethics of the Sages* (2:16) recounts, "It is not your job to finish the task; however, you are not free to abandon the task (merely because you cannot complete it)." Yet many other essays remain to be written in the field, and may it be that the field of religious human rights generally, and Jewish human rights specifically, continues to grow and blossom—so that we may all eat from the fruits of its accomplishments.

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<sup>21</sup>V. Havel, "Speech on July 4, 1994, in Philadelphia, on Receipt of the Liberty Medal," reported and excerpted in *Philadelphia Inquirer* (July 5, 1994): A08; *Buffalo News* (July 10, 1994): F8; and *Newsweek* (July 18, 1994): 66.