

Digitales Brandenburg

hosted by **Universitätsbibliothek Potsdam**

Aging and the aged in Jewish law

Jacob, Walter

Pittsburgh, 1998

FINANCIAL RESPONSIBILITY TOWARD JEWISH HOMES FOR THE AGED

urn:nbn:de:kobv:517-vlib-10115

FINANCIAL RESPONSIBILITY TOWARD JEWISH HOMES FOR THE AGED

Walter Jacob

QUESTION: Many Jewish institutions for the elderly require that all assets be placed into the custody of the institution before placement can take place. This has resulted in a large number of elderly individuals either refusing to use the institutions or giving their assets to their children before placement. The latter method is often used as a way of evading financial responsibility. The individuals then either become wards of the state or place an undue burden upon the Jewish community which supports the institution. What is the Jewish attitude toward this kind of subterfuge? (Howard Fagin, Temple Sinai, Atlanta GA)

ANSWER: The law as presently constituted intends to view the state as the care provider of last resort. Although this was the intention of the Congress, the rising cost of care for the elderly and the inability of private institutions to provide adequate care has led to the subterfuge mentioned above. It is, of course, wrong to cheat the government especially a friendly government or helpful institutions to avoid fiscal responsibility (*B. K.* 113 a, b; Or *Zarua* 110; Solomon ben Aderet *Responsa* III, 165; IV 35, 111). This should be considered as *genevat daat* or possibly outright theft (*Hulin* 94a; *Yad Hil. Genevah* 18.3; *Tur* and *Shulhan Arukh Hoshen Mishpat* 228.6). We must see this matter in the light of various aspects of tradition as well as other factors which may ameliorate this initial judgment.

Let us begin by reviewing some economic considerations presented by our tradition. We should recall that the Talmud set a poverty level for those eligible to receive the second tithe. The net worth had to be below 200 *zuz* or 50 *zuz* if the funds were invested as capital (*M. Peah* 8.8f; *Yad Hil. Matnat Aniyim* 9.14; *Tur* and

Shulhan Arukh, Yoreh Deah 253.1 ff). The party may retain his home, essential household goods and clothing. However, if the household goods are made of gold or silver, they are to be sold and replaced with ordinary ones. The assets must be accessible so a person with property in another place (as for example frozen bank accounts in another land) may qualify for assistance as he/she has no assets in his current domicile (See *Bet Yosef* to above quoting Isaac of Vienna).

This approach of the Talmud and codes is appropriate when sufficient public assistance is available; it demands the depletion of assets and guarantees a safety net. We should note that the tradition indicated that we are not obliged to provide luxuries for the poor (*M. Ket* 6.8; 67b; *Yad Hil. Matnat Aniyim* 7.3), yet if the individual was once wealthy we should provide some luxuries as this will make poverty more bearable (*Yad Hil. Matnat Aniyim* 7.3; *Shulhan Arukh* and *Tur Yoreh Deah* 250.1). We must remember that this legislation dealt with poverty in general and not with our specific problem of the aged who have not been poor, but who may be thrust into poverty because of the inadequacy of the pension/welfare system or due to the high costs of providing elderly and nursing care.

We must also be concerned about the psychological implications. The expectations of exhausting one's resources entirely provide a devastating psychological blow to the aged individual. The aged individual, independent and middle class to this point, will now become destitute and helpless. This person sees himself/herself as a ward of the state or completely dependent upon children even for the most minor luxuries. This may well lead to depression and an early death. Furthermore, the children see the

institution which will care for their parents robbing them of the hard-earned savings of their parents in a short period of time. They feel that a disproportionate burden has been placed on their shoulders in the semi-socialist society in which we live.

The subterfuge is wrong; as the law is not functioning as intended, it needs to be changed. This is especially necessary in this case as the old system has broken down and has led to a general disrespect for the law. However, until that change occurs we must deal with the morality of the present situation and reality as we find it.

We should discourage aged parents from committing *genevat daat*. If they nevertheless leave all assets to their children before placement, an increased financial responsibility falls upon the children, especially if major assets were involved. Although no secular law may demand sizable contributions toward the care of their parents, Jewish law does make such demands.

Rabbi Meir of Rothenburg indicated that charity must begin with close relatives; parents are first, then brothers and sisters; other relatives follow, and the total stranger comes last (*Responsa* Vol II, p. 118 f; *Yad Hil. Matnat Aniyim* 7.13; *Seder Elijahu* Chap. 27, p. 135; *Tur* and *Shulhan Arukh, Yoreh Deah* 251). It was normal in medieval Europe to support family members from the tithe allocated to the poor (Meir of Rothenburg *Responsa* (ed) Bloch #75 p 10b; Isaac of Vienna *OrZarua Tzedakah* Sec 26). The community could go to considerable length to force a son in this direction. Solomon ben Aderet, for example, suggested that the synagogue be closed to such a son and he be publicly shamed until he supported his father, yet he should not be placed under a ban

SELECTED REFORM RESPONSA

(*Responsa* Vol. 4 #56). In this case there was some doubt about the economic deprivation of the father. Somewhat similarly, David ben Zimri felt that children could be compelled to support their parents in a manner appropriate to the financial status of the children (*Responsa* Vol. 2, p. 664). A decision akin to this was rendered much later by Moses Sofer (*Hatam Sofer Yoreh Deah* #229).

It further indicated that anything which the son possessed must be placed at the disposal of the parents. These situations dealt with a society in which no social services existed and individuals might be left completely helpless. Our situation is somewhat different, yet our communities may make reasonable demands of the children. We do not expect them to support their aged parents alone, but we can also not permit financial abandonment.

The community may exert both moral and social pressure in order to bring about appropriate support according to the means of the children. This will bring enhanced support for the homes for the aged within our Jewish community and be in the spirit of our tradition.

Walter Jacob, *New American Reform Responsa: Questions and Reform Jewish Answers*, #91 (Central Conference of American Rabbis, New York, 1992).