

Spring August 2012

## The Normative Influence of the Fifth Commandment on Filial Responsibility

Charlotte K. Goldberg  
*Loyola Law School*

Follow this and additional works at: <https://scholarship.law.marquette.edu/elders>



Part of the [Elder Law Commons](#)

---

### Repository Citation

Goldberg, Charlotte K. (2012) "The Normative Influence of the Fifth Commandment on Filial Responsibility," *Marquette Elder's Advisor*. Vol. 10: Iss. 2, Article 3.

Available at: <https://scholarship.law.marquette.edu/elders/vol10/iss2/3>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Elder's Advisor by an authorized editor of Marquette Law Scholarly Commons. For more information, please contact [elana.olson@marquette.edu](mailto:elana.olson@marquette.edu).

# THE NORMATIVE INFLUENCE OF THE FIFTH COMMANDMENT ON FILIAL RESPONSIBILITY

Charlotte K. Goldberg\*

## INTRODUCTION

It is clear that the Fifth Commandment's obligation of honoring parents<sup>1</sup> is one source of filial responsibility laws.<sup>2</sup> Other sources include statutory laws that mandate that adult children have a duty to financially support their parents.<sup>3</sup> Some statutory laws even provide that a parent can sue a child to enforce that duty.<sup>4</sup> That kind of lawsuit is rare and obviously very destructive to the

---

\*Professor of Law, Loyola Law School of Los Angeles. The comments of Professors Kurt Lash and Suzanne Last Stone on earlier drafts of this article are gratefully acknowledged. Thanks to my research assistants, Ryan Murray and Saba Zafar, for their assistance in preparing this article. A draft of this article was presented on January 4, 2007, at the AALS Meeting, Section on Jewish Law, Emerging Applications of Jewish Law in American Legal Scholarship.

1. See *Exodus* 20:12; *Leviticus* 19:3. The Fifth Commandment states "Honor your father and your mother." *Exodus* 20:12; see GERALD BLIDSTEIN, HONOR THY FATHER AND MOTHER: FILIAL RESPONSIBILITY IN JEWISH LAW AND ETHICS xi (Norman Lamm, ed., Ktav Publ'g 1975). "Honor" is manifested in positive acts, including thought, speech, and action. RABBI YECHIEL BIBERFELD, The Laws of Honoring and Revering Parents 21 (Project D.E.R.E.C.H. Publ'ns 1995). The Torah also commands that every person must fear his mother and father. *Leviticus* 19:3. "Fear" "means that a child must have a sense of awe and reverence towards his parents, as he would towards someone he fears." BIBERFELD, *supra*, at 59.

2. See Katie Wise, Note, *Caring For Our Parents in an Aging World: Sharing Public and Private Responsibility for the Elderly*, 5 N.Y.U. J. LEGIS. & PUB. POL'Y 563, 567 (2001-02) ("A child's duty to care for her parents is a fundamental Judeo-Christian value.").

3. See, e.g., Cal. Fam. Code § 4400 (West 2004) ("Except as otherwise provided by law, an adult child shall, to the extent of his or her ability, support a parent who is in need and unable to maintain himself or herself by work.").

4. See Cal. Fam. Code § 4403(a)(1) (West 2004).

family relationship.<sup>5</sup> Irrespective of statutory laws, financial aid to, and health care of, elderly and infirm parents inevitably fall to their adult children.<sup>6</sup> Those children, even when willing and able, face a daunting task.<sup>7</sup> Those children may also be approaching "senior" status themselves, as many baby boomers have recently reached the age of sixty.<sup>8</sup> These baby boomers often still have the responsibility of supporting and paying for the education of their own children. This category of adults is referred to as the "sandwich" generation—these adults are sandwiched between responsibilities to their elderly parents and responsibilities to their own children.<sup>9</sup>

Filial responsibility statutes seek to prescribe and enforce a child's duty to support his or her needy and infirm parents.<sup>10</sup> Because enforcement of these statutes by courts is a remote possibility, states need to look to other incentives to encourage filial responsibility.<sup>11</sup> Those incentives can be monetary or intangible.<sup>12</sup> For instance, Vermont has initiated a program to compensate relatives who care for elderly and infirm family members at home.<sup>13</sup> Beyond monetary incentives, it is possible to look to the obligation found in the Fifth Commandment as encouragement for filial responsibility.<sup>14</sup> The major benefit of the Fifth Commandment is to pass down from generation to

---

5. See generally Lara Queen Plaisance, Comment, *Will You Still . . . When I'm Sixty-Four: Adult Children's Legal Obligations to Aging Parents*, 21 J. AM. ACAD. MATRIM. LAW. 245 (2008).

6. See generally Wise, *supra* note 2.

7. See generally Plaisance, *supra* note 5; Wise, *supra* note 2.

8. See generally Wise, *supra* note 2; Heather M. Fossen Forrest, Comment, *Loosening the Wrapper on the Sandwich Generation: Private Compensation for Family Caregivers*, 63 LA. L. REV. 381 (2003).

9. See Forrest, *supra* note 8, at 382-85.

10. See generally Seymour Moskowitz, *Filial Responsibility Statutes: Legal and Policy Considerations*, 9 J. L. & POL'Y 709 (2001).

11. See Plaisance, *supra* note 5, at 252-61.

12. See, e.g., Wise, *supra* note 2.

13. Lucette Lagnado, *Olden Days: Seniors in Vermont Are Finding They Can Go Home Again; In Shift From Nursing Homes, State Has Family Members Care for Elderly Relatives; Helping Gram at \$9.25 an Hour*, WALL. ST. J., Oct. 23, 2006, at A1.

14. See generally RABBI MOSHE LIEBER, *THE FIFTH COMMANDMENT, HONORING PARENTS—LAWS, INSIGHTS, STORIES AND IDEAS* 28-29 (Rabbi Nosson Scherman & Rabbi Meir Zlotowitz eds., Mesorah Publ'ns 2000).

generation the intangible benefits of caring for an elderly parent.

Before the increased mobility of modern society, families lived near each other for their whole lives and many even lived in the same home. Grandparents, parents, and children all contributed to the wellbeing of the family group. Children saw their parents caring for their parents and witnessed firsthand love, respect, and caring when a grandparent grew older and infirm. Today, families are spread out and contact with grandparents is often limited to holidays or vacations. When a grandparent becomes old and infirm, it is common for grandparents to receive assistance in their own home<sup>15</sup> or to enter an institution for care.<sup>16</sup> Like adults of all ages, grandparents generally value independence and self-sufficiency and do not wish to "burden" their children with their care. Similarly, adult children are often unwilling or unable to undertake that burden.<sup>17</sup> Yet those children may still feel the obligation.<sup>18</sup> The goal of this article is to suggest how concepts from the Jewish Law regarding the Fifth Commandment can add intangible benefit to undertaking the obligation of financial and physical care of an elderly parent. The normative influence

---

15. See Diarne Odom, *What is Long-Term Care and Who is Responsible for Its Cost?*, 39 THE TAX ADVISER 240, 240 (Apr. 2008) ("Much of the long-term care in this country is 'custodial care' delivered in the patient's home and not in a nursing facility."). "The trend toward home care has generally been hailed as a way to keep seniors happier and healthier, and at a lower cost, than they would be in an institutionalized setting." Philip Shishkin, *Cases of Abuse by Home Aides Draw Scrutiny*, WALL ST. J., July 15, 2008, at D1. "For families, keeping tabs on an older relative's spending patterns is important, as unscrupulous caregivers have been known to steal, while the elderly are often too scared to report abuse." *Id.* Cases of elder abuse and neglect have increased to the level of an "epidemic of gross mistreatment of America's elders." Plaisance, *supra* note 5, at 246.

16. Paying for nursing home care became much more difficult after changes in Medicaid by the passage of the Deficit Reduction Act of 2005, which was signed into law in February 2006. The Act "changes the penalty period for asset transfers from three years to five years and changes the date that period begins to the date the parent transferring assets enters a nursing home and is eligible for Medicaid." *DRA Could Bite Boomers on Parents' LTC Needs*, 110 NAT'L UNDERWRITER LIFE & HEALTH 32 (June 25, 2006). Most retirees could not "sustain huge nursing-home expenses, which averaged \$74,000 in 2005." *The Long-Term-Care Puzzle Gets Tougher*, Kiplinger's RETIREMENT REP., May 1, 2006, at 1. The changes in the Medicaid law "are aimed at people who give away assets in order to qualify for Medicaid." *Id.*

17. See generally Plaisance, *supra* note 5; Wise, *supra* note 2.

18. See generally Plaisance, *supra* note 5; Wise, *supra* note 2.

of the Fifth Commandment can ease the burden for adult children, making the experience of caring for elderly or infirm parents or grandparents more positive and rewarding, irrespective of filial responsibility laws or financial incentives.

### FILIAL RESPONSIBILITY LAWS

Filial responsibility laws impose a duty on adult children to support an indigent parent or parents.<sup>19</sup> For instance, in California, Family Code section 4400 provides that "an adult child shall, to the extent of his or her ability, support a parent who is in need and unable to maintain himself or herself by work."<sup>20</sup> Under that law, a parent may bring an action to enforce this duty.<sup>21</sup> Although a child can petition for relief from this duty in limited circumstances,<sup>22</sup> failure to support the indigent parent carries not only the possibility of a civil law suit, but also the possibility of a criminal penalty.<sup>23</sup> Despite this legal duty, enforcement of filial responsibility laws has declined<sup>24</sup> or is infrequent.<sup>25</sup>

---

19. See, e.g., CAL. FAM. CODE § 4400 (West 2004).

20. *Id.*

21. Cal. Fam. Code § 4403(a)(1) (West 2004). If a county furnishes support to the parent, the county may also bring an action against the child on behalf of the parent to obtain reimbursement. *Id.* at (a)(2). See *Swoap v. Superior Court*, 516 P.2d 840, 851-52 (Cal. 1973) (holding that imposing a duty on children to support needy parents is supported by a rational basis and does not deny equal protection of the laws).

22. The ground for relief is the parent's abandonment of the child for two or more years when the child was a minor and the parent was physically and mentally able to provide support for the child. Cal. Fam. Code § 4411 (West 2004).

23. Cal. Penal Code § 270(c) (West 2008) (misdemeanor for failing "to provide necessary food, clothing, shelter, or medical attendance for an indigent parent"). See also Cal. Penal Code § 368(a), (b)(1) (West 1990) (felony criminal liability for elder abuse); *People v. Heitzman*, 886 P.2d 1229, 1231 (Cal. 1994) (interpreting §368(a) to apply "only to a person who, under existing tort principles, has a duty to control the conduct of the individual who is directly causing or inflicting abuse on the elder or dependent adult").

24. For instance, after enactment of the Medicaid program in 1965, some states repealed their filial responsibility statutes. The reason was that under the Medicaid program, states were prohibited from considering the financial responsibility of anyone other than the recipient's spouse or child under age 21. Moskowitz, *supra* note 10, at 714-15.

25. See *id.* at 716.

One major criticism of filial responsibility statutes is that "litigation as a means of solving problems is a particularly blunt instrument when continuing relationships or processes are involved."<sup>26</sup> A law that enables one family member to sue another would hardly "foster a warm and loving environment."<sup>27</sup> Litigation between parent and child "may resolve a disagreement between family members temporarily, but only at great emotional and psychological costs."<sup>28</sup> It is doubtful that courts can create the kind of relationships that filial responsibility statutes envision.<sup>29</sup> The normative aspect of filial responsibility statutes must be bolstered so that adult children are willing to shoulder the financial burden of care for indigent parents.<sup>30</sup>

### BEYOND FINANCIAL RESPONSIBILITY

Caring for elderly parents goes beyond financial responsibility.<sup>31</sup> Filial responsibility statutes "fail to address the many non-financial needs of the elderly, such as assistance in completing daily tasks and their need for companionship."<sup>32</sup> That assistance often falls on the shoulders of adult daughters, who "find themselves saddled with the multiple responsibilities of rearing children, working for income outside the home and also providing care for aging family members."<sup>33</sup> Those daughters

---

26. *Id.* at 726.

27. Wise, *supra* note 2, at 575-76.

28. Moskowitz, *supra* note 10, at 726.

29. See Wise, *supra* note 2.

30. See, e.g., *id.*; Plaisance, *supra* note 5; LIEBER, *supra* note 14.

31. See generally Wise, *supra* note 2.

32. *Id.* at 564-65.

33. Moskowitz, *supra* note 10, at 724. A family caregiver is a person who "provides unpaid assistance to someone who is incapacitated or needs help for any number of reasons." *Who are Our U.S. Family Caregivers?*, WORK & FAMILY LIFE, Nov. 2006, at 1. According to statistics, "34 million adults (35% of the workforce) provide care for someone 50 or over . . . 8% of the workforce is in the so-called sandwich generation, with responsibilities for both children and parents." *Id.* A recent Iowa State University survey of women found that found that 70% of respondents expected to care for their aging parents, yet "few prepare for it—with 84% reporting that they delayed caregiving decisions until they were needed." *ISU Study Finds Women Expect to Care for Parents, But Few Prepare For It*, IOWA STATE

are part of what is called the "sandwich"<sup>34</sup> generation—individuals who have responsibilities to both their own children and their aging parents.<sup>35</sup> Besides the financial burden, the physical and psychological burden can be overwhelming and negatively affect the health and well-being of the caregiver.<sup>36</sup>

Federal and state efforts have been directed to easing the financial and psychological burden of caregiving by family members.<sup>37</sup> Financially, caregivers may take advantage of the federal dependent care tax deduction or exclude some

---

UNIVERSITY NEWS SERVICE, May 2, 2007, available at [www.public.iastate.edu/~nscentra/news/2007/may/caregivers.shtml](http://www.public.iastate.edu/~nscentra/news/2007/may/caregivers.shtml). Professor Susan Stewart, who conducted the research, noted that "the parents make the sons the people who are [in] charge of the finances, but actually the person who does the work is the daughter, or the daughter-in-law." *Id.* "Family care-giving of the elderly is often a women's issue. Statistics show women are poorer and older in their declining years than men, and that women—daughters, nieces, and granddaughters, by blood or by marriage—are by far the most likely to give care to an elderly loved one." Holly Shaver Bryant, *Funding Kinship Care: A Policy-Based Argument for Keeping the Elderly in the Family*, 8 WM. & MARY J. WOMEN & L. 459, 462-63 (2002).

34. Elizabeth S. Torkelsen, *What to Do About the 'Sandwich Generation'*, Vol. 12, No. 4 N.Y. EMP. L. LETTER 1 (Apr. 2005) ("People in the prime of their working lives are 'sandwiched' between caring for young children and elderly parents.").

35. Moskowitz, *supra* note 10, at 725. The economic burden can be overwhelming especially because a "majority of states do not have legislation allowing family caregivers to make claims against the estates of the care recipients." Forrest, *supra* note 8, at 382. Furthermore, the cases demonstrate that a jurisprudential rule has developed, severely restricting the ability of family caregivers to recover any compensation whatsoever." *Id.*

36. Moskowitz, *supra* note 10, at 724. "The stresses of caregiving can have a deadly impact, raising caregiver mortality rates 63% above that of non-caregivers, based on a four-year University of Pittsburgh study of 819 people over age 65." Sue Shellenbarger, *Companies Help Employees Cope With Caring for Parents*, WALL ST. J., June 21, 2007, at D1. Employers are also recognizing the effects of caregiving on their employees, and "a few employers are offering elder-care programs aimed at the health and well-being of the workers themselves. *Id.* One psychological problem for caregivers is that they can develop "codependency." SIMA DEVORAH SCHLOSS, *TAKING CARE OF MOM, TAKING CARE OF ME: COPING WITH A RELATIVE'S ILLNESS AND DEATH* 42 (The Judaica Press, Inc. 2002). One family caregiver stated that "I started becoming totally codependent, so consumed by taking care of others that I became physically and emotionally unable to take care of myself." *Id.*

Taking good care of yourself while you are a loving caregiver is often not a simple matter. Even when the caregiver is not actually with the patient he often feels that he should be constantly thinking about him or her and certainly not experiencing anything enjoyable. . . . If you do not take good care of yourself, eventually you won't be able to give the patient the time and care he needs . . .

NAOMI BRUDNER, *CARING: A JEWISH GUIDE TO CAREGIVING* 195-96 (Jerusalem Publ'ns 2005).

37. See, e.g., Lagnado, *supra* note 13; Odom, *supra* note 15, at 240.

caregiving expenses from their income.<sup>38</sup> However, due to significant limitations, both federal tax advantages appear "impractical and ultimately of little use to many caregivers."<sup>39</sup> Under state Medicaid laws, programs authorize caregiver payment programs.<sup>40</sup> The oldest program is California's In-Home Supportive Services, which funds over \$500 million dollars each year and serves more than 200,000 individuals.<sup>41</sup> This program also allows elderly persons to select their own caregivers, including family members.<sup>42</sup> Similarly, Vermont initiated a "Choices for Care" Program, which pays family members who care for aging relatives at home.<sup>43</sup>

Efforts also have been made at the federal and state level to ease the caregiver's physical and psychological burden.<sup>44</sup> In 1991, Congress passed a resolution establishing "National

---

38. Wise, *supra* note 2, at 585-86. A tax deduction is also available for premiums for long-term care insurance. Odom, *supra* note 15, at 241.

39. Wise, *supra* note 2, at 586. For instance, tax credits and deductions are not available to very poor caregivers who do not pay federal income taxes. Also, rigorous requirements for deductions to taxable income exclude many caregivers.

40. *Id.* at 588-89.

41. *Id.* at 563.

42. *Id.* at 588-89. Spouses and parents of minor children, who are legally responsible for providing financial support, are not eligible for payment. *Id.* at 589.

43. Lagnado, *supra* note 13. One purpose of the program is to shift caregiving from nursing homes to private homes. *Id.* In Vermont, one study compared the cost and found that it cost the state \$122 for institutionalized care as opposed to \$80 for care at home. *Id.* That led to a federal approval under Medicaid for Vermont to offer home care as an option equal to nursing home care. *Id.* The program reached its first anniversary in October 2006 and there has been a significant increase in people receiving home care since the program began. Press Release, Vermont Governor, Governor to Celebrate 1st Anniversary of Vermont's Innovative "Choices for Care" Waiver at Home in Southern Vermont - First in the Nation Program Has Expanded Options for Vermonters, Increased Numbers Served & Helped to Save Medicaid, (Oct. 5, 2006). Programs of this type were resisted because of traditional legal and moral impediments to paying family members. See generally Jonathan S. Henes, *Compensating Caregiving Relatives: Abandoning the Family Member Rule in Contracts*, 17 CARDOZO L. REV. 705, 705-08 (1996) (household services performed between household members were presumed gratuitous); Bryant, *supra* note 33, at 468 ("Probably the most enduring barrier to compensating family caregivers has been the implied moral duty that family members have to care for one another, particularly in times of trouble."); Forrest, *supra* note 8, at 393 (In denying compensation for family caregiving services, "the courts tend to look for a 'family-like' relationship as well as a 'mutuality of benefits.'").

44. Proclamation No. 6382, 56 Fed. Reg. 60,895 (Nov. 25, 1991).



Family Caregivers Week.”<sup>45</sup> Although the resolution did nothing to relieve the actual stress on caregivers, it did acknowledge the physical and emotional toll on family caregivers and recognized that “the contributions of family caregivers help maintain strong family ties and assure support among generations.”<sup>46</sup>

A federal government effort that had an actual impact on caregiver's stress was The Family and Medical Leave Act (FMLA), which requires employers to grant employees up to twelve weeks of leave per year for family needs.<sup>47</sup> The Act defined “family needs” to include care for a seriously ill parent, but the leave is unpaid and twelve weeks may be insufficient time to care for that parent.<sup>48</sup> Also, because the Act applies only to employers with more than fifty employees, many workers may not take advantage of the leave.<sup>49</sup>

Another program to support caregivers enacted in 2000 is called the National Family Caregiver Support Program.<sup>50</sup> It provides funding to states to provide “information to caregivers about available services, assistance in gaining access to services, caregiver training and counseling, respite care, and supplemental services.”<sup>51</sup>

States have provided additional supportive programs for caregivers.<sup>52</sup> For example, some states have supplemented the federal FMLA by allowing employees to use their accrued sick leave to care for family members.<sup>53</sup> Similarly, California's Caregiver Resource Center assists family members and other caregivers who provide support for people with cognitive

---

45. *Id.*

46. *Id.*

47. Wise, *supra* note 2, at 586-87.

48. *See id.*

49. *Id.* at 587.

50. Older Americans Act Amendments of 2000, PL 106-501, 114 Stat. 2226, 2254-56 (2000).

51. Wise, *supra* note 2, at 588.

52. *See, e.g.,* CAL. LABOR CODE § 233(a) (West 2003).

53. *Id.*

illnesses, such as Alzheimer's Disease.<sup>54</sup> These programs and state and federal laws represent efforts being made at the federal and state level to provide both financial and emotional support to caregivers, especially children of aging and infirm parents.<sup>55</sup>

Some private employers also act to relieve the care-giving burden on employees.<sup>56</sup> Private employers have seen the negative business consequences of employees charged with caring for ill or infirm family members: "expenses from . . . rehiring, absenteeism, workday interruptions, eldercare crisis, unpaid leave and transitioning from full-time to part-time quickly mount . . . ."<sup>57</sup> To assist care-giving employees, employers could offer relatively inexpensive benefits such as flexible scheduling and telecommuting.<sup>58</sup> Some employers already offer services that include paying for the cost of emergency caregivers and allowing workers to include their elderly parents in health insurance coverage. Law firms have also recognized that family emergencies and demanding jobs lead to a loss of productivity.<sup>59</sup> One firm provides employees with up to twenty days per year of adult in-home care; another has added an elder care benefit.<sup>60</sup>

To ease the psychological strain, some employers provide counseling and group support sessions.<sup>61</sup> One company provides employee caregiver seminars on self-care and emotional support.<sup>62</sup> Other employers provide a program called

---

54. Wise, *supra* note 2, at 590.

55. See, e.g., CAL. LABOR CODE § 233; Wise, *supra* note 2.

56. See, e.g., Shellenbarger, *supra* note 36; Molly Bernhart, *Elder Care Exacts a Major Cost Toll From Employers*, EMPLOYEE BENEFIT NEWS, Sep. 1, 2006, at 1; Molly Selvin, *Firms See Wisdom in Elder-Care Plans; Workers With Ailing Parents Find an Array of Stress-Reducing Services*, L.A. TIMES, Dec. 13, 2006, at A1.

57. Bernhart, *supra* note 56.

58. *Id.*

59. See, e.g., Shellenbarger, *supra* note 36; Bernhart, *supra* note 56; Selvin, *supra* note 56.

60. Peter Page, *More Firms Offering Programs for 'Elderly Care,' One Less Thing for Lawyers to Worry About: Caring for Their Parents*, NAT'L. L. J., Apr. 21, 2008, at 10.

61. See generally Selvin, *supra* note 56.

62. *Id.*

"Powerful Tools for Caregivers."<sup>63</sup> Some of these programs have shown that "certain skills training, counseling and social-support programs can slash caregivers' depression by half and sharply improve their quality of life."<sup>64</sup>

Aside from employers, caregivers can seek guidance and support from other sources, too. The internet provides information and support for caregivers.<sup>65</sup> Many private and religious organizations also provide guidance for caregivers.<sup>66</sup>

## WHAT DOES JEWISH LAW PROVIDE FOR FAMILY CAREGIVERS

### THE FIFTH COMMANDMENT

The significance of the Fifth Commandment in Jewish Law should not be underestimated. It is "the *only* positive demand" in the Ten Commandments regarding the obligations of man to his fellow man.<sup>67</sup> It is found in two places in the Torah and includes honoring both father and mother.<sup>68</sup> The obligation is called, in Hebrew, *Kibbud av ve'aim*.<sup>69</sup> The word "*Kibbud*" derives from the root "k-b-d" which means "heavy" or "weighty."<sup>70</sup> It encompasses both reverence for parents and honorable service to them.<sup>71</sup> It is a lifetime obligation of children and plays a central role in Jewish law and life:

It is of course true that filial responsibility, the duty of the younger generation to esteem and care for the older, meets a real social need—the preservation of the older generation and the

---

63. Shellenbarger, *supra* note 36.

64. *Id.*

65. See, e.g., Personal Parent Care, <http://www.personalparentcare.com> (last visited Jan. 25, 2009).

66. See, e.g., Jewish Family Services of Greater Dallas, <http://www.jfsdallas.org> (last visited Jan 25, 2009).

67. BLIDSTEIN, *supra* note 1, at xi-xiii.

68. Exodus 20:12; Leviticus 19:3. In Exodus "father" precedes "mother." Exodus 20:12. In Leviticus "mother" precedes "father." Leviticus 19:3. See also BLIDSTEIN, *supra* note 1, at xi.

69. BLIDSTEIN, *supra* note 1, at xii.

70. *Id.*

71. *Id.*

transmission of its values. But Judaism does not stress the instrumental role of filial responsibility in conserving society, seeing in *kibbud av* rather a shaping, directing value that contributes to the meaning of life in society.<sup>72</sup>

As previously noted, the word "kibbud" derives from its root of being "weighty."<sup>73</sup> This indicates the importance of the commandment, but the concept of "honor" is also connected to its root.<sup>74</sup> "'Honor' is a response to, a recognition of, the weightiness of the person honored, his worth."<sup>75</sup> Yet honor encompasses much more than recognition of a parent's worth because it includes personal service: "Honor means that he must give food and drink, dress and cover him, and lead him in and out."<sup>76</sup> The primary meaning of honoring a parent in Jewish law is to perform the physical deed of serving a parent, not only expending funds for the parent's food and clothing.<sup>77</sup> The personal responsibilities include "the symbolic gestures of attentiveness as well as the satisfaction of real needs, for both dimensions of service underscore the worth of the person so served and honored."<sup>78</sup>

Obviously, honoring a parent becomes more difficult in the face of a parent's illness. A pre-Talmudic source gives encouragement: "My son, be strong in the honor of your father, and do not leave him all the days of your life. And even if he loses sense, let him do all that he wishes and do not shame him all the days of his life."<sup>79</sup> Even though the great Jewish sage Maimonides recognizes that in some situations a parent's mental

---

72. *Id.* at 1. The significance of filial responsibility focuses on (1) connecting parents as creators with God as the Creator, (2) instilling the ethical value of gratitude to parents for one's existence and sustenance, (3) maintaining structures of authority, and (4) grounding filial respect as the basis for humanity and his culture.

73. *See generally id.*

74. *Id.* at xii.

75. *Id.* at 47.

76. *Id.*

77. *Id.* at xii.

78. *Id.* at 47. Those responsibilities are analogous to those of a servant to his master.

79. *Id.* at 116 (quoting *Ben-Sira*).

state may be beyond a child's capabilities, a child is not relieved of his obligation, but is still responsible for finding proper care for the parent.<sup>80</sup>

The heavy responsibility of honoring parents carries with it intangible benefits to the caregiver. Honoring one's parents is one of the few commandments in the Torah that includes a reward: "Honor your father and your mother as Hashem, your God, commanded you, so that your days will be lengthened and so that it will be good for you."<sup>81</sup> It is one of six mitzvahs for which a person is rewarded in this world, but whose principal reward remains in the "World to Come."<sup>82</sup> Because of the difficulty of fulfilling this particular mitzvah, God has chosen to let us know that there is specific reward for carrying it out.

A question arises as to how the reward of longevity is related to honoring one's father and mother. For instance, Rabbeinu Bachya, quoting R' Saadia Gaon, recognizes that as parents age, it becomes more and more difficult for children to care for their parents.<sup>83</sup> When the children become frustrated with the burden, they can be assured that their own longevity is linked to performing that mitzvah. How does this work? When children see their parent caring for a grandparent, they will learn from the example.<sup>84</sup> Thus, children who observed their

80. *Id.* at 117. There is some debate about the child's responsibility in this situation, but Maimonides' opinion seems the accepted Jewish law. *Id.* at 117-19.

81. *Exodus* 20:12. Two other mitzvahs assure longevity. See *Deuteronomy* 22:7, 25:15. The first is sending away a mother bird before taking her young: "You shall surely send away the mother and take the young for yourself, so that it will be good for you and will prolong your days." *Deuteronomy* 22:7. The second is honest weights and measures: "A perfect and honest weight shall you have, a perfect and honest measure shall you have, so that your days shall be lengthened on the Land, that Hashem, your God, gives you." *Id.* at 25:15.

82. *Talmud*, Shabbos 127a. These are the precepts whose fruits a person enjoys in This World but whose principal remains intact for him in the World to Come. They are honor due to father and mother, acts of kindness, early attendance at the house of study morning and evening, hospitality to guests, visiting the sick, providing for a bride, escorting the dead, absorption in prayer, bringing peace between man and fellow—and the study of Torah is equivalent to them all. This statement from the Talmud is said daily as part of the morning prayers.

83. LIEBER, *supra* note 14, at 28.

84. The example can also be a negative one. See Patti S. Spencer, *Filial Support Laws: Am I My Mother's Keeper*, LANCASTER INTELLIGENCER J., (Lancaster, Pa.) Nov.

parents care for their grandparents will take care of their parents, assuring long life to the next generation.<sup>85</sup>

Another interpretation explains how caring for a parent can extend life.<sup>86</sup> The time spent in caring for a parent is not considered "lost" time.<sup>87</sup> That time spent on fulfilling the mitzvah of honoring a parent will be made up by rewarding the caregiver with "lengthened days."<sup>88</sup> The prospect of such a reward could give the caregiver comfort when carrying the responsibility of care for an elderly parent.<sup>89</sup>

A true story, entitled "Raising Up Bubby," illustrates how the commandment of honoring a parent carries with it intangible rewards.<sup>90</sup> The story begins by describing a vibrant grandmother who had a career as a nurse.<sup>91</sup> She retired and was "a happy, normal lady . . . juggling the days spent with each precious grandchild."<sup>92</sup> Unfortunately, she fell and hit her head.<sup>93</sup> She suffered brain damage and now lives close to her daughter's family.<sup>94</sup> Her husband and the daughter's family are

---

21, 2005, at A1. Consider this parable: A frail old man went to live with his son, daughter-in-law, and young grandson. The old man's hands trembled, and he often spilled his food. He dropped a good piece of china, breaking it. Exasperated, the son and daughter-in-law made the old man wooden bowls and spoons and told him to eat in the kitchen while the rest of the family ate in the dining room. One day, the little boy was playing with wood scraps on the floor. 'What are you making?' his parents asked. The boy answered proudly, 'I am making wooden bowls and spoons for you, so that when you are old you can eat in the kitchen just like grandpa.' The parents realized how their negative treatment of the grandfather could influence their own child's attitude toward them. *Id.* (suggesting that as an incentive, children caring for a parent would have an increased share of inheritance).

85. LIEBER, *supra* note 14.

86. *Id.*

87. *Id.* "The Torah therefore promises that all the time 'lost' on fulfilling this mitzvah will be made up, for its reward in this world is 'so that your days be lengthened.'" *Id.* at 28-29.

88. *Id.*

89. *Id.*

90. "Bubby" is a Yiddish word for grandmother. Faygie Goldstein, *Raising Up Bubby*, 49 HORIZONS: JEWISH FAM. J. 56-60 (Summer 2006).

91. *Id.* at 58.

92. *Id.* at 56.

93. *Id.*

94. *Id.* at 56-57.

all involved in her care.<sup>95</sup> The grandchildren take part.<sup>96</sup> When they go to the store, they bring back a treat for Bubby, "without anyone even asking them to."<sup>97</sup> They come into the house and run to kiss Bubby hello.<sup>98</sup> They share a good story with Bubby and try to include her in their games.<sup>99</sup> "All these small acts add up to make a warm, caring atmosphere for us all."<sup>100</sup> Bubby's daughter's attitude is positive: "What a great mitzvah we all have!"<sup>101</sup> The grandchildren are encouraged to help and her daughter sees that caring for Bubby has the additional benefit of being "a living example to our younger generations."<sup>102</sup> "By raising our children to help us raise up Bubby, we teach them a valuable, irreplaceable lesson."<sup>103</sup> To keep her own spirits up, she notes "one of the things that helps me is to see my children's sensitivity toward my parents."<sup>104</sup> Cultivating sensitivity to the grandparents will ultimately result in passing down the lesson of how to treat the next generation of grandparents.<sup>105</sup>

#### PRACTICAL APPLICATIONS

One major question is how to convey the positive lessons of Jewish law to caregivers. It would be possible to create a pamphlet that describes the Fifth Commandments intangible rewards for honoring one's parents. It could even include a story like "Raising Up Bubby."<sup>106</sup> It could be distributed through organizations like the Jewish Family Services in cities across the nation.

Although that could have positive effect on Jewish

---

95. *Id.* at 57.

96. *Id.*

97. *Id.* at 60.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at 57.

102. *Id.*

103. *Id.*

104. *Id.* at 60.

105. *Id.* at 57.

106. See generally *id.*

caregivers, there is an issue whether it could have the same effect on caregivers of other religions and those caregivers who have no religious affiliation. For caregivers of other religions, reference to the Bible would surely resonate for them also. Both Christian<sup>107</sup> and Islamic<sup>108</sup> sources impose an obligation on children to care for a parent in need.<sup>109</sup>

Adapting the wisdom of the Fifth Commandment to those without a religious affiliation would be difficult or impossible. It may be possible to emphasize the value of caregiving as a way of strengthening family ties among the family's generations.<sup>110</sup> But without the anchor of the Fifth Commandment, it may be difficult for caregivers to grasp some of these concepts.

### CONSTITUTIONAL OBJECTIONS

To fund the production of the brochures regarding the Fifth Commandment, an organization could solicit private funds or possibly apply for government support. With private funding unavailable, a major question would arise regarding use of government funds. To produce literature for caregivers with sources from Jewish Law would possibly run afoul of the

---

107. "Catholic Church doctrine on the parent/child relationship is rooted in the Fourth Commandment." Christina Baine DeJardin, *Honor Thy Mother and Father: The Roman Catholic View of the Parent/Child Relationship*, 16 J. CONTEMP. LEGAL ISSUES 3, 4 n.4 (2007) (referring to the Catechism Fourth Commandment: "God has willed that, after him, we should honor our parents to whom we owe life and who have handed on to us the knowledge of God." The Fourth Commandment, CATECHISM OF THE CATHOLIC CHURCH 2197, available at [http://www.vatican.va/archive/ccc\\_css/archive/catechism/p3s2c2a4.htm](http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a4.htm)).

108. "[V]erses from the Qur'an teach Muslims to care for their parents as their parents cared for them when they were younger. The Qur'an equates showing gratitude to parents—in particular to the mother—with obedience to God." Roaa M. Al-Heeti, Note, *Why Nursing Homes Will Not Work: Caring for the Needs of the Aging Muslim American Population*, 15 ELDER L. J. 205, 209 (2007).

109. See, e.g., Seymour Moskowitz, *Adult Children and Indigent Parents: Intergenerational Responsibilities in International Perspective*, 86 MARQ. L. REV. 401, 406-08 (2002); Wing-Cheong Chan, *The Duty to Support an Aged Parent in Singapore*, 13 PAC. RIM L. & POL'Y J. 547, 550-51, 578 (2004); see generally AGE THROUGH ETHNIC LENSES: CARING FOR THE ELDERLY IN A MULTICULTURAL SOCIETY (Laura Katz Olson ed., Rowman & Littlefield Publishers, Inc. 2001).

110 Chan, *supra* note 109, at 575-76.



Establishment Clause.<sup>111</sup>

The Establishment Clause of the First Amendment of the United States Constitution states in part "[c]ongress shall make no law respecting an establishment of religion. . . ."<sup>112</sup> If funds were available under a federal statute to assist in easing the burden on caregivers, there is a possibility that Jewish organizations, like the Jewish Family Service, could receive funds for the production of brochures or literature concerning Jewish Law relating to honoring one's parents.<sup>113</sup>

The constitutionality of using federal assistance, funds, or resources, under the Establishment Clause would depend primarily on the so-called *Lemon* test, developed by the U.S. Supreme Court in *Lemon v. Kurtzman*.<sup>114</sup> Under the *Lemon* test, the Court set out a three-prong test to determine the constitutionality of using government funds for secular purposes: the governmental funding scheme (1) must have a secular legislative purpose; (2) its primary effect must neither advance nor hinder religion and (3) does not create an excessive entanglement with religion.<sup>115</sup>

Until the 1980s, the Supreme Court appeared hesitant to approve the use of federal funds for religious organizations.<sup>116</sup>

---

111. U.S. Const. amend. I.

112. *Id.*

113. Jewish Family Services of Los Angeles, Older Adults' Resources, <http://www.jfsla.org/index.php?/programs/categories/&byservice=11&bylocation=> (last visited Feb. 7, 2009).

114. *Lemon v. Kurtzman*, 403 U.S. 602, 606 (1971) (holding that a state program that funded teachers' salaries in religious schools was invalid).

115. *Id.* at 612-13.

116. See Douglas Laycock, *Why the Supreme Court Changed Its Mind about Government Aid to Religious Institutions: It's a Lot More Than Just Republican Appointments*, 2008 BYU L. REV. 275, 277 (2008). The *Lemon* Court in 1971 "struck down a funding program for the first time, holding that states could not subsidize teachers' salaries in religious schools. [T]he no-aid principle predominated from then until its high-water mark in *Aguilar v. Felton* in 1985." *Id.* "In 1997, the Supreme Court overruled the approach to establishment clause analysis used by the Court in the *Aguilar* and *Ball* cases without formally changing any of the basic establishment clause standards that had been used by the Court for evaluating government programs that provided aid to religiously affiliated organizations or persons between 1971 and 1997." Ronald D. Rotunda & John E. Novak, *Secular Instruction and Secular Services for Religious School Students: the 1997 Rejection of the "Assumptions" used by the Court in 1985*, Treatise on Constitutional Law--Substance

However, since 1986, "the Court has upheld six programs that permitted government funds to reach religious institutions; during that same period, it has invalidated none."<sup>117</sup> Most of those cases involved funding for services in religious schools<sup>118</sup> but in *Bowen v. Kendrick*, the Supreme Court approved a government scheme that provided grants to religious organizations for counseling.<sup>119</sup> The statutory scheme, the Adolescent Family Life Act (AFLA), authorized federal grants to public or non-profit organizations or agencies for services and research in the area of premarital adolescent sexual relations and pregnancy.<sup>120</sup> The issue before the Court was the constitutionality of federal funding going to organizations with institutional ties to religious denominations.<sup>121</sup> A lawsuit was brought to determine if the AFLA violated the Establishment Clause.<sup>122</sup>

According to the District Court, under the *Lemon* test, the AFLA had a "valid secular purpose: the prevention of social and economic injury caused by teenage pregnancy and premarital sexual relations."<sup>123</sup> However, the Act violated the other requirements of the *Lemon* test because it had a "direct and immediate" effect of advancing religion<sup>124</sup> and involved

---

and Procedure §21.4, 48, 53(4th ed. 2009).

117. Laycock, *supra* note 116, at 278.

118. See, e.g., *Zelman v. Simmons-Harris*, 536 U.S.639, 644-45 (2002) (challenging school voucher program as a violation of the Establishment Clause); *Mitchell v. Helms*, 530 U.S. 793, 794 (2000) (challenging a law providing for federally funded equipment to public and private schools); *Agostini v. Felton*, 521 U.S. 203, 208 (1997) (providing public school remedial education teachers to low income students in public and private schools); *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 3 (1993) (providing an interpreter for deaf at Catholic high school); *Witters v. Wash. Dep't of Servs. for the Blind*, 474 U.S. 481, 482 (1986) (discussing a state scholarship for blind student who wished to attend seminary).

119. *Bowen v. Kendrick*, 487 U.S. 589, 593 (1988); see Joel T. Ireland, Note, *The Transfiguration of the Lemon Test: Church and State Reign Supreme in Bowen v. Kendrick*, 32 ARIZ. L. REV. 365, 385 (1990) ("Bowen makes challenges to governmental enactments involving religious institutions significantly more difficult.").

120. *Bowen*, 487 U.S. at 593.

121. *Id.* at 597-98.

122. *Id.*

123. *Id.* at 598.

124. *Id.*

"extensive and continuous" entanglement through oversight and monitoring the religious content of the organization's counseling and teaching.<sup>125</sup> The Supreme Court agreed that the scheme had a legitimate secular purpose: "the elimination or reduction of social and economic problems caused by teenage sexuality, pregnancy, and parenthood."<sup>126</sup>

In our scenario, a federal governmental grant scheme providing funding for education and counseling to relieve some of the burdens of caregiving would also meet the first part of the *Lemon* test.<sup>127</sup> There would be a legitimate secular purpose in funding literature to encourage caregivers to provide financial and emotional support to their family members.<sup>128</sup> That purpose is not inherently religious.<sup>129</sup> If the government scheme offered funding to many types of charitable and service organizations as well as religious organizations, it would bear a striking resemblance to the scheme considered constitutional in *Bowen*.<sup>130</sup>

Because the purpose of filial responsibility statutes is to encourage, in addition to mandate, financial care of elderly and infirm parents, funding of literature encouraging that responsibility would not be considered endorsing religion under the *Lemon* test.<sup>131</sup> In the statutory scheme in *Bowen*, Congress attempted to enlist the aid of many groups, including family members, charitable organizations, voluntary associations, and religious organizations.<sup>132</sup> There was no evidence that the actual purpose in passing the scheme was endorsing religion.<sup>133</sup> However, two arguments were made that the scheme in *Bowen* had the impermissible effect of advancing religion.<sup>134</sup> First, it was argued that the scheme was advancing religion by

---

125. *Id.* at 599-600.

126. *Id.* at 602.

127. *Lemon*, 403 U.S. at 612-13.

128. *Bowen*, 487 U.S. at 603.

129. *Id.* at 605.

130. *See id.* at 593.

131. Spencer, *supra* note 84, at A5.

132. *Bowen*, 487 U.S. at 595.

133. *Id.* at 602-03.

134. *Id.* at 605-06.

recognizing that religious organizations had a role to play in addressing the problems associated with teenage sexuality.<sup>135</sup> Second, it was argued that the scheme was advancing religion by authorizing direct funding to religious organizations.<sup>136</sup> The Court rejected both arguments.<sup>137</sup>

The Court stated, “[n]othing in our previous cases prevents Congress from making such a judgment or from recognizing the important part that religion or religious organizations may play in resolving certain secular problems.”<sup>138</sup> In fact, the Court thought it was “quite sensible” to “recognize that religious organizations can influence values and can have some influence on family life, including parents’ relations with their adolescent children.”<sup>139</sup> Similarly, it is sensible to recognize that in the area of filial responsibility, religious organizations can influence adult children’s relations with their elderly and infirm parents.<sup>140</sup> Thus, granting funds to a religious organization to encourage filial responsibility would not have the impermissible effect of advancing religion.<sup>141</sup>

The second argument was rejected because the Court described the scheme in *Bowen* as one where a wide range of organizations were eligible to apply for funding and the scheme was considered “neutral with respect to the grantee’s status as a sectarian or purely secular institution.”<sup>142</sup> Thus, the sectarian nature of the organization seeking funding was not considered as advancing religion.<sup>143</sup> Similarly, if a wide range of organizations were eligible for funding, funding religious organizations to educate and to counsel regarding filial responsibility would not violate the prohibition on advancing

---

135. *Id.*

136. *Id.* at 606.

137. *Id.* at 606-09.

138. *Id.* at 607.

139. *Id.* at 607.

140. *See id.*

141. *See id.* at 607-08.

142. *Id.* at 608.

143. *See id.*

religion.<sup>144</sup>

While it is likely that the brochure would pass the first prong of the *Lemon* test, the content of the brochure presents the problem of "advancing religion" and may run afoul of the second prong.<sup>145</sup> For example, a brochure developed by a Jewish organization would explain how the Fifth Commandment and Jewish law regarding honoring parents can give psychological support for caregivers who have a filial responsibility.<sup>146</sup> This content is obviously religious and runs the risk of having the "primary effect of advancing religion."<sup>147</sup> The *Bowen* Court approved the AFLA because it did not "necessarily" have "the effect of advancing religion because the religiously affiliated AFLA grantees will be providing educational and counseling service to adolescents."<sup>148</sup> Thus, a service organization like the Jewish Family Service, which renders educational and counseling services to caregivers,<sup>149</sup> would prompt the question of whether there is a substantial risk that aid to the organization would "knowingly or unknowingly, result in religious indoctrination."<sup>150</sup> A brochure that is basically about the Jewish view of the Fifth Commandment could be considered "religious indoctrination."<sup>151</sup> It is questionable whether such a brochure could be designed to avoid that possibility. Thus, the difficulty with this particular brochure would be that it is primarily dealing with the Jewish view of the Fifth Commandment even though its purpose is to give psychological support to

---

144. *Id.*

145. *Lemon*, 403 U.S. at 612-13.

146. LIEBER, *supra* note 14, at 28-29.

147. *See Bowen*, 487 U.S. at 615.

148. *Id.* at 611.

149. *E.g., Caring for our Aging Parents*, Conference on October 29, 2006, presented by Aleinu Family Resource Center, A Program of Jewish Family Service of Los Angeles. Workshop Materials on file with the author.

150. *Bowen*, 487 U.S. at 612 (*citing* Sch. Dist. of Grand Rapids v. Ball, 473 U.S. 373, 385 (1985) (prohibition against "government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith"); *Meek v. Pittenger*, 421 U.S. 349, 370 (1975) ("unacceptable risk" if government funding would be used to advance the religious mission of the religious institution receiving aid)).

151. *Bowen*, 487 U.S. at 611-2.

caregivers.

Finally, use of this kind of brochure may run afoul of the third prong of the *Lemon* test, which prohibits “excessive entanglement with religion.”<sup>152</sup> The constitutional question is whether monitoring of use of government funds by religious organizations would represent excessive entanglement.<sup>153</sup> In *Bowen*, the Court noted that most entanglement problems involved aid to parochial schools.<sup>154</sup> The Court was not concerned about monitoring aid “in the context of a statute authorizing grants to religiously affiliated organizations that are not necessarily ‘pervasively sectarian.’”<sup>155</sup> It is doubtful that a family services organization, like the Jewish Family Service, would be considered “pervasively sectarian.”<sup>156</sup>

For instance, the Jewish Family Service of Los Angeles programs include Adult Day Care, Disability Services, Care Management Services, Personal Care, and Conservatorship.<sup>157</sup> The organization is denominated “Jewish” Family Service and many of its clientele are Jewish, but it does not represent any particular sect of Judaism and would not be considered “pervasively sectarian” as would a parochial school.<sup>158</sup> Even if

152. *Lemon*, 403 U.S. at 612-13.

153. *Id.* at 614-15.

154. *Bowen*, 487 U.S. at 616.

155. *Id.* at 617. Justice Kennedy, in his concurrence joined by Justice Scalia, explained, “We hold today, however, that the neutrality of the grant requirements and the diversity of the organizations described in the statute before us foreclose the argument that it is disproportionately tied to pervasively sectarian groups.” *Id.* at 624 (Kennedy, J. concurring). This seems to collapse *Lemon*’s third prong into *Lemon*’s second prong, the question being whether the grant is used to “further religion.” *Id.*

156. *See id.* at 616.

157. Jewish Family Services of Los Angeles, <http://www.jfsla.org/> (last visited March 8, 2009). Information regarding Adult Day Care, <http://www.jfsla.org/index.php?/programs/results3/&byservice=25&bylocation=&byservername=25&maincat=25>; information regarding Disability Services, <http://www.jfsla.org/index.php?/programs/categories/&byservice=6&bylocation=>; information regarding Care Management Services, <http://www.jfsla.org/index.php?/programs/results3/&byservice=26&bylocation=&byservername=26&maincat=26>; information regarding Personal Care, <http://www.jfsla.org/index.php?/programs/details/2/26>; information regarding Conservatorship, [http://www.jfsla.org/index.php?/programs/details/program\\_protective\\_services/](http://www.jfsla.org/index.php?/programs/details/program_protective_services/).

158. Jewish Family Services of Los Angeles, *About JFS*,

the Jewish Family Service would be considered "pervasively sectarian," the major determinative issue would be whether the grant funds were used to "advance religion."<sup>159</sup>

The case of *Rosenberger v. Rector of the University of Virginia*<sup>160</sup> is also relevant because it involved the issue of the use of government funds for the printing of a student newspaper that had a "Christian viewpoint."<sup>161</sup> The University, through its Student Activities Fund, had refused to pay printing costs for the newspaper.<sup>162</sup> One argument in *Rosenberger* was that funding the printing of the newspaper would violate the Establishment Clause.<sup>163</sup> The Court held that because the "governmental program [was] neutral toward religion," the funding did not advance religion nor aid a religious cause.<sup>164</sup> The emphasis on the neutrality of the governmental program was the determining factor in the Establishment Clause inquiry.<sup>165</sup> Thus, if a government program was neutral in its funding for support of caregivers, a brochure with religious content would arguably be permissible under the Establishment Clause.<sup>166</sup> The elevation of "neutrality" in Establishment Clause jurisprudence supersedes the second prong of *Lemon* regarding "advancing religion."<sup>167</sup> In *Rosenberger*, the Court stated, "A

---

<http://www.jfsla.org/index.php?/about/&id=0> (last visited March 8, 2009).

159. See *Bowen*, 487 U.S. at 624-25 (Kennedy, J., concurring).

160. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 822-23 (1995).

161. *Id.* at 826.

162. *Id.* at 827.

163. *Id.* at 837-38.

164. *Id.* at 840.

165. *Id.* at 839.

166. See *id.*

167. See A. Louise Oliver, *Tearing Down the Wall: Rosenberger v. Rector of the University of Virginia*, 19 HARV. J. L. & PUB. POL'Y 587, 597 (1996) ("Rosenberger indeed should be seen as a victory for the neutrality principle."). "The Rosenberger decision makes clear two points: (1) a majority of the Court supports application of the neutrality principle to Establishment Clause jurisprudence; and (2) the Court, without repudiating the *Lemon* test, continues to avoid application of the test to Establishment Clause challenges." Robert L. Kilroy, *A Lost Opportunity to Sweeten the Lemon of Establishment Clause Jurisprudence: An Analysis of Rosenberger v. Rector & Visitors of the University of Virginia*, 6 CORNELL J. L. & PUB. POL'Y 701, 729 (1997). "No doubt the opinion breaks new ground in the intersection of free speech and establishment clause jurisprudence and will have far-ranging implications for the future." William W. Bassett, *Religious influences in public schools—Religious clubs in*

central lesson of our decisions is that a significant factor in upholding governmental programs in the face of Establishment Clause attack is their *neutrality* toward religion.”<sup>168</sup> Thus, a brochure that is neutral toward religion would have the best chance at surviving an “advancing religion” First Amendment attack.<sup>169</sup> Furthermore, the intersection of First Amendment free speech rights with the Establishment Clause led the Court to interpret its decisions as allowing participation of religious speakers “in broad-reaching government programs neutral in design.”<sup>170</sup> A governmental funding scheme to encourage caregivers of elderly parents would be considered neutral in design and thus funds used to print the brochure would not be considered advancing religion.<sup>171</sup>

One caveat in *Rosenberger* was that there are “special Establishment Clause dangers where the government makes direct money payments to sectarian institutions.”<sup>172</sup> The question is whether the “benefit to religion is incidental to the government’s provision of secular services for secular purposes on a religion-neutral basis.”<sup>173</sup> In *Rosenberger*, the services involved printing of the religious newspaper.<sup>174</sup> Similarly, government funds used to print brochures to help caregivers that had a religious content would not present the dangers that concerned the Court.<sup>175</sup> Therefore, funding of the brochure would possibly not violate the *Rosenberger* Court’s Establishment Clause standards.<sup>176</sup>

---

*public schools*, RELIGIOUS ORG. & L. §2.30, 2-114 (2008).

168. *Rosenberger*, 515 U.S. at 839.

169. *See id.*

170. *Id.*

171. *See id.* at 840.

172. *Id.* at 842.

173. *Id.* at 843-44.

174. *Id.* at 822-23.

175. *See id.* at 845-46.

176. *Id.* at 846.



## CONCLUSION

Filial responsibility laws use the power of the state to enforce the financial obligations of adult children to care for their elderly or infirm parents.<sup>177</sup> Those laws have limited normative value in advancing adult children's loving care of their elderly and infirm parents.<sup>178</sup> Although government programs provide some economic incentives and some psychological support to those who undertake care giving of their elderly parents, the concepts of Jewish Law regarding the Fifth Commandment can add intangible benefits to caregivers.<sup>179</sup> If Jewish Family Service organizations devise printed material for that purpose, filial responsibility could become less of a burden and instead a difficult but uplifting challenge.

---

177. Moskowitz, *supra* note 109, at 422.

178. *Id.* at 435-37.

179. LIEBER, *supra* note 14 at 28-29.