"Honor Thy Father and Mother": Children’s Obligations to Honor & Support Parents - A Comparative Analysis of Jewish and American Secular Law

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Abstract

This article will contrast and compare the duties of children to their parents under traditional Jewish and modern secular American law. The focus is on the adult child’s duty to support parents. Whereas the mandates proscribed by Jewish law increase with age, American law focuses on emancipation and personal autonomy. That said, recent American law encourages children to provide care to elderly parents. The history and reasoning behind both sources will be addressed.
**Introduction and Historical Background**

*Remember the days of old, consider the years of many generations; ask thy father, and he will declare unto thee, thine elders, and they will tell thee.* – Deuteronomy 32:7

Oral law is vital to Jewish history. While the physical Torah is indeed sacred\(^1\), the ideals contained within it and other primary sources are the foundation of Jewish law.

Throughout history, from the destruction of the Temple in Jerusalem to the various and continued attempts at destroying the religion, the Jewish people and their laws have survived.\(^2\) The insight provided by oral transcripts i.e. the Tanakh\(^3\) is vital but it is the individuals, and the knowledge that they possess, that both maintain and expand the wealth of knowledge that is Jewish law and history.\(^4\)

“Honor thy father and mother”, the fifth commandment, a phrase that resonates throughout both the Jewish and secular worlds. This paper will examine whether honoring one's parents mandates that a child provide support to a parent, and if so, when does the duty arise and how it may be satisfied. Jewish law will be compared and contrasted with that of the United States. It is ultimately concluded that while many similarities are present, Jewish law provides a higher threshold for satisfying the requirement in that while the duty to obey is present throughout one’s life, the formal duty to support becomes effective upon the age of majority and devotion lasts forever.

Whereas American law focuses on emancipation and the autonomy of the individual,

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\(^1\) Deuteronomy 31:26 and Deuteronomy 13:5
\(^2\) Iranian President Mahmoud Ahmadinejad has stated that Israel should be "wiped off the map", see “Iran again challenges the Security Council” THE DAILY TELEGRAPH(LONDON) October 28, 2005, Friday, Pg. 23
\(^3\) 82 U. Det. Mercy L. Rev. 563
\(^4\) The Talmud at Sota 49a stating “The love of the child is towards his child”
Jewish law, or Halacha, represents a lifetime of devotion hence the ever increasing duty. An illustrative analogy is found in the legal distinctions between criminal and civil convictions in traditional American law. In general, to convict on a criminal charge a defendant must have committed the “actus reus” and have the requisite “mens rea” whereas many civil convictions require no such mental state. In order to properly honor one’s parents a Jew must not only go through the motions of performing religious acts and providing those services or financial support required but must in fact commit their full body, mind and soul from the time of their birth to the time of their death.

We are all indebted to our parents for they brought us in to this world. The Jerusalem Talmud at Kiddushin 31a relates the fantastic stories of Rabbi Tarfon’s devotion, illustrating how he would bend down and permit his mother to use his back as a step stool in order for her to access her bed. Perhaps this is why Rashi stated that a child can never fully honor their parents. They are compelled to care for us under religious and secular statutory law. The very laws of nature compel a mother to protect her young. Through his children a father maintains his family’s lineage. While a child may honor, respect and revere their parents there is no reciprocal duty found in nature or the secular laws of the United States on par with that of the duty of a parent to child itself. Under the

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5 I.e. Deuteronomy 32:7-9 and Leviticus 19:3  
6 Throughout the paper the term American law should be interpreted as the laws of the United States of America.  
7 Shulhan Arukh Yoreh De'ah 241:6  
8 See Gereboff, Joel Rabbi Tarfon, The Tradition, The Man, and Early Rabbinic Judaism Scholars Press, 1979, relating the story of how Rabbi Tarfon would place his hand under his mothers foot as she walked after having her sandal split amongst other tasks of devotion and when his mother asked his fellow scholars to pray for him when he was ill because of all he had done for her, they responded that had he done one-thousand times as much it would still be inadequate!  
9 Kiddushin 31B
mandates of Jewish law children owe their parents a lifetime of devotion, prompting Rabbi Yochanan to proclaim “Happy is he who has never set eyes upon his parents” because of the Talmud’s nearly impossible to meet demands.\textsuperscript{10}

It is important to note that religious and modern statutory law do in fact intercede, a point that will resonate throughout the paper. For instance, the Talmud provides for the \textit{din}, a rule that fathers must provide for their children aged six and under. Religious courts often extended this obligation under the charitable rules of zedakah (tzedakah) which provide that one’s own children are of the highest priority. In 1944 the Chief Rabbinate of Palestine enacted a takkanah, or mandate, that the duty of support be continued until the age of fifteen.\textsuperscript{11} Similarly, the laws of the United States have been adapted for children in several contexts including tort liability and the extension or modification of specifically enumerated rights for instance the free speech issue in public schools.\textsuperscript{12}

The paper is organized along the respective lifelines of the child and parent. Part I addresses the obligations of a minor to a parent. Part II addresses how an adult child must honor and support an adult parent. This is the longest section as the obligation to support, the focus of this paper, becomes apparent at this juncture. Part III addresses how a child must honor and support a dying or deceased parent.

**Sources of Jewish Law**

The requirement to honor one’s father and mother is found in three primary sources.

\textsuperscript{10} Id. See also Talmud Yerushalmi, Peah I:1
\textsuperscript{11} Kirschenbaum, Aaron \textit{Equity in Jewish Law} Ktav Publishing, 1991 Pg. 23
\textsuperscript{12} For a complete discussion see: 29 Ariz. St. L.J. 519
I. Honor your father and your mother (Exodus 20:12, Deuteronomy 5:16)
II. Fear (some translations use “revere”) your mother and your father (Leviticus 19:3)
III. Do not curse your mother and father (the penalty being death) (Kedoshim 20:9)

These do not represent the totality of Jewish law on the topic. A great many other passages involve the parent/child dynamic however for all intents and purposes of this paper these will suffice. American law, including probate law and child rearing laws are left to the devices of the individual states. Freedom of Religion is of course provided for in the First Amendment of the US Constitution although it is not without limits.13

Discussion

I. The Duty of Minors

a. Standard

Jewish law indicates that children, boys under the age of thirteen, girls under age of twelve, are exempt from the commandments.14 Why then should they obey their parents if their parents are required, by both Jewish and secular law, to provide for their well-being.? From a practical perspective, they stand to be treated better by their parents. From a Jewish legal perspective, Leviticus 19:3 relates the concept of “Yir’ah” or “fear” or “reverence”. This is a commandment from G-d that essentially places the parents in His place during a child’s formative years. A parent may discipline a disobedient child provided that the parent has fulfilled their affirmative obligations to the child and does

13 http://www.law.cornell.edu/constitution/constitution.billofrights.html#amendmenti
not physically harm the child.\textsuperscript{15} They are in a practical sense, to a much lesser degree, delivering the nurturing care and guidance as well as the corrective measures that G-d would carry out Himself if the child were subject to the commands.\textsuperscript{16} The purpose of this practice is to prepare the child for a lifetime of holiness and devotion to G-d.\textsuperscript{17}

As part of their obligations, a parent must provide a child with a Jewish education so that they may grow up to be a righteous adult.\textsuperscript{18} This cycle is completed when the child becomes vested with affirmative obligations meant to benefit the parent.\textsuperscript{19} Exodus 20:12 proclaims that one should honor their parents “so that your days will be lengthened” upon the earth. Read in the negative, one that does not honor their parents will not live a long life. Therefore, a child who fails to honor their parents; provided the parents are entitled to be so honored\textsuperscript{20}, may have strayed from the path of righteousness. Without the ability to pass down the knowledge they went without, the child in question will not be able to provide the requisite education to their children thus breaking the proscribed cycle.\textsuperscript{21}

\textsuperscript{15} The degree to which a parent may utilize physical discipline is beyond the scope of this paper. Some examples: Deut: 21:18-21 permitting stoning of a rebellious son, Ben Sira: 30:1-2 stating that a child will benefit from discipline by finding salvation in the future, Proverbs:13:24 authorizing use of the rod by the parent.

\textsuperscript{16} Leviticus 19:3, after the passage dealing with “fear”, concludes with “and keep my Sabbaths: I am the LORD your G-d.” The command to fear the parents is divine, in keeping “my Sabbaths” there is no dispute as to where the source of the parent’s power is derived or to where the child’s true devotion should lie.

\textsuperscript{17} Leviticus 19:2

\textsuperscript{18} Rabbi Joseph Caro, Shulkhan Arkuh, Yoreh De`ah 245:1

\textsuperscript{19} A synopsis is found at: http://www.shemayisrael.co.il/paisha/kindertorah/archives/kisetze65.htm

\textsuperscript{20} Select exceptions discussed \textit{infra} at notes 23, 34-35. See also Rashi on Lev. 19:3; Yevamos 5b; Bava Metzia 32a. See also Telushkin, Joseph The Book of Jewish Values: A Day-by-Day Guide to Ethical Living Harmony/Bell Tower; 1st edition, 2000

\textsuperscript{21} Genesis 1:28, the famed “Be Fruitful and Multiply Passage” and the Talmud at Sota 49a
The primary Jewish texts devote very little to any distinct affirmative duties to parents placed upon minors. This is most likely due to the fact that those under the age of twenty were spared from divine punishment, Numbers 14:29.\textsuperscript{22} Similarly, American law, for the most part, classifies minors differently than adults but does provide for certain measures such as juvenile detention in order to deter future misconduct. The term “best interest of the child” is present in many American family law statutes.\textsuperscript{23} While a presumption exists that a parent is best suited to raise their child precedent dictates that this right is not absolute and states acting under the “parens patriae” power have substituted their own judgment.\textsuperscript{24} Often times this is to prevent children from becoming “wards of the state.”\textsuperscript{25} While the obligation of a Jewish minor to a parent is stringent it is not unyielding. Maimonides states that the burden placed on a child should not be too heavy and if it is, the courts should punish the parent.\textsuperscript{26} The key difference is that while American secular law is, for the most part, aimed at protecting the interests of the public at large, Jewish law is concerned more with the individual’s maintenance of their devotion to G-d. These points intersect however, for instance in the seminal case

\textsuperscript{22} Falk, Ze’ev W. Hebrew Law in Biblical Times Brigham Young Univ. Press 2001 Pg. 112

\textsuperscript{23} The US Dept. of Health and Human Services maintains an excellent summary of state laws, it is available at: http://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interestall.pdf


\textsuperscript{25} Olmstead v. L.C. 527 U.S. 581, 1999 The US Supreme Court issued a landmark decision discussing the failure on the part of the state to provide for special needs persons under the Americans With Disabilities Act, 42 U.S.C. § 12101(a)(2),(5). Under Jewish law orphans are specifically mentioned, along with the stranger and the widow, to be deserving of compassion and are to provided for by the community (often times the religious leaders) under the mandates of tzedakah. Deuteronomy 15:8

\textsuperscript{26} “Asur le-adam le-hakhbid olo al banav” in the Hebrew-English Edition of the Babylonian Talmud (Rabbi Dr. I. Epstein ed. & Rev. Dr. Israel W. Slotki trans., 1989)
Wisconsin v. Yoder, Amish parents defeated a state statute requiring that children be enrolled in a traditional school setting until the age of sixteen stating that is was against their religious beliefs. On the other hand, a minor child, aged fourteen, is vested with the fundamental right to choose their religion under the First Amendment. A Jewish person converting to another religion against the will of their parents would be tantamount to merely dishonoring them but would arguably be ground for being put to death under traditional Jewish law. This would obviously be impermissible under most any modern form of law. In short, American courts have struggled to find an exact standard for how religious law should affect the parent/child relationship. The most likely scenario would be for a court to undertake a “strict scrutiny” analysis of any conflict involving a claim of interference with religious law.

Many scholars recognize a difference between the affirmative commands of “honor” and “fear/revere” in the Jewish texts finding that the latter is akin to obey. Kiddushin 30b recognizes that a child may fear a father more and love a mother more but nonetheless both parents are to be honored, and for good reason. The parents act in place of G-d, and are to be honored in a similar if not identical fashion in order to prepare the child for a lifetime of devotion to G-d. Deuteronomy 21:18-21 indicates that a “stubborn and rebellious son” who does not heed the voice of parents shall be stoned to death by the

27 406 U.S. 205 (1972)
28 See Whalen v. Allers, 302 F. Supp. 2d 194, involving a Jewish daughter being baptized at a Pentecostal Church in New York at her own choosing.
29 Deuteronomy 13:1-10
30 While the First Amendment is typically afforded “Strict Scrutiny” (see Yoder supra at note 21), the highest level of Supreme Court review, there may be a movement towards lowering the standard, See Employment Division v. Smith, 494 U.S. 872 (1990).
town elders as an example for all Israel.\textsuperscript{31} A distinction can be drawn between placing an affirmative command to support one’s parent and a prohibition against disobeying, and therefore dishonoring the parent. It can therefore be concluded that children owe a high level of respect to their parents. Classic examples set forth by scholars include not directly contradicting a parent’s statement, not occupying a place typically reserved for a parent i.e. a specific seat at the table, not calling a parent by their first name and not waking a parent who is resting.\textsuperscript{32} Exceptions include waking a parent to fulfill a mitzvah i.e. waking a parent to attend synagogue.

b. \textbf{Education}

The role of education in both Jewish and American law is paramount. An affirmative obligation is placed upon the father to teach the son Jewish law and if the father fails in that respect the duty is transferred to the child to take it upon himself.\textsuperscript{33} Hasidim who follow the doctrine of the Zaddik have determined that a Hasid must journey periodically to his master, even if it is against the will of his parents.\textsuperscript{34} Some scholars have interpreted the Shabbat 127a to suggest that study of Torah supersedes the duty to honor one’s parents. As a practical matter, American law mandates that children receive at least a basic education, see \textit{Yoder} supra. This is so they can become productive members of society. That said the separation of Church and State issue has been debated.

\textsuperscript{31} 37 Brandeis L.J. 511
\textsuperscript{32} Yoreh De'ah 250
\textsuperscript{33} 44 J. Cath. Leg. Stud. 179 citing Rabbi Joseph Caro, Shulhan Arukh, Yoreh De’ah 245:1
\textsuperscript{34} Dresner, Samuel H. \textit{The Zaddik: The Doctrine of the Zaddik According to the Writings of Rabbi Yaakov Yosef of Polnoy} Jason Aronson Publishing, 1994
for years and at present religion is all but banned in US public schools.\(^{35}\) On the other hand, New York courts mandated that a Jewish child be enrolled in a Yeshiva in his “best interests” during a child support modification hearing.\(^{36}\) The distinctions between the respective roles of secular and religious education are too great to draw a universal standard. In one’s sense, a child living in secular America can only support his parent by gaining a secular education and finding a job but must also receive a religious education under Jewish law. It appears that as long as a child receives a secular education they are free to pursue a religious education as well. Therefore a child can honor and support his parent but can not choose to do one independent of the other under a hybrid theory of American secular and Jewish law.\(^{37}\)

II. Adult/Mature Children

a. Must One’s Honor An Abusive Parent?

The Talmud at Kiddushin 31a relates the story of a soldier who remained passive as his mother publicly humiliated him. In the name of honoring one’s parents this was the correct result. Only if he were subject to physical injury or financial injury could he take any attempt to protect himself. This is a drastic departure from contemporary American law where courts have accepted claims for injury as result of such treatment and permit children to abandon elderly parents on such grounds.\(^ {38}\)

\(^{35}\) Wallace v. Jaffree, 472 U.S. 38 (1985), See Justice Rehnquist’s dissent calling the decision a “bulldozer” of religion.

\(^{36}\) Gruber v. Gruber, 87 A.D.2d 246

\(^{37}\) As an aside, some scholars have stated that living in Israel “Eretz Yisrael” is paramount to obeying a parent’s directive not to do so. See Masekhet Bava Metzia 32a

\(^{38}\) This topic has been discussed at length elsewhere, Maimonides stated that only a truly wicked parent could not be honored, See also Lev. 19:14 and 19:16 suggesting that the child’s physical welfare is paramount but perhaps not permanently negating the honor requirement, See also Gold, Rabbi Michael God, Love, Sex, and Family: A Rabbi's
b. **Is There a Duty to Provide Financial Support?**

Traditional American law treats entry into adulthood as emancipation from one’s parents. When one reaches the age of majority (various rights are typically accrued from the age of 18-21) they gain the right to vote, the ability to drive an automobile, the ability to choose whether to drink or smoke as well as a host of others. Certain privacy laws consistent with the aforementioned idea of personal autonomy completely remove a parent’s ability to view their children’s records at higher education institutions even if the parent is paying tuition for their child.\(^{39}\) It is common for children to go through a rebellious phase at some point during their formative years regardless of how generous and nurturing their parents may be.\(^{40}\) This cultural phenomenon could very well be linked not only to the plethora of rights one’s receives at this time but also to the absence of any corresponding duty in the secular world.

Under traditional Jewish law the duty to honor one’s parents is continuous and in fact becomes heightened as the child matures. That said there remain questions as to whether a child has a duty to support a parent financially when the parent is unable to do so. An analysis of the Talmud, Kiddushin 32a, suggests that they are not so obligated however medieval authorities commonly ruled that they are so compelled if it is financially viable.\(^{41}\) On the other hand, the previous verse, Kiddushin 31b has been said to stand for the proposition that "Honor" means that he must give him food and drink.

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\(^{39}\) Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g; 34 CFR Part 99

\(^{40}\) Harris, Jay M. How Do We Know This? Midrash and the Fragmentation of Modern Judaism SUNY Press, 1995 Pg. 260 Discussing the phenomenon as beginning in nineteenth century Europe

\(^{41}\) Jacobs, Lewis *A Tree of Life* Oxford University Press, 1984 Pg. 192
clothe and cover him, lead him in and out etc. The “Code of Jewish Law” provides that financial support is in fact an obligation that should be divided amongst the children based upon ability but limits its rule to elderly parents.\textsuperscript{42} In Yev, 65b however a man who cannot provide a wife with a child for ten years is compelled to divorce the woman so that she can remarry in order to have the support of her children in old age.\textsuperscript{43} This is further supported by Ruth 4:15 and Isaiah 51:18 relating how a widow would typically stay with and be maintained by her adult sons.\textsuperscript{44} From this we can derive a basic duty to provide necessities to an elderly parent who is incapable of providing for their own needs. This conclusion best serves the purpose of this paper however it is not universally agreed upon. Some Jewish scholars state that the honor must be performed by the child but financed by the parent because the child’s time is of equal value.\textsuperscript{45} 

How can a duty to support, if one’s in fact exists, be reconciled with the Sanhedrin’s mandate and other like passages that one’s not rely on the handouts of others but rather through their own toil?\textsuperscript{46} The logical answer is the mandate of honoring one’s parent supersedes it. If a parent properly fulfills their duty to their child and that child becomes successful they are entitled to support, if needed, as a matter of equity. An appropriate analogy would be to the modern stock market. The support received later in life is a result of the wise investment made in one’s children. In that vein, the commandment to be “fruitful and multiply”\textsuperscript{47} can be equated to the sound advice of investment diversification. Alternatively, the Jewish mitzvah of Tzedakah has been said

\begin{itemize}
\item \textsuperscript{42} "Code of Jewish Law - Rma" 240:5
\item \textsuperscript{43} Jewish Law Annual Pg. 259
\item \textsuperscript{44} Falk Pg. 153
\item \textsuperscript{45} For a brief overview see 1 U.C. Davis J. Int'l L. & Pol'y 107
\item \textsuperscript{46} Sanhedrin 108B
\item \textsuperscript{47} Genesis 1:28
\end{itemize}
to permit children to assist parents as a form of charity, in some cases even if the child accepted charity himself in order to provide for the parent.48 Providing for the parents well being, in order to honor them is paramount, for instance, a Jewish child, like any American child, is said to not be liable for the debts of their parents to creditors beyond what was left in the estate.49 Therefore a parent may die a pauper but must be supported throughout their days by the child.

Still harder to understand is the Talmud’s command that one’s must “never become a parent to a parent”.50 The debate on this topic has been ongoing. Jewish law compels action. In short the traditional aspects of parenthood should not be reciprocated to an elderly parent. The notion of respect is paramount. A parent nurtures the child because it is unable to do so but does not understand this. A parent who is no longer able to care for themselves is accepting a form of charity.51 It is therefore imperative for a child providing support to do so in the most honorable way possible. The cited passage uses the Hebrew term “kavod” which is closer to the English term dignity than honor. Therefore the true mitzvah is to protect the parent’s dignity. One can therefore rationalize giving economic support, even if not mandated specifically, as a means to protect the parent’s dignity as mandated by the Talmud.52

Various jurisdictions within the United States have adopted statutes that follow the principles set forth above. In Maryland for instance an obligation to financially support a destitute parent arises only when the child can or is earning a sufficient amount

48 Jerusalem Talmud Kiddushin 1:7, VIII.I-J
49 18 Cardozo L. Rev. 2037 reviewing Rabbi Emanuel Quint’s, A Restatement of Rabbinic Civil Law (1993).
50 Kiddushin 30b - 31a
51 BT Berakhot 19b
52 See Note 83 infra
to do so. Even then, the obligation extends only to food, shelter, care and clothing. This is in line with the decisions of Jewish courts. In Kentucky a similar statute exists. A child is guilty of non-support only if he “persistently fails to provide support which he can reasonably provide and which he knows he has a duty to provide…to an indigent parent.” In an older case examining the predecessor to the current statute and the best available linkage to traditional common law values, the court ruled that a child had right to seek contribution from his siblings but could not recover from the estate of his deceased parent. The legislative history of the aforementioned and similar statutes suggests that these laws were designed to prevent the state from bearing the burden posed by these persons rather than enforcing familial obligations.

Assumedly child can fulfill these simple obligations imposed by American law through a surrogate caregiver such as a retirement home or assisted living center. Jewish law however would likely impose an increased mandate. As mentioned above, the child’s time and their actions are of true value. Simply paying someone else to fulfill your sacred obligations does not truly honor the parent. Jewish law most likely imposes a duty of support. The duty is both physical and financial and greatly surpasses those imposed by American statutory laws. That said, many US jurisdictions encourage children to support parents. For example, in New York housing laws and lease terms are broadly interpreted to allow elderly parents to live with their children as “immediate family members.”

Furthermore, financial support given to elderly parents should not be considered when

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53 Md. FAMILY LAW Code Ann. § 13-102(a)
54 KRS § 530.050
55 For a discussion on the formation of like child to parent support statutes see 75 A.L.R.3d 1159
56 Equity Inv. v. Paris, 108 Misc. 2d 404
denying certain state benefits to the same. These are but two examples of how American secular law may encourage but not compel children to support their parents. In conclusion, a Jewish child can properly honor his parents by supporting them under Jewish law. His good deed will not be punished by the secular laws of the United States.

c. **Support to Others Over Parents**

Other sources of Jewish law require that support be given to other named individuals. Consider the following: A person who needs food has a greater priority than one’s who needs clothing (Yoreh De'ah 251:7). Scholarship is more important than lineage, and a Mamzer Torah Scholar has priority over an ignorant Kohen Gadol. A Torah Scholar who needs clothing has greater priority over a non-Torah Scholar who needs food (Rema -- Horayut 13a, Yoreh De'ah 251:9). Relatives only have priority over others in the even there is no imminent danger to life (HaRav Unterman, Former Chief Ashkenazic Rabbi of Israel). When there is imminent danger to life, priority is not given to relatives but to lineage and Torah Scholarship (Talmud -- Horayut 13a). A relative's or a Rebbe's needs are greater than anyone else's needs (Matanot Aniyim 7:13). In terms of priority from greatest to least: your house, parents, brothers and sisters, relatives, neighbors, and those who live on the same street (Midrash Tana Devei Eliyahu Ch. 27).

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57 Howlett v. State Social Sec. Com., 347 Mo. 784
59 As an aside, a mamzer or bastard child is the only instance of Jewish strict liability against children i.e. the child suffering for the crime of the parent. This is as odds with Part I. supra but is mitigated by the Rabbinic decisions permitting one’s mamzer to marry another. See Maimonides, Laws of Forbidden Relations ch. 15
60 http://www.carasso.com/david/charity.html
These verses are offered for comparison only. Under traditional US tort law/the common law there is no duty to rescue. There is not enough US law on point to warrant a discussion of this section. It is however easy to see why the duty to honor one’s parents has been given so much scholarly attention.

d. **Marriage**

There is some discrepancy as to whether it was proper for a parent or parents to select or approve of their child’s spouse. Jeremiah 29:6 suggests that it was a parent’s duty to select their child’s spouse however some scholars state that this was an exception to the general rule in that a child was free to select a spouse of their choosing provided that they did not break any other commandment in doing so. It is clear that marriage is a “fundamental right” in the United States under the Equal Protection clause as decided in the seminal case *Loving v. Virginia*.

In Biblical times the patriarch was clearly the dominant family member however modern Western law has eliminated many of the vestiges of this concept. As a result of these advances women are now entitled to a greater share of marital assets under secular law and as such a likely corresponding increased level of responsibility under Jewish law.

Various aspects of Jewish law favor the male offspring, for instance the transfer of a father’s estate and the right to an education. As is the case in the common law,

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62 388 U.S. 1 (1967), declaring that Virginia’s anti-miscegenation statute violated the Constitution
63 See Education Pg. 8 *supra* and Babylonian Talmud Bava Batra 133b and Jerusalem Talmud Bava Batra 8:6 suggesting that a parent should not disinherit a child, especially by using death as a means to settle earthly debts.
succession rights under Biblical Jewish Law were typically vested in the eldest son.\textsuperscript{64} This was not a default rule but rather the result of a formal ceremony conferring power as prescribed in Genesis 27:29, 37 which reads “Be lord over your brothers, and may your mother’s sons bow down to you.”\textsuperscript{65} Widows were not entitled to share in the inheritance and daughters were precluded as long as a male heir survived according to Codex Lipit Ishtar 22 and Codex Hammurabi 172, 180-82 l 184, respectively.\textsuperscript{66} Other sources of Jewish law such as the Talmud Bavli examine such exigencies as whether a daughter or daughter of a deceased son would take. The conclusion is that the latter would which suggests that a male heir at any generational level will take over a female.\textsuperscript{67}

As a result of the forgoing a Jewish wife has a lesser obligation to her parents than a Jewish husband has to his. This is at odds with modern American law which has eliminated such practices as the dowry. Of specific concern to the Jewish community is the validity of New York’s “Get Statute”\textsuperscript{68} In short, the court has determined that the fundamental right to marry outweighs the religious concern and as such the conflict remains. As a practical matter however, this, along with such other modern, relatively speaking, secular reforms such as women’s suffrage in 1920 indicate that if anything, a woman’s obligations are heightened as a result of her increased ability to be a provider.\textsuperscript{69} At present a widow is typically favored in probate proceedings, often through the existence of an “elective share” statute entitled her to a minimum percentage of the

\begin{itemize}
\item \textsuperscript{64} See Oliver Wendel Holmes, \textit{The Common Law Lecture X. Successions Inter Vivos} Dover Publications; New Ed edition 1991
\item \textsuperscript{65} Hebrew Law in Biblical Times Pg. 71
\item \textsuperscript{66} Id. at 74
\item \textsuperscript{67} Talmud Bavli, \textit{Bava Basra} 115b in \textit{The Principles of Jewish Law} 18 (Menachem Elon ed., 1975) Pg. 12
\item \textsuperscript{68} N.Y.D.R.L § 253, for an in depth discussion see 96 Yale L.J. 1147
\item \textsuperscript{69} US Constitution, 19\textsuperscript{th} Amendment
\end{itemize}
estate. This concept is in agreement with Rabbi Y’huda’s codification of the Mishna in which he claims that in order to properly honor the widowed mother “she must be assured the same living conditions” as she had prior to the father’s death.\(^{70}\) In conclusion, if one’s follows the maxim that one’s should give based on ability, modern Jewish daughters should have a heightened duty of support to their parents if they are in a financial position to do so.

III. **Death and End-of-Life Decisions**

a. **Duties to the Dead**

Jewish law prohibits one’s from cursing their mother or father. Exodus 21:15–17. See also Leviticus 20. This mandate continues throughout one’s life and the traditional punishment under Jewish law was death by stoning. Jewish children are assigned certain duties to their parents after death, for example sitting shivah and commemorating the death of their parent annually through Yahrtzeit and Yizkor.\(^{71}\) Because of these rituals that follow death it follows that the prohibition from cursing one’s parent extends past the time of their demise. Jewish children must make the keriah or cut on the left side of their clothing and may not re-sew the garment at any point. This mandate is for children of the deceased only and signifies the child’s remorse at no longer being able to honor their parents.\(^{72}\) So important is the duty to honor one’s mother and father that even proselytes (converts) are compelled to and observe traditional Jewish mourning rituals for their own, non-Jewish parents.\(^{73}\) A duty to honor deceased parents can be inferred from the

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\(^{70}\) Patai, Rapahel *The Jewish Mind* Wayne State University Press, 1996 Pg. 174
\(^{71}\) For a complete analysis see Lamm, Maurice *The Jewish Way in Death and Mourning* Jonathan David Publishers, 2000
\(^{72}\) Moed Katan 3:5
proposition that the child assumes, or inherits, the sins of the departed parent. These rules are in stark contrast to the sheer absence of any such corollaries in American secular law which instead provides for certain alienable rights for a child usually having to do with the disposition of the dead body.

In addition to the obligations a child has to the dead there is the affirmative mitzvah of Hesped. It is a great mitzvah to honor the dead by proclaiming their greatness. One’s manner in which children fulfilled their duty to honor the dead is by naming their children after their parents, the child’s grandparents. This tradition is found in secular American tradition but not in law absent specific holidays designated by Congress.

b. **Control From Beyond the Grave**

Returning to the notion that a child should obey their parents wishes provided they do not contradict a greater commandment it is interesting to note how American probate courts have upheld provisions in wills that direct a child to fulfill a religious objective. The typical threshold question is whether the terms of the will violate a fundamental American right. For example, a will mandating that a father’s two sons marry a Jewish girl in order to claim their share of his estate was upheld as it did not violate the constitutional right to marry.

c. **Property Rights**

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74 HaKadish: M’koro, Mashmauso V’dinav 153-54
75 *State of Florida v. Powell*
76 Shulchan Aruch (Yoreh Deeah 344, 1)
78 Shapira v. Union Nat'l Bank, 39 Ohio Misc. 28, See Also note 53 *supra*
As discussed above, honoring one’s parents by supporting them includes supporting their religious ideals. Under Jewish law, the body remains property of G-d and it is the individual’s duty to maintain that body to the best of their ability.\(^7^9\) The American courts were amongst the first to introduce the concept of informed consent, the notion that the patient should make medical decisions. In the context of incompetent patients a surrogate decision maker can be elected through a living will or appointed under the typical hierarchy of spouse, adult children and then parent. A strong case can be made for compelling a child to make a decision on a parent’s behalf in accordance with the parent’s beliefs as to not do so would be to dishonor the parent.\(^8^0\)

In the context of burial rights, secular American law dictates that, absent a will on point, the widow followed by the children may determine how to lay the body to rest.\(^8^1\) Consider the following. In one’s case children were allowed to disinter their parent’s remains for reburial at a reform congregation’s cemetery.\(^8^2\) In another case the deceased body was buried in accordance with Jewish law where the court substituted its judgment for that of the daughter who had become estranged from her father.\(^8^3\) These examples suggest that without recognizing an explicit mandate to always act in accordance with religious law, the courts will at least factor religious law in during

\(^7^9\) Mishneh Torah, Hikhot Rotseah 1:4 cited in Jewish Law Annual (Jewish Law in Context, Vol 12) B. Jackson Pg. 4
\(^8^1\) For an in depth discussion on the usefulness of a halachic living will see Zwiebel, Chaim Dovid The "Halachic Health Care Proxy": An Insurance Policy With Unique Benefits at http://jlaw.com/ethical2.html#SA
\(^8^2\) Tamarkin v. Children of Israel, Inc., 2 Ohio App. 2d 60
\(^8^3\) In re Application Pursuant to Article 4200 of the Pub. Health Law, 196 Misc. 2d 599 (N.Y. Misc. 2003) For another example of how religious law can be actionable in this context, see Liberman v. Riverside Mem. Chapel, 225 A.D.2d 283
similar disputes and will strip the child of certain rights should they find that they are not acting in accordance with the parents wish, or more precisely, failing to honor thy mother and father.

**Final Thoughts & Conclusion**

Jewish law and secular law may both promote a practical result however the underlying reasons are quite different. Consider the following; a parent cannot be cursed in death because the parent’s dignity will be compromised.\(^{84}\) No such law exists or could exist in American secular law because of the legal “standing” requirement.\(^{85}\) The real question remains why does Jewish law require such devotion?

The answer begins with the fact that under Jewish law, to honor our parents is to in fact honor G-d. The commandments which we follow all stem from that one guiding principle. That principle must be ingrained at an early age. Because of the concept of free will, the path must be chosen rather than compelled by force.\(^{86}\) This path must be one on to which we are initially guided. Therefore the bond we share with our parents from generation to generation is imperative towards maintaining Judaism. Given that our parents set us on the path towards righteousness it is only proper that they should be honored for having done so.

In summation, the mandate to honor one’s parents is common to both Jewish and secular American law. A duty to support can be recognized in Jewish law however it is distinct from, and in fact greater than any secular law because it compels the child to exercise a degree of thoughtfulness and care much like that afforded to them by their

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\(^{84}\) Maimonides, Mishneh Torah, Laws of Rebels 5:1

\(^{85}\) US Constitution, Article III, Section 2

\(^{86}\) Deuteronomy 30:19
parents when they were in need of support as children. The rules appear circular and aimed at achieving equity between the parties. In the absence of any such standard, everyone would do “what is right in their own eyes.” Whereas American law focuses on individual autonomy and emancipation, the familial bond under Jewish law remains central to the continuance of the religion. The concept of emancipation is not reserved for American secular law. In fact, the Bar/Bat Mitzvah is a formal ceremony that accomplishes just that. The difference is that rather than being allowed to do certain things i.e. drive, smoke etc. a Bar Mitzvah confers the responsibilities of adulthood upon a young adult who has earned such a privilege by learning the required Jewish material under the watchful eyes of their parents.

As a final thought, Vayikra (Leviticus) 19:18 compels us to “love your fellow as you love yourself.” Scholars, as they have for most every biblical passage, have debated this phrase for years. To love everyone as we do ourselves would be an insurmountable objective. That said, it is a costless endeavor to show respect and treat others as we would wish to be treated. To allow pettiness or even a truly bad act to cause lasting animus between a child and a parent is an affront to the guidelines as proscribed by Jewish law. The effort exerted to maintain a meaningless feud could be put to far greater use. We all have an issue with our parents at some juncture. Bear in mind that your parents were always there to help you, even if at times it did not seem as such. This paper is but a

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87 See Deuteronomy 28:47 suggesting that Torah should be fulfilled happily and that to fulfill every other commandment begrudgingly is in fact an offense, See also Shulhan Arukh Yoreh De'ah 241:6 quoting Maimonides regarding precisely how must one address a parent. Even the tone with which we address our parents can bear upon our fulfillment of the command, a far greater standard than any secular law.
88 Judges 21:25
89 78 Tul. L. Rev. 1169 citing Talmud Bavli, supra note 21, Sanhedrin 45a(1).
90 Sefer Chareidim, no. 28, quoting Rambam
glimpse into the Jewish legal perspective of how one should honor their parents. That said, if you have experienced difficulties with your parents, or simply do not feel as connected as you would like, pick up the phone, write a letter, send an e-mail…and set yourself on the right path.