



RUDERMAN SYNAGOGUE INCLUSION PROJECT



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A TEXT STUDY ON DEAFNESS

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I. Introduction

- A. In this text study, we will first wrestle with the rabbinic treatment of deafness, and then we will ask how this informs our modern Jewish values.
- B. Be prepared for the fact that some of these texts may be troubling. We encourage you to recognize that times have changed, and our understanding of the condition of deafness and the ability of people who are deaf (like so many others with disabilities) to participate most fully in our lives has changed as well.
- C. The main goals of this text study are:
 - 1. to understand the distinctions that the rabbis made about deafness
 - 2. to unpack what those distinctions mean from a values-based perspective
 - 3. to apply those to modern circumstances and understand what a judicially informed attitude might be

II. Dispensing with the obvious

- A. If we were to poll a random audience of knowledgeable Jews or Christians about the most basic biblical source on deafness, they would probably all point us to the same verse:

“You shall not curse the deaf or put a stumbling block before the blind. You shall fear your God: I am Adonai.” Leviticus 19:14
- B. This is not a particularly interesting text. In a simple prohibition, it tells us not to abuse blind people or deaf people.
- C. Do you feel like we needed a biblical text to tell us not to do that?
- D. Does it actually tell us anything useful about the proper Jewish attitude toward deafness?



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E. All joking aside, there are some interesting things we can unpack from the ethical imperative of this text, but you may want to look at our text study on an introduction to Judaism and disability for that because they are not only applicable to deafness.

III. Let's not hide the ball: The rabbinic understanding of deafness was incomplete, and their legal stance reflected it¹

A. *"A deaf-mute, a shoteh [a person with an intellectual disability], and a minor are fit to have their worth vowed, and to be evaluated, but they are not fit to vow [on another's worth] or to evaluate, because they are not considered capable of intent. A baby less than a month old can be vowed, but not evaluated." M. Arachin 1:1*

1. What does this mean?
2. It seems clear that a deaf-mute, the rabbinic formulation most commonly used to refer to deafness, was a person of value, but he or she couldn't provide an opinion as to someone else's value.
3. We are told that it's because "they are not considered capable of intent." Let's assume here that "intent" is a proxy for knowledge, willful understanding, and adult agency, which is what this usually means when it's found in this kind of context. What do we think about the assertion that a deaf-mute person is not capable of intent?
4. Intent is often the key to ritual, agency, and legal culpability in the rabbinic world. We have to accept that, in the rabbinic mindset, determinations of intent were critical. In a world before systematized sign language, how would we make a case-by-case determination of the intent of a deaf person?

IV. Maybe it wasn't so black-and-white: A rabbinic nuance about intent

1. *"The occurrence of [injuring] a deaf-mute, a shoteh, or a minor is unfortunate. One who injures them is liable, and if they injure others they are exempt. The slave and the woman: their occurrences are unfortunate. One who injures them is liable, and when they injure others they are exempt. However, they [might] pay after some time — [if the] woman becomes divorced or the slave is freed, then they are liable to pay." M. Baba Kamma 8:4*

¹ With grateful acknowledgment to Bonnie L. Gracer, MA, MSW, whose article, "What the Rabbis Heard: Deafness in the Mishnah", published in the spring 2003 volume of *Disability Studies Quarterly*, was invaluable in the identification of these sources. The article can be found at <http://dsq-sds.org/article/view/423/593>, and is available there free of charge as of June 27, 2017.



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2. What's happening here?
3. What are we really saying when we say that a class of people is not liable if they cause injury to another person?
 - a. Are we saying that they don't understand what they do?
4. Why are the deaf-mute, the *shoteh*, and the minor treated differently from the slave and the woman?
 - a. The first category exemplifies a lack of intent through lack of understanding, whereas the second category shows a lack of agency.
 - b. For that second category, it's important to note that they are treated differently once they get their agency back, either through divorce or freedom.

B. Just in case there is any doubt that the issue is an issue of agency, let's read another passage.

"[I]f an ox of a person of sound senses gored the ox of a deaf-mute, a shoteh, or a minor, he is obligated. [I]f an ox of a deaf-mute, shoteh, or a minor gored the ox of a person of sound senses, he is exempt. [I]f an ox of a deaf-mute, a shoteh, or a minor is gored, the court appoints a guardian over them, and they testify against them in the presence of the guardian." M. Baba Kamma 4:4

1. Same issue of unequal legal status here as in M. Baba Kamma 8:4 above, right?
2. But here, we have an addition that teaches us what we really need to know. Now, we don't have to guess: if the deaf person is the owner, they are not liable; if they are the victim, they get a court-appointed guardian. Why does the court appoint guardians? What are we implicitly saying about the person for whom a guardian is appointed?

C. But then another part of the Talmud reads:

"A deaf person may indicate and be indicated to [with signs between contracting parties]. Ben Beteirah says, 'Mouthing [words] and being mouthed to [is effective] for movable property.'" M. Gittin 5:7

1. If they have no agency or no legal status, how would such a person sell property?
2. It seems that you don't need to be able to hear or speak to engage in a legal transaction. What's the difference here?



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- a. The desire to engage in the transaction itself shows intent.
 - b. Unlike the previous texts which are about liability, particularly how one should avoid imposing liability on someone who doesn't understand, this text shows that we should not avoid honoring the transaction of someone who appears to have intentionally engaged in said transaction.
3. Is it possible that this could refer to deafness only after intent could be conclusively determined, say, because the person gained hearing later in life? Let's look at another text.
- D. *"[If] a deaf-mute marries a hearing woman, or if a hearing man marries a deaf-mute — if he desires he can remove [divorce] her, if he desires he can maintain her. Just as he marries her using signals, so, too, he can remove her using signals." M. Yevamot (14:1)*
1. First of all, it's nice to know that, in the rabbinic world, it was perfectly okay for deaf people to get married and get divorced.
 2. Secondly, it seems clear that an individual is still able to get married and divorced if he or she is someone who communicates by sign language.
 3. What do you think this demonstrates about the broader legal status of deaf people in the rabbinic world? What did it say about inclusion in their world when unwarranted liability was not a concern?
 4. Do we feel comfortable saying that the blanket statement from our first source that a deaf person lacks intent was in fact a rule that was situationally modified when there was proof that this was not true?
 5. What else do we think about these texts?

V. The heart of rabbinic thinking: Deafness and ritual obligation

- A. The rabbis enjoyed legal discussion. They could talk for hours about a goring ox or personal injury law, but in the hierarchy of their world, ritual clearly held top billing.
- B. Given that, we can see the purest expression of the way that the rabbis thought about the place of deaf people in society based on the way they spoke about deaf people and ritual obligation.



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C. “[Certain types of people] may not set aside Terumah [produce consecrated for priestly consumption], and if they did set aside Terumah, their Terumah is not [valid] Terumah: the deaf-mute, and the shoteh, and the minor, and one who sets aside Terumah from what does not belong to him. ... A deaf person who can speak but cannot hear may not set aside Terumah. But if one did set aside Terumah, that one’s Terumah is valid Terumah. A deaf person that the Sages refer to in all cases can neither hear nor speak.” Mishnah Terumat 1:1-2

1. The first construction is familiar, right? People who cannot demonstrate proper intent cannot do the all-important work of separating the *Terumah* offering.
2. But wait, there’s an exception! A deaf person who can speak but cannot hear. Who does this person represent?
 - a. They are someone who is deaf, but they learned to speak.
 - b. While this could mean that they were not always deaf, all we really know for sure is that it means that they found some way to learn how to speak, showing that they could be educated.
3. They’re still not supposed to do it, but if they do it, and they do it right, then it’s valid. What does this mean?
 - a. There is no benefit of the doubt here, but there is also no meaningless restriction.
 - b. If it’s been done, and done right, then there’s nothing inherently wrong with it just because it came from a deaf person.
4. And then it continues with a seeming non-sequitur, that the deaf person referred to by the sages was always a deaf-mute. What does this mean?
 - a. The rabbis here are distinguishing between someone who cannot demonstrate being educated or having intent in the context of their society and someone who can, or, in their words, the deaf-mute versus the deaf person who can talk.
 - b. What they really appear to be saying is that the various rabbinic prohibitions on what deaf people can and can’t do only apply to those who have not demonstrated some ability to learn.
5. How might this inform our world today?



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VI. What rabbinic texts from the 19th century can tell us about the implications of these standards in a modern world²

A. *“In the case of a deaf person who has been taught to speak ... the leading authorities of our generation are in disagreement. Some say that such a person is like a hearing person in every way, and has the legal status of one who speaks but does not hear. Others categorize him as [without intent]..., giving him the same status as one who neither speaks nor hears. Others are undecided and judge strictly in each case, because of the doubt.*

...

This, however, was the prevalent attitude to deaf people at that time ... Medical writings from that period upheld the same views, and it is only later on that the doctors’ opinions were amended, until they reached the conclusion that deaf people have mental powers (and only a difficulty in bringing this potential into full expression) and this view has been borne out in the experience of our own times. There is no contradiction here with the words of our sages, who only referred to deaf people with no opportunity to access their own intellectual potential. In my humble view we must not follow these great minds in deciding that a deaf person’s education has no significance. ...There is no doubt that research in the natural sciences has no authority to contradict the traditions received from the sages. Here, however, we are simply interpreting the sages, to determine whether they made no distinction between one deaf person and another, or whether their intention was only to rule on a deaf person without education.” Rabbi Azriel Hildesheimer

1. This text, both because it is excerpted and a little disjointed, can be a little hard to follow. This rabbi from the 19th century points out that there was a rabbinic disagreement regarding whether or not the special legal status of deaf person still existed. He seems to accept the fact that, since in their modern 19th century understanding, any deaf person could now be educated, they could now “*access their own intellectual potential.*”
2. This rabbi postulates, therefore, that the rabbinic category only referred to people that could not access their own intellectual capacity, a type of person that no longer exists. He seems to indicate that this was a subject of disagreement in 19th century Europe.
3. Given all of the text that we just studied, how do we feel about the distinction that this rabbi offers?

² A grateful thanks to Ed Frim and the United Synagogue for Conservative Judaism’s Ruderman Inclusion Action Committee for identifying and sharing this text.



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4. If we accept the distinction, can we also accept that, under the rubric that the rabbis themselves established, they would now give full rights and responsibilities, ritual and otherwise, to deaf people, since any deaf person can now be educated?

VII. Conclusion

- A. The rabbis had an incomplete understanding of the phenomenon of deafness, and an inability to educate every potential deaf person.
- B. The rabbis always extended some rights, like marriage and the sale of property, to deaf people.
- C. Where the rabbis removed rights and obligations, it was because they could not be certain that the person in question had the requisite understanding to exercise those rights or discharge those obligations.
- D. When that person demonstrated otherwise, the rabbis changed their status.
- E. It seems likely therefore that none of the rabbinic prohibitions on what deaf people can or can't do have survived into this day, when we can communicate with everyone.