

ANTECEDENTS OF SOCIAL CASEWORK IN MEDIATING DOMESTIC DISCORD

Notes on the Pursuit of "Shalom Bayit" in Classical Jewish Sources

DAVID J. SCHNALL, PH.D.

*Herbert Schiff Professor of Management and Administration, Wurzweiler School of Social Work,
Yeshiva University, New York*

There is substantial evidence from rabbinic sources of the medieval period that court-appointed caseworkers were used to investigate and mediate in matters of domestic discord in a variety of Jewish communities throughout the Middle Ages. Although these early caseworkers were not formally trained and it is not clear whether they were paid for their efforts, their intervention can be considered an antecedent of contemporary casework.

"Shalom bayit," loosely translated as domestic tranquility in family life, is a deeply held value, the importance of which transcends many other areas of social and ritual responsibility in Jewish tradition. Nevertheless, instances of domestic discord are recorded in early scriptural narrative, and it is well known that the topic informs a large portion of talmudic and later rabbinic writ (Lamm, 1980; Linzer, 1972).

There is a less well-known facet, however, of particular interest to practitioners of social work and communal service: the use of court-appointed caseworkers to investigate and help mediate in instances of domestic discord. The practice dates at least to the early Middle Ages in Jewish communities as disparate as those in Morocco, France, Poland, Spain, and Egypt. It is cited in a variety of primary sources—normative rabbinic documents, correspondence, and quasi-judicial rulings of the period—from which this exploratory analysis proceeds.

The clearest examples of the practice reflect a constellation of intergenerational tensions. Conflict between the demands of

spouse and those of parents are common in any culture that places a premium upon family ties. Jewish values place great emphasis upon domestic tranquility, but they also stress the honor due parents. Both values doubtless stem from a healthy respect for the family as an agent of socialization and stability in environments not always hospitable to Jewish life. Nevertheless, powerful values residing in close psychosocial proximity are bound to collide.

In addition, the social circumstances of medieval Jewish life often exacerbated these tendencies. Extended families frequently lived together or very close to each other, perhaps within the same residential complex or cul-de-sac, sharing a common courtyard or entrance way. Newlyweds commonly moved into the home of one set of parents, or elderly parents came to reside in the home of a married child (Blidstein, 1975).

Further, these communities were close-knit, with complex interlocking social, economic, and kinship relations. Maintaining anonymity and privacy in the face of domestic conflict was difficult at best. When circumstances could no longer be borne by the parties alone, they generally came to the local rabbi, who served as counselor and judge in matters ritual,

Dedicated to my mother of blessed memory,
Chanah Schnall.

financial, and familial as well. The stage was thus set for a collision of values between the demands of spouse and those of parents.

Precisely this state of affairs frequently confronted medieval Jewish scholars and religious leaders in considering family values and practices. As an example, Maimonides (Egypt, 1135–1204) ruled:

If she says [to her husband] I do not want your mother or your sister to enter my home nor will I live with them in the same yard, for they do me ill and cause pain, we listen to her. We cannot force a person to reside with others in his jurisdiction (*Yad Hahazakah*, Hilkhot-Ishut 13:14).

Although this example regards a wife's claim, Maimonides ruled that her husband has similar rights. He may ban any member of her family from their home (not just the women, a point to be considered below), though he must provide her with the right to visit them at least once a month and on holidays.

In a comment on the ruling, Rabbi Avraham ben David (France, 1125–1198) distinguishes between circumstances in which the wife preceded her in-laws in the residence and those in which she was the newcomer. In the former case he finds with Maimonides in her favor. However, if she is the newcomer, then she can make no such claim. He does suggest, however, "that we request of them [her in-laws] to correct the circumstances in order not to pain her by their presence in the home (*Hasagot Haravad*).

Both these findings are general judgments codified within works of law. However, they operate within the context of a specific ruling rendered earlier by Rabbi Yitzhak Alfassi (Algeria and Morocco, 1013–1103), which is most important for our purposes. In the case before him, a woman was in conflict with her mother-in-law and refused to reside with her in the same household. She demanded that the older woman be removed from the home,

and she sought community support for her claim. In response, Alfassi finds:

It is the custom in all courts of law that one who claims loss in such a case is heard and we place a trustworthy woman to stay with them [the family] until it is clarified as to who initiated the feud. Then we force her from her fellow (*Shelot Uteshuvot Harif*, 235).

Although painfully terse, several aspects of this ruling are noteworthy. First, it has little of the sweep that characterizes Maimonides' judgment. Although the claimant "is heard" (i.e., her claim is attended), fact-finding, mediation, and substantiation must precede a finding that will put her in-laws out. Indeed, if she is found to have initiated the ill feeling, then her claim will have no merit.

Second, the instrument of choice in investigating the claim is a "trustworthy woman," i.e., one whose word will carry weight. Presumably this person is a woman who is trained and instructed to live with a family, gather data, and present a recommendation to the court.

Indeed, the opening phrase, "it is the custom in all courts," indicates that such problems were common and the practice was well known, further suggesting the ready availability of individuals to serve in this capacity. Nevertheless, it is not at all clear whether the caseworker in question was paid for her services or she served as a volunteer.

Alfassi's ruling in favor of the use of caseworkers to implement court investigation before rendering judgments in such cases of domestic discord had a profound impact on Jewish communities far removed from him in both time and place. It is cited either directly or indirectly by such later authorities as Rabbi Yerucham ben Meshulam (France/Spain, 1280–1350; *Sefer Hamesharim* 23:5), Rabbi Moshe Isserlies (Poland, 1525?–1572; *Darkei Moshe: Tur Even Haezer* 74:3), Rabbi Yehoshua Falk Katz (Poland, 1555–1614; *Drisha: Tur Even*

Haezer), Rabbi Vidal Toulosa (Spain, late 14th century; *Magid Mishna*), and Rabbi Yosef Caro (Turkey and Palestine, 1488–1575; *Bet Yosef: Tur Even Haezer*). Thus, there is overwhelming evidence that court-appointed casework was a well-known and respectable undertaking as reflected in classic Jewish sources throughout the Middle Ages.

An interesting sidelight to the affair is embedded in a second ruling by Rabbi Yosef Caro, along with a note by Rabbi Moshe Isserlies. In this ruling, Caro, paraphrasing Maimonides, writes:

And she who says it is not my wish that your *father*, your mother, your *brother* or your *sister* come into my home, and I will not live with them in one yard, for they do me ill and cause me pain, we listen to her (*Shulkhan Arukh: Even Haezer*, 74:10).

To which Isserlies adds,

It is the custom to place a trustworthy *man* or *woman* (italics added) to live with them until it is clarified who initiated the conflict and quarrel (*Hagoat Harama*).

In a thrust toward sexual equality within this context, these authorities expand both Maimonides and Alfassi by including the male in-laws as those against whom a wife may have a claim and allowing for both male and female caseworkers to serve as mediators and investigators.

This expansion is not lost on later analysts. For example, Rabbi Avraham Eisenstadt (Lithuania, 1813–1868; *Pithei Teshuva: Shulkhan Arukh Even Haezer* 74:1) suggests that Maimonides' ruling followed a strict interpretation of earlier talmudic writ. Apparently, dissension between female in-laws was a commonplace occurrence in ancient Jewish life, and such strains were stipulated in legal proceedings (*Talmud Bavli: Yevamot* 117a). Therefore, Maimonides requires no fact-finding procedure, but permits the wife's claim to stand unsubstantiated by independent evidence.

However, since Caro and Isserlies require the report of an investigative caseworker, claims against any in-law could be entertained, and the gender of the caseworker therefore was of no consequence. Perhaps because it was less common for male in-laws to be party to such tension or because in a society of strict sexual mores they simply had less contact with daughters-in-law, Alfassi considered it appropriate that the caseworker be female. Alternatively, he may have felt that a woman would be more effective and more felicitous in the role. In any event, by the 16th century, Rabbi Isserlies and the Jews of Poland employed both male and female caseworkers to entertain claims against any in-laws.

Although somewhat less well developed, it appears that court-appointed caseworkers were also used to help mediate discord directly between husband and wife. For example, in a ruling that lacks the sweep of his earlier-cited judgment, Maimonides writes:

If he claims that she is not fulfilling [her domestic responsibilities] and she claims that she has never ceased from them, then a woman or neighbors should be placed between them. But only to the extent that the judge deems it possible (*Yad Habazakah, Hilkhot Ishut* 21:11).

Clearly, Maimonides is less than enamored with the thought of installing a caseworker in the home of a contentious couple. Thus, he omits the formulaic word "trustworthy" found in references above. Instead, he is satisfied merely with "a woman or neighbors," suggesting that this is a far less formal arrangement. He further cautions that the intervention be applied only "to the extent that the judge deems it possible," leaving the ultimate disposition to the discretion of the authorities and the flow of contemporaneous circumstances.

By contrast, in a far more explosive affair, Rabbi Yosef Ibn Abitur (Spain and Syria, 940–1020) provides us with perhaps the earliest reference to this practice in a much

more affirmative vein. He was petitioned regarding a wife who wished to sue for divorce and the requisite support on the grounds of repeated physical abuse.

Abitur found that, if her claim was substantiated by witnesses, then the court should warn the husband sternly (*Teshuvot Hageonim: Sharey Zedek*, IV 4:42). During a provisional period following this warning, she should remain in the home "at the hand of a trustee." If her husband persists, then the court would rule in her favor.

In this case, the caseworker served an investigative function. However, Abitur's phrase, "at the hand of a trustee," implies not only investigation but perhaps protection for the wife as well. In addition, the Hebrew term for "trustee" (*ne-e-man*) is in the masculine, suggesting that Abitur predated (or outdid) Isserlies' use of male caseworkers. It also may confirm that the "trustee" was there, at least in part, to protect against further physical abuse.

Almost 600 years later, Rabbi Moshe Isserlies used the investigative caseworker in a similar case. Here too, a wife claimed that she was physically abused by her husband. However, he countered that she taunted him, cursing and insulting his family. Although the claims formed *prima facie* evidence for dissolution of the marriage in his mind, spousal support was at issue. Isserlies ruled that objective observers (here female) should be placed in the home to investigate. In addition, lest there be any misapprehension, he had this to say about domestic violence:

A man who strikes his wife sins as if he struck his fellow. If he persists [after warning], it is for the court to imprison him, to excommunicate him, to flog him with all forms of lash, and to force him under oath to desist (*Darkei Moshe: Tur Even Haezer* 154:3).

In sum, there appears to be substantial evidence from primary rabbinic sources of the medieval period that court-appointed caseworkers were employed in matters of domestic concern within a broad variety of

Jewish communities throughout the Middle Ages. Of course, it is not implied that they underwent professional training in any way similar to that required of contemporary caseworkers, the notion of education in preparation for any type of practice being in its bare infancy. In addition, it is not clear whether this was a formal vocation, i.e., a standing service that entitled its practitioners to a fee for their efforts. The service may have been provided ad hoc by voluntary members of the communal leadership cadre. Indeed, according to one source, neighbors could serve as well.

Finally, the function, as outlined in this context, was largely investigative, forensic, and perhaps even protective, rather than therapeutic. It was family service in its most concrete form. Nevertheless, common sense suggests that the resulting recommendations might easily have been used for purposes of family mediation short of divorce.

There are, however, many similarities to contemporary casework, permitting the evidence submitted here to be considered an antecedent at the very least. Indeed, the very context in which such an instrument was applied, domestic discord, suggests it was an early model of casework, as do the functions outlined and the frequent recruitment of women for the task.

The research thus far suggests that the use of caseworkers is unique in the corpus of Jewish tradition. Evidently, casework as it regards family practice has a long and distinguished history within the Jewish community, dating back some ten centuries and spanning both Eastern and Western Europe, North Africa, and the Middle East.

REFERENCES

- Alfassi, Yitzhak. (1954). *Shelot Uteshuvot Harif* (edited by Zev Wolf Leiter). Pittsburgh: Ramban Institute.
- ben David, Avraham. *Hasagot Haravad*.
- ben Meshulam, Yerucham. (1959). *Sefer Hamesharim*. Jerusalem.
- Blidstein, Gerald. (1975). *Honor thy father*

- and thy mother.: Filial Responsibility in Jewish law and ethics.* New York: KTAV and Yeshiva University Press.
- Caro, Yosef. (1965). *Shulkhan Arukh: Even Haezer*. Jerusalem: Hatam Sofer Institute.
- Eisenstadt, Avraham. *Pithei Teshuva: Shulkhan Arukh Even Haezer*.
- Falk Katz, Yehoshua. *Drisha: Tur Even Haezer*.
- Ibn Avitur, Yosef. (1966). In: Nissim Modai, ed. *Teshuvot Hageonim: Sharey Zedek*. Jerusalem: Klal U-Prat Publishers.
- Isserlies, Moshe. (1954). *Darkei Moshe: Tur Even Haezer*. New York: Peninim Publishers.
- Lamm, Maurice. (1980). *The Jewish way in love and marriage*. New York: Harper and Row.
- Linzer, Norman. (1972). *The Jewish family*. New York: Federation of Jewish Philanthropies.
- Maimonides, Moses. (1986). *Yad Huhazakah*. Brooklyn: Moriah Press.
- Toulousa, Vidal. *Magid Mishna*.