Torah Education of the Mentally Retarded

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One of the happier developments in contemporary society is an enhanced awareness of, and concern for, the needs of the disabled and disadvantaged. Of late, this phenomenon has been paralleled in the Jewish community by intensive efforts to provide for the religious and educational needs of the handicapped, particularly of children suffering from serious learning disabilities and mental retardation. Such endeavors are certainly to be applauded. Quite apart from religious imperatives which may be involved, maximalization of educational opportunities within a Torah-oriented framework serves to promote the social integration of such children with their peers within the observant Jewish community. This, in turn, can only lead to greater happiness and emotional stability. Apart from these significant considerations, which in themselves generate halachic imperatives, the nature and extent of the formal obligation vis-à-vis the Torah education of such children merits examination.

The Gemara, Sukkah 42a, declares: “A minor who knows how to shake (the lulav) is obligated with regard to the lulav; (a minor who knows) how to cloak himself is obligated with regard to

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tzitzit; (a minor who knows) how to watch over tefillin, his father must purchase tefillin for him; (a minor) who knows how to speak, his father must teach him Torah and the reading of the shema.”

The focal principle giving rise to these provisions, as Rashi carefully points out, is the rabbinic obligation of chinuch or training. Although performance of mitzvot becomes obligatory only upon achieving the age of halachic majority, viz., thirteen years and one day, rabbinic edict requires that a child be trained in the performance of mitzvot at an earlier age. The Gemara, in this statement, seeks to indicate the age at which the rabbinic obligation comes into effect. It is clearly established that there is no single, uniform age at which the father is required to introduce the child to the performance of all mitzvot; nor is there a specified chronological age at which training in any particular mitzvah becomes obligatory for all children. The age of obligation varies in accordance with the individual child’s development and maturation and with regard to the nature of the mitzvah. With regard to any specific mitzvah the child must be initiated into its performance upon reaching the developmental stage at which he may perform the mitzvah in the prescribed manner.

As noted, Rashi and other commentators indicate that the obligation of chinuch is rabbinic in character. It may therefore be assumed that with regard to each of the specific examples presented in Sukkah 42a the obligation is rabbinic rather than biblical. Accordingly, it may be inferred that a father is under rabbinic obligation to teach Torah to a child who “knows how to speak,” but has no biblical obligation to do so. This conclusion is expressly affirmed by Tosafot, Sukkah 28b. Citing this statement of the Gemara, Tosafot remarks that the obligation of chinuch with regard to Torah study commences when the child “knows how to talk.”

This inference, however, seems to be contradicted by a statement recorded in Kiddushin 29a. The Gemara posits a number of responsibilities which a father must fulfill on behalf of his son: “A father is obligated vis-a-vis his son: to circumcise him, to redeem him, to teach him Torah, to arrange for his marriage and to teach him a trade. Some say that he is also [obligated] to teach him
to swim in water." The Gemara seeks a scriptural source for each of the enumerated obligations. In establishing an obligation to teach a son Torah the Gemara adduces the verse "And you shall teach them to your sons...." (Deuteronomy 11:19).

The obligation to teach a son Torah, as posited by the Gemara in Kiddushin, is clearly biblical in nature. Moreover, there are strong grounds for assuming that the father's obligation in this matter is not in the nature of chinuch or training, i.e., the obligation is not instrumental in nature as a means of preparing the child for adulthood, but is intrinsic to the mitzvah of Torah study itself.

R. Baruch Ber Leibowitz, the Rosh Yeshiva of Kaminetz, in his Birkat Shmu'el, Kiddushin, no. 27, cites an analytic query posed by his renowned disciple and son-in-law, R. Reuven Grozowsky, concerning the nature of a father's obligation with regard to teaching his son Torah. Circumcision and redemption of the first-born are, in their essence, obligations incumbent upon the child. Nevertheless, the father is charged with performance of these commandments because the child cannot perform the requisite acts independently. Accordingly, the father is charged with providing instruction so that the son may fulfill this obligation. Alternatively, the obligation to teach one's son Torah may not be engendered by the son's obligation to acquire proficiency in Torah, but may constitute a personal obligation incumbent upon the father which is quite independent of the child's obligation to study Torah.

Birkat Shmu'el demonstrates that the obligation is in the nature of the father's personal responsibility. In doing so, R. Baruch Ber bases himself upon a ruling recorded in Shulchan
Aruch, Yoreh De'ah 245:6 and the explanatory comment of R. Elijah of Vilna, Bi'ur ha-Gra, Yoreh De'ah 245:15. Shulchan Aruch rules that a father who is not competent personally to act as instructor for his son, or a father who does not have the leisure necessary to teach his son, is required to engage a tutor in his stead. Bi'ur ha-Gra remarks that the obligation to hire a tutor to teach one's son is identical with the obligation to hire a tutor for oneself if one is incapable of studying Torah without a teacher. The implication is that the two obligations are two sides of the same coin. The obligation to engage in Torah study and the obligation to teach Torah to one's son are two facets of a single mitzvah, both of which constitute a personal obligation.

To this writer, the identical concept appears to be reflected in a problem posed by the Gemara, Kiddushin 25b, and its accompanying resolution. Recognizing that education of a child may conflict with the father's own Torah study, the Gemara questions whether the father may give priority to his son's study over his own. Specifically, in the event that the father does not have sufficient funds to engage a tutor both for himself and for his son, should priority be given to the father or to the son? Despite a general obligation to teach Torah to "the son of one's fellow" as well as to one's own children, no such query is posed regarding a situation in which teaching another person's child would interfere with one's own study. The implication is that the question arises only with regard to one's own son because the commandment "And you shall teach them to your sons" is intrinsic to an individual's personal obligation with regard to Torah study. The notion that the obligation is incumbent upon the child himself but is discharged on his behalf by the father is dispelled by the Gemara's resolution of this question. The Gemara declares that the son's studies have priority over those of the father only if the son is a more proficient student.

Were the father's personal obligation to study Torah and his responsibility to provide instruction for his son to be viewed as separate and distinct obligations, the question of priority between conflicting obligations would be germane; however, analyzed in this vein, the cogency of the Gemara's resolution is not at all clear.
Every person, whether bright or dull, is obliged to study Torah. Similarly, a father must teach his son, regardless of the latter’s intellectual capabilities. Consideration of varying acumen does not appear to be relevant to the ordering of priority between diverse obligations. If, however, it is understood that the obligation to teach one’s son is intrinsic to fulfillment of one’s personal obligation of *talmud Torah*, the Gemara’s resolution of this problem is entirely cogent. A *mitzvah* is always to be performed in the most enhanced manner possible. Torah is certainly to be studied in a manner which leads to the highest degree of proficiency. If it is assumed that, from the vantage point of the father’s *mitzvah*, the son’s study and that of the father constitute fulfillment of one and the same obligation, it is readily understandable that priority is assigned to whichever of the two is the more proficient student. Should the son be the more proficient of the two, the father’s *mitzvah* is fulfilled in a more enhanced manner than through the latter’s own study.\(^1\)

As earlier noted, if, as postulated by the Gemara, *Kiddushin* 29a, a father’s obligation to teach Torah to his son is biblical in nature and encompassed in the biblical *mitzvah* of *talmud Torah*, its inclusion by the Gemara, *Sukkah* 42a, in a catalogue of rabbinically imposed obligations of *chinuch* is incongruous. In context, *Sukkah* 42a seems to imply that the obligation described is rabbinic in nature, rather than biblical.

A related question is raised by *Bi’ur ha-Gra*, *Yoreh De’ah*, 245:19. Ramo, *Yoreh De’ah* 245:8, rules that immediately upon attaining the age of three a child is to be taught the “letters of the Torah so that he accustom himself to read the Torah.” *Bi’ur ha-Gra* comments, “I do not comprehend [Ramo’s] words since immediately when he begins to speak [the father] is obligated.” *Bi’ur ha-Gra* is obviously referring to *Sukkah* 42a which posits an obligation to teach a child Torah as soon as he begins to speak.

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1. See *Shulchan Aruch*, *Ha-Rav*, *Hilchot Talmud Talmud Torah* 1:7, who explains this halacha by stating, “*she-be-limud beno gam hu mekayem mitzvah shel Torah kemo be-limud atzmo*” for in the study of his son he also fulfills the *mitzvah* of Torah [study] just as [he fulfills the *mitzvah*] in his own study.”
That level of maturity is generally reached sometime before the age of three. Hence, argues Bi’ur ha-Gra, it should logically follow that the father is obliged to begin to teach his son the alphabet and to read even prior to the age of three.

In order to resolve the apparent contradiction between Sukkah 42a and Kiddushin 29a and in order to explain Ramo’s ruling, it may be postulated that there exist two separate and distinct mitzvot with regard to teaching Torah to one’s children. “And you shall teach them to your children” quite obviously constitutes a biblical command. Rambam, Hilchot Talmud Torah 1:7, and Shulchan Aruch, Yoreh De’ah 245:6, declare that a father must teach his son the entire Written Law, including the Prophets and the Hagiographa; according to Rashi, Kiddushin 30a, the father’s responsibility is limited to instruction in the Chumash. However, once the child has become proficient in the designated subject matter, the father is relieved of all further obligation. The commandment “And you shall meditate thereon day and night” (Joshua 1:8) does indeed establish an ongoing obligation to study Torah even if the subject matter has been totally mastered, and, as recorded by Rambam, Hilchot Talmud Torah 1:10, the verse “and lest they [the precepts] depart from your heart all the days of your life” (Deuteronomy 4:9) establishes an obligation to review the material one has already mastered since “whenever one ceases to engage in study, one forgets.” Nevertheless, the subject matter in which a father must cause his son to become proficient is clearly circumscribed.

In fulfilling the biblical obligation both to study Torah oneself and to teach Torah to one’s son, a father might well choose to devote all available time to his own study for a period of time rather than to divide the available time between engaging in his own study and instructing his son. The father might do so on the plea that it is possible for him to impart a requisite knowledge to his son at a somewhat later time since the material he is obliged to teach is, relatively speaking, somewhat limited. Indeed, he might claim with some justification that such a procedure would reflect a more efficient allocation of time since the more mature the child, the less time need be expended in assisting him in mastering a
given curriculum. There is little question, for example, that a child of six can learn to read in a fraction of the time it would require for a child of three to attain the same degree of proficiency. Since, in contradiction to one's personal obligation of talmud Torah, a father's obligation vis-a-vis his son is to impart knowledge rather than to devote time to the teaching process, the father might devote himself exclusively to his own study for a significant period of time and delay his son's instruction anticipating that he would be capable of causing his son to become proficient in the Written Law in a relatively short period of time. Insofar as the father's biblical obligation is concerned there would be no barrier to fulfilling the mitzvah of talmud Torah in this manner.

However, the Sages were well aware that education must consist of more than mere book-learning. In order to mold character and personality, values and attitudes must be imparted at a very early age. Even from a purely scholastic standpoint, the likelihood of attaining the desired proficiency is vastly enhanced if study habits are developed an an early age.

It may be argued that the Sages accordingly established a second, more encompassing obligation. By virtue of rabbinic decree they obligated the father to begin the process of instruction at as early an age as conceivable, viz., immediately upon the child's acquiring the ability to speak. As defined by Rambam, Hilchot Talmud Torah 1:6, this obligation is quite specific in terms of the extent of instruction which must be provided and the time-frame in which it must be provided. When the child begins to talk the father must teach him the verse, "Torah tzivah lanu...," then, "Shema Yisra'el," and thereafter he is obligated to teach the child additional verses on a regular basis in accordance with the child's ability to absorb instruction. Finally, when the child reaches the age of six the father must provide the services of a full-time teacher who will provide an intensive regimen of study.

The rabbinic obligation is rooted in the principle of chinuch i.e., training and habituation, in a quite literal sense. To be sure, in actually teaching a biblical verse to his son, the father fulfills the biblical commandment, yet the mandatory nature of the duty to seek the fulfillment of the biblical mitzvah at a particular stage of
the child's development is rabbinic. The fact that a certain act, when performed, constitutes "kiyum," or fulfillment, of a biblical commandment does not necessarily entail that there exist a mandatory obligation to seek an opportunity for such fulfillment. In this case, the rabbinic ordinance specifies that the biblical obligation may not be delayed and prescribes that a child be taught Torah in a regular and ongoing manner.

Ramo's statement with regard to the age at which a child must be taught to read can now be placed in proper perspective. Ramo declares that a child must be taught the letters of the Hebrew alphabet at the age of three, implying that prior to the age of three, there exists no such obligation. To be sure, as Bi'ur ha-Gra points out, a father must begin to teach his son Torah as soon as the child is able to speak. However, the obligation to provide instruction at so early an age is rabbinic, rather than biblical, in nature. The rabbinic obligation, as defined by Rambam, requires instruction in a limited but increasing number of biblical verses until the child reaches the age of six.

Ramo declares that even a child of three should be taught the letters of the alphabet "so that he accustom himself to read the Torah," i.e., as part of the rabbinic obligation of chinuch. The age at which the child reaches a degree of development and maturity which renders study of the alphabet a meaningful springboard in his educational development is set by Ramo as three. There is thus no contradiction between establishment of the age at which the alphabet must be taught as the age of three and the requirement that biblical verses be taught orally at a much earlier age. The rabbinic obligation of chinuch requires the Torah be taught in a manner commensurate with the child's ability to learn. A child is capable of rote repetition of biblical verses at an early age but cannot readily master the reading of the alphabet until the age of three. The essence of the rabbinic obligation is to teach the child Torah in progressively more demanding stages in accordance with his developing abilities.

The distinction drawn between the biblical obligation to teach a son Torah as a goal in and of itself and the rabbinic obligation of chinuch as it pertains to the teaching of Torah yields yet other
possible disparities. Chinuch is rooted in the need to train a child in the performance of mitzvot so that he will continue to fulfill them upon reaching the age of halachic maturity. Accordingly, there is cogent reason to question whether the rabbinic obligation of chinuch extends to a child who is a "treifah." A treifah, roughly defined, is a person suffering from an abnormality or trauma such that his normal life expectancy is less than twelve months. Hence, for example, a ten-year old who has experienced an accident which has damaged a vital organ and who is not expected to survive for a full year may be considered to be a treifah. Since it is not anticipated that he will survive until the age of bar mitzvah, he will never be subject to a biblical obligation with regard to mitzvot. Is the father of such a child under formal rabbinic obligation to train him in mitzvot which he unfortunately will never be able to fulfill as an adult?

An analogous but more limited question arises in regard to aliyah le-regel, the thrice-yearly pilgrimage to Jerusalem which was mandatory during the days of the Temple. A cripple is specifically exempted from this biblical commandment. Hence, the father of a crippled minor is exempt from the rabbinic obligation of chinuch with regard to this mitzvah. What is the father’s obligation in the case of a minor child facing imminent amputation of a foot subsequent to the festival? Is the father obligated to "train" the child to make the pilgrimage to Jerusalem since he is not yet disabled, or is he exempt from doing so since "training" in the performance of this mitzvah is, under the circumstances, bereft of meaning?

A negative answer to these questions would be entirely logical. Although, to this writer’s knowledge, neither question has been addressed directly in earlier sources, some support for the conclusion that no obligation of chinuch exists in such circumstances can be found in the comments of Rashba, Megillah 19b. The Mishnah declares that a minor cannot read the Megillah on behalf of an adult. Tosafot and other early authorities point out that "a minor who has reached the age of chinuch" is obligated to hear the reading of the Megillah by virtue of rabbinic decree. Noting that the mitzvah of reading the Megillah on Purim is
rabbinic, these commentators proceed to query why it is that a minor cannot read the Megillah on behalf of an adult since both adult and child share an identical rabbinic obligation. To this question Rashba responds by declaring that the mitzvah of chinuch is intrinsically different from other rabbinic obligations, viz., the mitzvah of chinuch is designed "le-hargil kodem zemano kedey she-yehe ragil be-mitzvot ke-she-yagi'a zemano" to accustom him before the time [of obligation] so that he be habituated in [the performance of] mitzvot when the time [of obligation] arrives." Since the intrinsic nature of their respective obligations is entirely dissimilar, a minor cannot act on behalf of an adult. In essence, Rashba declares that, unlike other rabbinic commandments, the mitzvah of chinuch is not an end in itself but is entirely instrumental in nature. According to Rashba’s distinction between the qualitative nature of the mitzvah of chinuch and other rabbinic commandments it would be entirely logical to assume that, absent the possibility of eventual biblical obligation with regard to a specific mitzvah, there exists no instrumental rabbinic obligation with regard to training and habituation.

The question of a father’s obligation with regard to the rabbinic obligation of chinuch vis-à-vis a child who is mentally incompetent as defined by Jewish law, is discussed by two latter-day authorities. Minchat Chinuch, no.5, sec.2, albeit without quoting the previously cited comments of Rashba, nevertheless employs much the same line of reasoning in stating that no obligation of chinuch devolves upon the father of a shoteh, i.e., a mentally incompetent person, or a deaf-mute "for they will not enter the category of mitzvot." Pri Megadim, Orach Chayyim, petichah kollelet, part II, sec. 9, rules in a like manner, but for a different reason, viz., "for [a shoteh or deaf-mute] will not obey him as they are not at all possessed of reason."²

² Elsewhere, in Eshel Avraham 343:2, Pri Megadim voices a tentative feeling that there may be an obligation of chinuch with regard to a deaf-mute. Similarly, Aruch la-Ner, Yevamot 113a, opines that such an obligation does exist with regard to a deaf-mute. See Encyclopedia Talmudit, XVI, 169, note 104. If Rashba’s comment is accepted as a source for this determination, it would follow that no distinction should be made between a shoteh and a deaf-mute. However, for a halachic definition of chersh or deaf-mute and an analysis of the status of a deaf-mute in Jewish law see Tradition, Fall, 1977, pp. 79-84.
According to the definitive ruling of these authorities, a father has no obligation of chinuch with regard to a shoteh and hence it follows that he need not "train" a shoteh in the study of Torah. However, in light of the earlier presented analysis of paternal obligation with regard to Torah study, it appears to this writer that it cannot be concluded that a father of a mentally incompetent child is entirely exempt from teaching his son Torah.

As has been shown, a father is obliged to teach his son Torah by virtue of a two-fold obligation: one rabbinic, the second, biblical. The rabbinic obligation encompassed within the general obligation of chinuch does not include a shoteh. However, with regard to the biblical obligation to teach Torah there does not appear to be any ground for distinguishing between a shoteh and a child of normal mental capacity. The commandment "And you shall teach them to your sons," as demonstrated earlier, is not at all predicated upon the capacity of the child to perform the mitzvah upon reaching the age of halachic capacity. A father is obligated to instruct his son in the biblical passages concerning Shabbat and tefillin, not in order that he become a Sabbath observer and don tefillin, but by virtue of the intrinsic mitzvah of talmud Torah. The father is biblically obligated to teach Torah to his son just as he is obligated to study Torah himself. The paternal duty of talmud Torah is not predicated upon the mental competence of the child and is limited in extent solely by the child's ability to absorb instruction.

The halachic definition of a shoteh is beyond the scope of this endeavor. Suffice it to say that the halachic definition of a shoteh is technical in nature and that many individuals who are encompassed within the category of shoteh are certainly capable of at least elementary Torah study. By the same token, many children classified as mentally retarded are not encompassed within the halachic category of shoteh. Such children are fully obligated with regard to chinuch as well as to fulfillment of mitzvot upon reaching the age of halachic maturity. Nevertheless, as pointed out by R. Moses Feinstein, Am ha-Torah, Vol. II, no. 2 (5742), the

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parents of such children are not obligated to train them in the various mitzvot at the same age as they would be obligated to train normal children since the age of chinuch is predicated upon the development and maturity of the child.

The obligation of teaching Torah to a child is primarily a personal obligation which devolves upon the father. However, as recorded in Shulchan Aruch, Yoreh De'ah 145:4, in the event that the father is himself not capable of teaching his son, either due to his own ignorance or because of lack of leisure, he is obligated to engage the services of a tutor.

Communal obligation with regard to the Torah education of the mentally retarded requires further elucidation. The Gemara, Baba Bathra 21a, relates that in early days "One who had a father, [the father] taught him Torah; one who did not have a father did not study Torah." This situation was rectified by means of a series of ordinances establishing a network of schools culminating in the ordinance of R. Joshua ben Gamala who ordained that classes be established in every district and city and that children be enrolled in these schools at the age of six or seven. The Gemara praises R. Joshua ben Gamala in the most laudatory terms for promulgating this ordinance "for if not for him Torah would have been forgotten by Israel."

An early authority, Ramah, in his commentary on Baba Bathra 21a, observes that pursuant to promulgation of the edict of R. Joshua ben Gamala the financial burden of educating the youth became a communal rather than a personal responsibility. Ramah believes this conclusion to be self-evident. How, queries this authority, could R. Joshua ben Gamala have decreed that the community provide teachers unless as part of the selfsame ordinance the community was made responsible for paying their hire?

The matter of communal responsibility for educational expenses is also discussed by Ramo, Choshen Mishpat 163:3. Quoting Rabbenu Yerucham, Ramo rules that the community is obligated to defray educational expenses only when the parents are not able to afford the expenses themselves. Under such circumstances, the resultant deficit is to be financed by levying an
assessment of tax upon each member of the community in accordance with his net worth.

Tosafot, *Baba Bathra* 21a, maintains that the community is required to implement the decree of R. Joshua ben Gamala and to engage a teacher only if there are a minimum of twenty-five students requiring instruction. Since the *mitzvah* of teaching Torah to children extends to the mentally retarded as well, it would follow that where there are a minimum of twenty-five such children in a community the community is required to establish a class for their instruction. If the financial expenditure is too onerous for parents to assume themselves, as is likely to be the case in light of the special educational requirements of such children, the financial burden must be borne by the entire community.

However, pedagogically, retarded children cannot be taught properly in classes of twenty-five students. R. Moses Feinstein, in the above cited responsum, opines that while there may be no halachic grounds for establishing a compulsory tax in order to engage additional teachers to cater to the needs of such students, nevertheless, charity funds should be utilized for such purposes. The obligations of charity mandate support of Torah study and such children are indeed worthy beneficiaries of charitable support.

It should be noted that the community has the right and the duty to compel its members to contribute funds for charitable purposes. Although, as Rabbi Feinstein points out, the expenses involved in the education of such children may be in excess of the obligation incumbent upon the community by virtue of the edict of R. Joshua ben Gamala, the community may nevertheless be duty-bound to provide such services by virtue of the general obligation of charity. As noted earlier, apart from purely educational considerations, such children require educational opportunities within a Torah-oriented environment in order to foster emotional stability and well-being. Satisfaction of those needs is a matter entirely separate from obligations with regard to education *per se*. The latter, as mandatory requirements, are predicated entirely upon the edict of R. Joshua ben Gamala; the former flow from the general obligation of charity. The community’s power to compel its member to fulfill obligations of charity by providing funds to assure the well-being of members lacking sufficient independent
financial resources is entirely distinct from any obligation incumbent solely by virtue of the edict of R. Joshua ben Gamala. Surely, a community blessed with uncommon affluence should not find its obligations of charity inordinately onerous.