

**Inclusion of People with Disabilities  
in Jewish Liturgical Practice**  
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Thesis submitted in partial fulfillment of the requirements for Ordination  
Hebrew Union College – Jewish Institute of Religion  
2008

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## Digest

Judaism has dealt with issues of inclusion of people with disabilities for millennia. The purpose of this thesis is to explore the *halakhic* traditions regarding people with disabilities and how the Reform Jewish community in America continues to struggle with those same challenges.

Chapter 1 focuses on the traditional *halakhic* understanding of Judaism as a religion defined by the fulfillment of *mitzvot* and how people with certain disabilities are often exempt from performing ritual obligations. Therefore, as not being required regarding *mitzvot* to the same extent as others, people with disabilities were unable to participate fully in Jewish religious and social life.

Chapter 2 explores the impact of being exempt from *mitzvot*. Within the Jewish tradition, obligation to and performance of *mitzvot* confers dignity. Although one may perform *mitzvot* for which he is not obligated, such actions are considered less holy than fulfilling required obligations. While the Rabbis sought to ease the burden of people with disabilities by not requiring them to fulfill *mitzvot* deemed impossible for them, this inherently lessened the degree of holiness that they could achieve.

Chapter 3 provides a brief history of the disability rights movement in America and how this influenced Jews and non-Jews alike to engage more actively in including people with disabilities in all aspects of communal life. Through a series of legislation, people with disabilities slowly gained equal rights according to American law. Following this trend, American Reform Judaism under the auspices of the Union for Reform Judaism (URJ) sought positive ways



of including all of its members in synagogue life. *Halakhically*, this means that we choose to think of our responsibilities in terms of *chiyuv*, obligation, as opposed to exemption. We now consider the category of *chiyuv* to be a positive category, something to be extended as widely as possible, rather than as a description of an unchanging social reality. In doing this, we move the focus of religious participation from the perspective of exclusion to one of inclusion.

Chapter 4 discusses how URJ congregations are now seeking to address the needs of all their members, specifically in areas from which they had previously been excluded, such as in *tefillah*. Although the majority of Reform synagogues have begun such work, significant barriers remain to making our congregations welcoming and accessible to all Jews.

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# Chapter 1

## Traditional Rabbinic Texts in Defining the Role of People with Disabilities

### Why do the Rabbis categorize people?

Judaism centers largely on the commandments, or *mitzvot*, one is required to perform. The basis of these *mitzvot* originates in the Bible, and was elaborated upon in the later rabbinic texts including the *Mishnah* and *Talmud*. *Mitzvot* are regarded as primary in religious praxis.<sup>1</sup> The *mitzvot* both instruct the individual on how to lead a meaningful life and constitute a concrete expression of the covenant between God and the Jewish people.

In rabbinic literature, the dignity of individuals is defined in terms of responsibility for performing *mitzvot*. To be considered a full and equal member of society, one must take upon oneself the responsibility of fulfilling the legal obligations imposed by the Torah as interpreted by the Rabbis. Full participation in Jewish communal and religious life is thus expressed through the concept of *chiyuv*, the obligation to fulfill *mitzvot*. To be *chayav*, obligated, to these laws requires that an individual possesses independent status and the ability to perform legal transactions for oneself.

In order to be *chayav*, a person must be physically and mentally able to perform a particular *mitzvah*. Because of the significance of determining who

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<sup>1</sup> Leibowitz p. 67

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was to be considered *chayav* for various *mitzvot*, the Rabbis explored different categories of people in detail.

Perhaps this need for classification stemmed from the fact that the earliest Rabbis considered themselves heirs to the Pharisees, a group concerned primarily with maintaining the sanctity of the Temple in Jerusalem.<sup>2</sup> This role required attention to the detailed priestly laws, and therefore, the continuation of this tradition within Jewish literature was logical. The early rabbinic texts in particular were intended to serve as "operating manuals" of sorts for the burgeoning rabbinic Judaism.<sup>3</sup> As the traditional practices surrounding the Temple could no longer be performed, the Rabbis needed to establish guidelines for numerous emerging expressions of faith. Therefore, expanded explanations of precisely who was obligated to fulfill *mitzvot* gained importance.

For the Rabbis, two main issues emerged regarding the determination of one as *chayav* or not: physical and mental ability. In this context, mental ability is defined by the rabbinic term *da'at*, the basic intellectual competence required to be held responsible for one's actions. The Rabbis deemed that people should be exempt from *mitzvot* outside of their capacities. Therefore, when one is declared to be lacking in *da'at*, one is exempt from activities that would require a degree of discernment.

Following this system of logic, the Rabbis also determined that people with physical disabilities were not required to fulfill *mitzvot* that lay beyond their physical abilities. For example, a person without hands is exempt from *mitzvat*

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<sup>2</sup> Holtz p.130

<sup>3</sup> Abrams p. 151

*netilat lulav* because he is physically not able to grasp the *lulav* in his hand as the *mitzvah* requires.<sup>4</sup>

More so than the *Tanakh*, the *Mishnah* tends to differentiate between disabilities. This may be attributed to the fact that some disabilities had a greater impact than others in the world of the Rabbis.<sup>5</sup> Just as the priestly system had banned priests with ritual impurities from participation in the Temple cult,<sup>6</sup> so too the early Rabbis estranged themselves from those who could not participate in their evolving religious system. The early Rabbis adapted to a Temple-free world by focusing their religious observances on an intellectual and oral system. Therefore, those who could not communicate effectively were considered to have a more pronounced degree of disability than others.<sup>7</sup>

Auditory, verbal, and mental faculties determined one's ability to participate in the Sages' system of learning and debate. Any disabilities that precluded function in any of these areas made their inclusion in this intellectual world virtually impossible. This level of disability usually fell into the category of *cheresh*, *shoteh*, *v'katan* (the "deaf-mute" or the person with hearing and speaking disabilities, the person with mental limitations, and the minor). All people who fell into one of these categories were not considered to possess *da'at*, and therefore, they were not considered *chayav* with regard to *mitzvot*.

Carl Astor explains that this complete exclusion of the *cheresh* and the *shoteh* from responsibility for *mitzvot* differed from the *halakhic* expectations of

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<sup>4</sup> *Beit Yosef* 651:7; *Babylonian Talmud Sukkah* 37a and 42a; Scheinberg pp. 112-113

<sup>5</sup> Abrams. p. 152

<sup>6</sup> Leviticus 21:18; 22:22

<sup>7</sup> Marx pp. 377-8, 398

people with other disabilities such as people who are blind or lack certain types of mobility.<sup>8</sup> People considered both *compos mentis* but who had physical limitations that prevented them from fulfilling particular *mitzvot* (as in the case of the man without hands mentioned previously) were exempt only from those *mitzvot* that were impossible to perform because of their particular limitations. While these people were considered marred, they were able to function within the system of the early Rabbis. Abrams points out that the only instances when such people disqualified in the *Mishnah* appear where the Rabbis are recapitulating the priestly literature or in instances when they sought to exclude as many people as possible from a particular venture.<sup>9</sup>

While under the Priestly system the "blemished" were completely excluded from performing priestly functions without regard for their exact disability, the Rabbis began to redefine the notion of absolute perfection. The most important characteristic required to participate in the religious and cultural system was *da'at*. While those who are considered to lack *da'at* are completely exempt from participation, this is not always a permanent classification. In addition, people with certain physical limitations are not entirely excluded from the system of the Rabbis like they were in previous eras.

### **Categories of Complete Exclusion: *Cheresh* and *Shoteh***

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<sup>8</sup> Pp. 98-9

<sup>9</sup> The example provided by Abrams for this type of exclusion comes from *Mishnah Sanhedrin* 8:4 where disabled parents are disqualified from testifying against a rebellious son. Since there is nothing inherent to a physically disabled person preventing them from such actions, Abrams suggests that this limitation was included to reduce the number of such accusations within the system.

The status of the *cheresh* and the *shoteh* in terms of the performance of ritual obligations and duties tends to be quite low. People deemed to fall into one of these categories are considered mentally deficient and therefore not obligated to fulfill *mitzvot*.<sup>10</sup> Rashi's comment<sup>11</sup> explaining the term *shoteh* on *Chagigah* 3b supports this understanding: "Who is a *shoteh*? One who is repeatedly referred to as one who is free from the commandments and any punishment, whose purchasing is invalid and whose selling is invalid." This definition sets up the primary understanding of the *cheresh* and *shoteh* as people considered exempt from numerous positive commandments due to their questionable mental status.

### Cheresh

The term *cheresh*, often translated as deaf-mute, frequently appears paired with the term *shoteh*. As mentioned previously, the *Talmud* tends to associate this condition with mental impairment in addition to its physical manifestations. *Chagigah* 2b presents the general statement that "A person who is deaf and mute is not of sound mind."<sup>12</sup> The fact that each of these symptoms of one deemed a *cheresh* is elucidated elsewhere explains why this term seems to have two slightly different meanings. An indication of this appears in the Mishnaic discussion of who may separate the *terumah*, the priestly offering, from among the harvested crops.<sup>13</sup> The first two *mishnayot* of the first chapter of *Terumot* demonstrate the nuances of this classification when compared to one another. *Mishnah Terumot* 1:1 reads "There are five who may not separate the

<sup>10</sup> Astor p. 61

<sup>11</sup> Rashi, *B. Chagigah* 3b, s.v. *eizehu shoteh*.

<sup>12</sup> Astor p.42; see also *Gittin* 23a

<sup>13</sup> Leviticus 21:17-21



priest's share of the produce, and if they do so their separation is not valid: the *cheresh*, the *shoteh*, and the minor...." In contrast, the following *mishnah* seems to put conditions upon when the *cheresh* can indeed be relied upon for this task. *M. Terumot* 1:2 reads, "A *cheresh* who speaks but cannot hear should not separate the priestly offering, but if he did separate it, his priestly offering is valid. The *cheresh* of whom the sages spoke in all cases is one who can neither hear nor speak."

It seems from these two *mishnayot* that two possible manifestations of the *cheresh* exist. In the first, the *cheresh* cannot hear nor can he speak. In the second, he cannot hear but does have the ability to speak. In a time before occupational therapies, sign language, and the other methods that a person who is deaf might today use to communicate, a person who was born deaf or who lost his hearing at an early age might indeed have no means of sophisticated communication with others. In contrast, a person who lost his hearing later in life, perhaps due to an accident, illness, or old age, might retain the ability to share meaningful communication with others. In a society in which oral communication played such a central role not only in communal life but also in religious practice, the distinction between these two types of *cheresh* was rooted in the individual's ability to communicate with others.

Bonnie Gracer draws a parallel between this importance of speech to the leadership in the time of the *Mishnah* and the recitation of *Shema*, a prayer central to Jewish liturgy.<sup>14</sup> The opening word of this prayer, *shema*, literally means "hear." The *Mishnah* records the following debate as to whether a Jew

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<sup>14</sup> P. 92

may fulfill his obligation to recite *Shema* if he cannot hear his own words: "If a man recited the *Shema* but not loud enough for himself to hear, he has fulfilled his obligation. R. Yose says: He has not fulfilled it."<sup>15</sup> Gracer cites Pinchas Kehati's commentary on this particular statement. Kehati points out that while the *halakhah* follow the opinion of R. Yose *lekhatilah* – one ought to say the *Shema* loudly enough to hear one's own words. However, if one did not say the *Shema* audibly, one has nonetheless fulfilled the obligation. Rambam reiterates this ruling in his writing using almost identical language as the *Mishnah*.<sup>16</sup> The *Shulkhan Aruch* uses slightly different wording: "One must hear with one's ears what one utters with one's mouth, but if one did not hear, he still fulfills the obligation, as long as his lips utter [the words]."<sup>17</sup> Rabbi Solomon Ganzfried's summary of Jewish laws emphasizes the importance of this verbal expression of faith by adding that others should be able to hear a person as well. He writes, "It is customary to say the *sh'ma* with a loud voice to arouse attention."<sup>18</sup> According to these interpretations of the original *mishnah*, one who cannot talk would not be able to fulfill the *mitzvah* of *Keri'at Shema*.

The second half of the *mishnah* continues with a statement that provides more room for leniency in accepting how one recites *Shema*. The *mishnah* continues, "If he recited it without clearly pronouncing the letters, R. Yose says: He has fulfilled his obligation. R. Judah says: He has not fulfilled it." Unlike the preceding case, the *halakhah* follows the opinion of R. Yose here. However, in

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<sup>15</sup> *Mishnah Berachot* 2:3

<sup>16</sup> *Mishneh Torah, Hilchot Keri'at Shema* 2:8

<sup>17</sup> *Orach Hayim, Hilchot Keri'at Shema* 62:2 as cited by Astor p. 63

<sup>18</sup> P. 53

this instance, the *tanna* accepts the recitation of one who did not speak as clearly. Considering people with disabilities, this statement might permit one who has a speech impediment to be included in this central *mitzvah*. This entire *mishnah* emphasizes the importance of using words and speech for communication. While the *halakhot* that follow from these statements do not allow for the inclusion of people who are deaf or hard-of-hearing in the recitation of *Shema*, they demonstrate that such issues were present for the redactors of the *Mishnah*. Just as in the first half of the statement, the ideal way of performing the *mitzvah* is given. However, in each case there is also a level of leniency that permits one to fulfill his obligation even if he did not do the actions perfectly. Although the *tannaim* did not speak directly regarding people with disabilities, they did consider the issues that might arise in defining a person with disabilities within the Jewish community.

Despite the emphasis placed on the role of hearing and speech in the previous statements, there also existed a *tannaitic* understanding of communicating using actions rather than words. *Mishnah Gittin* 5:7 begins by stating that, "A *cheresh* may communicate by signs and be communicated with by signs." This statement indicates that business may be conducted using communication methods other than speech. The *mishnah* continues by adding an additional method of communication that is acceptable, namely, lip reading. "Ben Bathyra says: He may communicate by movements of the mouth and be communicated with by movements of the mouth." In this expansion on the

previous statement, the tradition demonstrates the existence of various kinds of communication available for legal transactions.

As this *masechet* of the *Mishnah* focuses on the laws of divorce, the use of such movements are accepted here as legitimate means of communication in a significant legal transaction. Similarly, the same types of communication may be used in the formation of a marriage.<sup>19</sup> One section of *Mishnah Yevamot* 14:1 reads, "Like as he married her by signs, so may he put her away by signs." This passage refers back to *Gittin* 5:7. Since a man is permitted to use sign language to enter into a marriage, he must therefore also be able to use the same sorts of physical motions to end a marriage. Regarding the critically important legal transactions surrounding marital status, the *Mishnah* permits the use of physical movements in communication instead of relying solely on verbal language. This demonstrates awareness of the need for other means of communication. In addition, the Rabbis also decreed that a *cheresh* may marry in spite of a lack of *da'at*.<sup>20</sup> However, Maimonides makes it clear that this law comes from the work of the Rabbis rather than being a Biblical *mitzvah*.<sup>21</sup> This example demonstrates a major leniency on the part of the Rabbis as the possession of *da'at* typically functions as a minimal requirement for marriage. However, it seems that the Rabbis wanted to bring the *cheresh* into social and communal life under a level of supervision. In permitting a person deemed a *cheresh* to marry, he was able to build a household as did others in the community. Therefore, while he might not

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<sup>19</sup> Gracer p.93

<sup>20</sup> *Talmud Bavli, Yevamot* 112b

<sup>21</sup> *Mishneh Torah, Hilkhos Ishut* 4:9

be able to fully participate in every aspect of religious and social life, he was physically and officially a part of the community.

According to the rabbinic classification of the *cheresh*, there is a primary and a secondary understanding of people with disabilities surrounding their hearing. In virtually all cases, the *cheresh* is excluded from the responsibility of fulfilling the positive commandments. However, the texts indicate that exceptions were made in cases in which a person with hearing impairment could effectively communicate. In the cases of the *cheresh*, as well as the *shoteh*, which will be explored next, the reasoning behind the complete exclusion from *halakhic* responsibility rests on the assumption of an inability to communicate with others. When a person categorized as having either of these disabilities recovers or retails effective means of communicating with others, he is considered to retain a level of *da'at* that permits him to be included more fully in the communal life and *halakhic* obligations.

### Shoteh

On the most basic level, the term *shoteh* refers to one who lacks *da'at*. However, the term itself can infer various reasons for this status. Abrams explains that the primary use of *shoteh* is in referring to a person with profound mental illness.<sup>22</sup> This idea is reinforced in Marcus Jastrow's dictionary entry for *shoteh* that provides the word, "madman" as the first possible translation of the term.<sup>23</sup> According to this understanding of *shoteh*, little if any distinction is made between a person with an illness such as schizophrenia, a developmental

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<sup>22</sup> P. 139

<sup>23</sup> P. 1531

disability, or one of low intelligence. Because of this ambiguity, various sources and thinkers have sought to provide basic guidelines for determining whether or not a person should be labeled as a *shoteh*.

*Chagigah* 3b to 4a in the *Talmud Bavli* provides the primary list of symptoms of the *shoteh*. The text of the *Gemara* reads, "Who is a *shoteh*? One who goes out alone at night, one who lodges in a cemetery and one who tears his garments." An Amoraic dispute follows this statement. According to Rav Huna, an individual must perform all three of these actions to be considered a *shoteh*. In contrast, Rabbi Yochanan expresses the opinion that a person need only display one of these symptoms to be deemed a *shoteh*.

Regarding this dispute, Rabbi J. David Bleich<sup>24</sup> notes that the writers of the *Gemara* understood that every possible action could at some point have rational thought behind it. Therefore, the *Gemara* text is not prepared to accept apparently aberrant behavior as the sole method of determining mental competence. In contrast, if these behaviors are performed due to irrational thought, the three specific actions pointed out by Rav Huna seem disconnected. Therefore, the *Gemara* continues by elucidating more about each of these three actions.

What is the case? If [this person] performed [these specified actions] in an insane manner, even one of them [should be enough to determine mental incompetence.] If he did them all in a rational manner, [then performing] even all of them should not [render him to be considered mentally incompetent]. If he [only] spent the night in a cemetery, I might say that he did it in order that the spirit of impurity rest upon him. If he [only] went out alone at night, I might

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<sup>24</sup> P. 124

say that he was seized by *ganderipos*.<sup>25</sup> If he [only] tore his garments, I might say that he was lost in thought. However, if he performed all three of them, it is equivalent to [the case of] an ox that gored an ox, and donkey, and a camel, and thus became a forewarned gorer (*mu'ad*) for all animals.

Bleich continues by citing several points which can be learned from this *baraita* regarding how one's status as a *shoteh* is to be determined. First, erratic behavior, no matter how bizarre it may appear, cannot alone be enough of a reason to declare someone mentally incompetent if a possible rational explanation for the actions exists. Second, irrational behavior that has no possible rational meaning is enough to determine mental incompetence, even if only one type of aberrant behavior manifests.

On the next *daf* of *Chagigah* 4a, an additional level of interpretation continues: "Rav Pappa said: If Rav Huna had heard this [ruling] – 'Who is a *shoteh*? One who destroys everything that is given to him.' – he would have reversed his ruling." The *Gemara* continues by relating this destruction of all that is given to him to the tearing of his garments, as this action could be viewed as a subcategory of destroying "all that he is given." Therefore, even according to Rav Huna, this action alone could be enough to determine a person to be mentally incompetent. However, the *Gemara* leaves the question unresolved as to whether this additional ruling would have caused Rav Huna to reverse his statement in its entirety.

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<sup>25</sup> Rashi explains that this term refers either to a type of melancholia or a fever that led him to seek out some night air.



From this section in *Chagigah* 3b to 4a, the *Gemara* lays out four possible symptoms that could lead to a determination of a person to be a *shoteh*.

However, there are obviously other possible actions a person could take that would deem him mentally incompetent in the opinion of the Sages. Rambam elaborates on this fact in his *Mishneh Torah, Hilchot Edut* 9:9 where he explains why a *shoteh* cannot serve as a witness in order to present evidence at a trial:

The [*shoteh*] is incompetent by biblical law, because he is not subject to the commandments. By "[*shoteh*]" is to be understood not only [as] one who walks around naked, breaks things, and throws stones, but anyone who is confused in mind, invariably mixed up with respect to some matters, although with respect to other matters he speaks to the point and asks pertinent questions; nevertheless his evidence is inadmissible and he is included among the [*shotim*.]<sup>26</sup>

Comparing the list of symptoms listed in *Chagigah* with those used by the Rambam in his *Mishneh Torah*, it is clear that there are differences between the two descriptions. Although similarities exist, Rambam is not simply repeating the identical list of actions provided by the *Talmud*. Bleich<sup>27</sup> interprets this discrepancy to be an intentional indication that Rambam considers the list of possible symptoms found in the *Talmud* to be examples of possible indicators, not sole factors to be considered in making a determination of status. Rambam points to a general state of confusion and abnormal behavior, which could take numerous forms. In addition, he states directly that such confusion may relate only to specific topics or for a limited time in the life of the person in question.

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<sup>26</sup> As translated by Hershman p.101

<sup>27</sup> P. 126



This indicates an awareness that a person may in some circumstances enter into a period when he must be considered a *shoteh* without reservations such as during the period of a psychotic break.<sup>28</sup>

Rambam cites the *Talmud Bavli Rosh Hashanah* 29a as providing an example of this in his explanation of the *mitzvah* of eating *matzah* during *Pesach*. The quote reads, "A person who ate an olive's bulk of *matzah* in delirium, while possessed by a seizure, and afterward recovered, is obligated to eat another [olive's bulk]. The consumption of [the first *matzah*] took place while he was free from the obligation to perform any *mitzvot*."<sup>29</sup> In this ruling, it is clear that a person lacking *da'at* is not responsible to fulfill this *mitzvah*. However, in the case when the person regains his senses quickly, his responsibilities return along with his cognitive functions.

Rambam's work demonstrates an understanding that a person may become a *shoteh* for only a short period of time. One is not automatically deemed a *shoteh* permanently. Although the *halakhah* maintains that the evidence presented by a man who was temporarily not *compos mentis* is still inadmissible, Rambam reiterates an awareness of the fluidity possible when attempting to determine whether or not a person's status as mentally incompetent remains permanent.

In addition to the definition of *shoteh* as not being *compos mentis* either due to mental illness or disability, rabbinic tradition also utilizes this term to indicate that a person does not understand the religious dogmas of Judaism. As

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<sup>28</sup> Hershman p. 101

<sup>29</sup> *Mishneh Torah, Hilchot Chametz Umatzah* 6:3

an example of such a case, Abrams cites the *Mishnah Avodah Zarah* 4:7 which reads, "They (a group of idolaters) asked the elders<sup>30</sup> in Rome, 'If God has no pleasure in an idol why does He not make an end of it?' They answered, 'If men worshipped a thing of which the world has no need he would make an end of it; but lo, they worship the sun and moon and the stars and the planets: shall God destroy His world because of *shotim*?' " In this story, the great Sages visit Rome, a symbol for the Rabbis of a place where false gods rule in the minds of those who conquered and cruelly destroyed the holiest of all cities, Jerusalem. In this case, the Romans do not accept that the God of the Jews could be authentic because He does not destroy all He dislikes. In answer, the elders respond that God refuses to destroy the world He created just because some of its human inhabitants cannot accept the truth of monotheism. In creating a covenant with Noah, God swore never again to destroy the world<sup>31</sup> regardless of future actions of its inhabitants.

In this instance, the term *shotim* refers not to those who are mentally ill or disabled, but to fools. These men, as do the other non-Jews in the *Mishnah*, demonstrate their mental prowess frequently in their ability to debate the Sages. However, despite their ability to debate, these men are fools because they cannot or will not accept the unquestionable truth that the God of the Israelites alone is the one authentic God of all. According to this mindset, a person would have to be mentally incapacitated to not adhere to their world view of

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<sup>30</sup> Tradition teaches that these elders were Rabban Gamliel, Rabbi Elazar ben Azariah, Rabbi Joshua ben Hananiah, and Rabbi Akiva.

<sup>31</sup> Genesis 8:21

monotheism in which their God alone acts as a deity. In cases such as this, the term *shotim* can be used in a mocking way to indicate foolish behavior.

### **Categories of Partial Exclusion: People with Visual Impairment as an Example**

In contrast to the *halakhic* categorization of the *cheresh* and *shoteh* as being completely exempt from the responsibility to perform *mitzvot*, people with certain other disabilities remain responsible for a portion of the commandments. Visual impairment serves as an excellent example of this type of exemption status. Although the *halakhah* does not hold a person who is blind or visually impaired responsible for the *mitzvot* he physically cannot perform, he remains included in the overall practices of the community despite his disability.

Throughout Jewish history, people who are blind or visually impaired have acted as full members of the community, even serving as teachers and religious leaders. Numerous *halakhic* guides exist which outline the legal obligations of the blind vis-à-vis adherence to *mitzvot* such as *Halachic Rulings Relating to the Blind* compiled by Rabbi David Toiv. In his article exploring the role people with visual impairments may play within the Torah service, Rabbi Nevins<sup>32</sup> refers to another such guide by Dr. Avraham Steinberg which presents the interesting fact that people who are blind are nevertheless required to fulfill *mitzvot* that one would think would require sight, including reciting the blessing upon seeing a king. While Toiv says that a blind man may recite this blessing, it is not a

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<sup>32</sup> Pp. 28-9

requirement.<sup>33</sup> Toiv does state that a man who is blind should not recite the *Shema* while facing an immodestly dressed woman, another rule that would seem to require sight. The fact that numerous guides exist on the legal responsibilities of people who are blind indicates that this disability population has long been accepted as full members of the Jewish community. In addition, the *halakhic* system provides reasonable exemptions from responsibilities where they apply.

*Bava Kamma* 87a serves as a central Talmudic source regarding the status of people who are blind within the system of rabbinic Judaism. The discussion found on this *daf* refers back to a section of *mishnah* 8:1 which reads, "If a man inflicted indignity on a naked man, or a blind man, or a sleeping man, he is liable; but if he that inflicted indignity was asleep he is not liable." The lack of a statement on the part of the *Mishnah* as to whether or not the blind person is liable for causing humiliation inspired a debate between the *tannaim*. The central question rises as to whether or not people who are blind are to be exempt from all *mitzvot*. In this discussion, Rav Yosef says that he used to believe that people who are blind are exempt from all *mitzvot* because he accepted the ruling of the *tanna* R. Yehudah as authoritative in the matter. He interpreted this to mean that as a man without sight, his performance of the *mitzvot* would be rewarded by God more than those who simply do what they must. However, after hearing the statement by Rabbi Chanina that "the one who acts out of obligation is greater than the one who acts even though he is not obligated," Rav Yosef said he would throw a great feast for the rabbis if someone could show him that the *halakhah*

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<sup>33</sup> P. 55

did not follow Rabbi Yehudah. This means that Rav Yosef now wanted to fall into the category of *chiyuv*.

This passage brings up two important issues. First, there is the possibility that those who are exempt from performing the *mitzvot* might still wish to do so because it allows them to participate in the central realm of Jewish religious experience.

Second, it demonstrates why a person would *want* to be obligated regarding *mitzvot*. At the conclusion of this debate, the *Gemara* determines that the blind are indeed obligated because the *halakhah* does not follow R. Yehudah. The *Tosafot* expand upon this ruling by explaining that even R. Yehudah, who exempts the blind from the *mitzvot* as a matter of Torah law, believed that the Rabbis adopted a *takanah* that obligated the blind to perform the *mitzvot*. Their reasoning was that if people who were blind were exempt from the *mitzvot*, this would make them "like gentiles." This exemption would result in excluding them from the rich ritual life of the community.<sup>34</sup> For the Rabbis, therefore, this inclusion of the blind in the obligation to perform this *mitzvah* represented a desire to include them as members of the community

The method reasoning behind this ruling is also used in *Pesachim* 108b to explain why women are obligated to drink the four cups of wine during the *seder Pesach*. In that instance, women are required to fulfill a time-bound commandment even though the general rule exempts them from such

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<sup>34</sup> *Tosafot*, Bava Kamma 87a, *vekhen haya R. Yehudah potero mikol hamitzvot*: "if you exempt the blind from the requirement to observe all the commandments, even if this requirement is rabbinically-imposed, you make him as though he is a Gentile, who does not walk in the path of Judaism at all." (see "A Blind Person as a Witness" note 25)

responsibilities. This exception is made because women were as much a part of the miracle of the exodus from Egypt as were the men. Therefore, as part of the community, women are required to celebrate as a part of the community of *am Yisrael*. Similarly in the case of people who are blind, exempting them from all *mitzvot* would be treating them as non-Jews. As true members of the community, the *Tosaphot* therefore determine that the general rule for people who are blind to follow the *mitzvot* just as does the rest of the Jewish community. They are only exempt from actions that they physically cannot perform.

Overall, the long-standing tradition of inclusion of people with visual impairment in Jewish religious practice follows the same logical process by which the *cheresh* and the *shoteh* often face exclusion. In the traditional system of the Rabbis, a person who was blind had much greater access to forms of study and communication than did those with hearing impairments. In a world in which study primarily occurred through verbal encounters, a blind man possessed an advantage over a man who was deaf. Even before the invention of Braille and other technologies that the visually impaired have available today, the rabbinic system of discourse allowed them that complete access as an active member of the religious community.

### Conclusion

"...A *cheresh*, a *shoteh* or a minor cannot fulfill [a *halakhic* obligation] on behalf of many. This is the general rule: any on whom an obligation is not incumbent cannot fulfill that obligation on behalf of many."<sup>35</sup>

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<sup>35</sup> Mishnah Rosh Hashanah 3:8

As people classified as outside the realm of community obligation, the *cheresh* and the *shoteh* have long been excluded from communal religious life to a large extent. Similarly, people with other disabilities such as visual impairment, while not completely excluded legally, have been relegated to lesser positions in terms of religious communal involvement. As technological advances and a changing understanding of what it means to be commanded have arisen, the Jewish community as a whole has sought to re-envision how those once "excused" from responsibility can be welcomed as participating members. The next chapter will focus on how the modern, liberal view of the meaning of "commandedness" has influenced our desire not only to permit a more diverse population to participate in religious observance, but how it has changed the very nature of how we view inclusion to be a natural extension of our Jewish identity.

## Chapter 2

### The Dignity of Being Commanded

#### The Purpose of *Mitzvot* in Jewish Tradition

Yeshayahu Leibowitz<sup>36</sup> comments that *mitzvot* and the adherence to these commandments serve as “the ground of the living religious reality known as Judaism.”<sup>37</sup> The performance of *mitzvot* represents the central means by which Jews have expressed their faith for centuries. Although the importance of *mitzvot* within Jewish life is unquestioned, debate continues as to how it is appropriate to attempt to uncover rational reasons for adherence to the commandments.

Leibowitz presents a compelling argument for the lack of a need to pursue a rational purpose for observing *mitzvot*. For him, *mitzvot* are “...to be understood not in terms of their so-called philosophical ‘reasons’ but rather as the matrix of Judaism as one lives it and is capable of living it in the here and now, in everyday life...[T]he *mitzvot* – not as dogmas or values – define its spiritual content.”<sup>38</sup> For Leibowitz, *mitzvot* demonstrate the devotion of the Jewish people to God. Performance of the commandments as set out by the Oral and Written Law should act as a means of drawing the individual closer to God and should not be examined in ways attempting to demonstrate the possible

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<sup>36</sup> Yeshayahu Leibowitz (1903-1994), a scientist by training and profession, did not regard Judaism to have a unique philosophy or theology as a religion. He considered its distinguishing element to be the adherence to *halakhah* as a way of serving God. This service to God must be for that purpose alone and not for betterment of the spirituality of the individual or the improvement of society or the world. (See the article “Leibowitz, Yeshayahu” in *Encyclopedia Judaica*)

<sup>37</sup> P. 67

<sup>38</sup> Ibid.



benefits upon the observer. Such pursuits can actually prove detrimental to the intended purpose of *mitzvot* according to Leibowitz who writes, "Every reason given for the *mitzvot* that bases itself on human needs...voids the *mitzvot* of all religious meaning....Therefore, the so-called 'reason for the *mitzvot*' (*taamei ha-mitzvot*) are a theological construct and not a fact of religious faith. The only genuine reason for the *mitzvot* is the worship of God."<sup>39</sup>

Tzvi Marx identifies another reason for a hesitance among theologians to explore rational reasons behind the *mitzvot*. By attempting to find reasons for performing *mitzvot*, the danger arises of a weakening of the observance of the commandments.<sup>40</sup> Proof of the realization of this fear has indeed manifested itself as liberal Jews of the post-Enlightenment have selected which *mitzvot* to observe based on personal relevance.

While the Reform movement proudly extols the virtues of this approach, the idea of such a system flies against the purpose of *mitzvot* as understood by thinkers such as Leibowitz. The search for *ta'amei hamitzvot* (reasons for the commandments) is an ancient and honored discipline in Jewish thought.

Saadya Gaon was the first thinker to divide the *mitzvot* into the categories of those that are obligatory because they are justified through reason and those which only exist due to divine revelation.<sup>41</sup> Bahya ibn Paquda combined Saadya's divisions of the *mitzvot* with other classifications he gleaned from Mu'tazalite sources which led him to place the commandments into the categories of "the duties of the heart," or those relating to faith, and that of "the

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<sup>39</sup> Ibid., p. 71

<sup>40</sup> P. 174

<sup>41</sup> Ibid., p. 175; "Commandments, Reasons for" p. 784

duties of the limbs," which refer to those that deal with physical actions.<sup>42</sup> While the duties of the limbs originate from either from reason or from divine command, the duties of the heart come solely from God. Bahya emphasizes the importance of the duties of the heart over those of the limbs because weaknesses in the human intellect are the only reason that divinely revealed commandments are needed.<sup>43</sup> Many other scholars including Judah Halevi, Abraham ibn Ezra, Abraham ibn David, and Maimonides added their own work to this field of study as each attempted to gain a deeper understanding of the *mitzvot*.

Marx concludes his discussion of the reasons against trying to find rational reasons behind the *mitzvot* by citing a saying attributed to R. Johanan b. Zakkai<sup>44</sup> who was concerned that one might say, "These laws appeal to my reason and I shall observe them; those are but futile performances and I do not care to observe them."<sup>45</sup> Because of this possible line of thinking, numerous scholars such as Abraham Chill contend that the Torah itself refrains from providing reasons behind many *mitzvot*.<sup>46</sup>

Not all Jewish thinkers have rejected the idea of seeking the rationale underlying the *mitzvot*. As a starting point, many turned to the Toraitic *mitzvot* for which explanations are present. For example, the rationale behind the commandment for dwelling in *sukkot* is followed by the explanation that this should be done, "In order that future generations may know that I made the

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<sup>42</sup> "Commandments, Reasons for" pp. 785-786

<sup>43</sup> Ibid.; ibn Paquda 3:3

<sup>44</sup> Marx p. 175

<sup>45</sup> 1885 Buber edition of the Tanhuma, Hukat, 26 from Newman p. 292

<sup>46</sup> P. xvi

Israelite people live in booths when I brought them out of the land of Egypt."<sup>47</sup>

Similarly, Torah relates the reasoning behind observance of Shabbat to be rooted in its symbol of the covenant between God and the people of Israel<sup>48</sup> and as a reminder of the miracle of Creation.<sup>49</sup>

Two problems arise from attempting to deduce the rational reasons behind the *mitzvot*. First, even if the Torah provides explanations for certain *mitzvot*, this does not necessarily mean that we are entitled to add or expand upon those provided by God.

Secondly, the very fact that the Torah provides rationales for some of the *mitzvot* has been cited as a basis for inappropriate behavior of Jews in later generations. One example of this appears on *Sanhedrin* 21b of the *Bavli*. There, the *Gemara* explains that King Solomon broke two commandments designated for kings: not to breed more horses than is needed for one's army and not to take more wives than is appropriate. In both of these cases, King Solomon disobeyed these *mitzvot* because he believed that he as a king could avoid the misuse of the riches and power he gained thereby negating the rationales warning against these actions. In a comment attributed to Rabbi Yitzchak, the *Gemara* says that at the moment that Solomon married Pharaoh's daughter, the angel Gabriel planted a reed on the ocean floor. The sandbank that grew around that reed eventually became the site of Rome, the city that would later be responsible for the destruction of Jerusalem and the Second Temple.

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<sup>47</sup> Leviticus 23:43

<sup>48</sup> Exodus 31:16 – 17

<sup>49</sup> Ibid. 20:11

In another passage from the *Talmud Bavli*,<sup>50</sup> a *baraita* goes so far as to state that God decreed that the Israelites do not have permission to question the *mitzvot*, neither those that could be derived through logic or those whose only source is the Torah. In a comment on Leviticus 18:4,<sup>51</sup> the *baraita* expounds upon the apparent repetition in the message of this verse by explaining that the first phrase refers to those commandments which could be derived through logic<sup>52</sup> and the second refers to those commandments which can only be known through revelation.<sup>53</sup> The final phrase of the verse, "I am the LORD your God," is interpreted to mean that all of these *mitzvot* are of equal importance, and the legitimacy of none of them may be questioned.

Despite this tradition that all the *mitzvot* must be followed regardless of whether or not reasons are provided by the Torah, Jewish thinkers continued to ponder them. As mentioned previously, the rationalist philosopher Saadya Gaon divided the *mitzvot* into two categories in his famous work *Emunot Ve-De'ot*. According to him, "rational *mitzvot*" which man's intellect could understand and "received *mitzvot*" which were transmitted through the Oral and Written tradition yet could only be accepted as proper actions because of their status as divine commandments.<sup>54</sup> As rational beings, understanding of why we are commanded to pursue certain actions increases our willingness to do so. Although the human

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<sup>50</sup> *Yoma* 67b

<sup>51</sup> "My rules alone shall you observe, and faithfully follow My laws: I the LORD am your God," (JPS translation.)

<sup>52</sup> Namely the prohibitions against idolatry, adultery, murder, robbery, and the positive command to bless the Divine Name according to the *baraita*

<sup>53</sup> The *baraita* cites eating pork, the prohibition against wearing clothes of mixed materials, the laws surrounding Levirate marriage, and the practice of sending a goat into the wilderness on Yom Kippur as examples.

<sup>54</sup> Marx pp. 175 – 6

mind cannot discern the reason behind each of God's commandments, his spiritual devotion to the *mitzvot* may be heightened by his rational understanding of at least some of them.

Both Judah Halevi and Maimonides argue that *mitzvot* serve as the cornerstone for Israel's relationship with God.<sup>55</sup> Although Halevi advocated for the connection to God through the details of *halakhah* while Maimonides focused more on the spiritual journey once one was able to move beyond the framework of *halakhah* in his prayer, both of these prolific thinkers recognize the centrality of *mitzvot* within Jewish life. At the same time, they do not reject the human curiosity at considering reasons behind the *mitzvot*.

Despite the universal understanding of *mitzvot* a core pillar of Judaism, educated Jews of the post-Enlightenment era displayed an even greater desire to understand the reasons behind the *mitzvot*. The Reform movement which arose in response to the needs of the secularly-educated Jews of Germany demonstrated the implementation of this desire into Jewish practice. Moshe Zemer cites the work of the nineteenth century German Rabbi Zacharias Frankel who summarized the Reform idea of rejecting *mitzvot* that did not mesh with the realities of modernity. Frankel formulated two conclusions as a result of his study of the relationship between rational thought, *mitzvot*, and modernity:

1. We must respect all the excellent customs handed down to us by our ancestors, while rejecting those that give off a whiff of superstition.

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<sup>55</sup> Hartman p. 122; "Commandments, Reasons for" p. 786-787

2. We must continue organically the path of the Sages of the Middle Ages, whose regulations rejuvenated the face of Judaism.<sup>56</sup>

Reform Judaism continued to follow this line of thinking. As a movement that did not regard itself bound by the restrictions of *halakhah* considered outdated or contrary to modern society, those *mitzvot* thought to have rational relevance tended to be those that maintained significance for the liberal Jews. This demonstrated a radical theological break with previous thinkers. For those theologians, even if they supported the inquiry into the rationale for the commandments, the impetus was not to uncover reasons to *dispense* with them.

Despite this relatively progressive level of flexibility, creative solutions for how to include those who had traditionally been excluded from communal life centered upon those whose status posed only minimal challenges. For example, while women had long been exempted from certain aspects of ritual life,<sup>57</sup> their participation did not pose as much of a challenge as did that of people with mental disabilities. A woman with normal intellectual and sensory abilities proved easier to include in ritual life during the early twentieth century than did a man with limited verbal abilities.

For many years the Reform movement undertook no active efforts to include people with disabilities in the performance of acts referred to as *mitzvot*. Perhaps this was because the general population, including the Jewish

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<sup>56</sup> Isaac Heinemann as cited by Zemer p. 56 as cited by Isaac Heinemann

<sup>57</sup> The exemption of women from positive, time-bound *mitzvot* was based on the many responsibilities women had, such as raising children, that might prevent them from fulfilling all of the *mitzvot* for which men were responsible. Rather than forcing the women to choose between their obligations, tradition exempted women from certain *mitzvot* in order that they be able to fulfill their numerous other roles in the community. Therefore, their *ability* to participate was not questioned.

community, lacked knowledge regarding people with disabilities. Societal stigma prevented many people from admitting the families members with severe disabilities even existed. For those people with disabilities who functioned at a high enough level to function in society yet would clearly be exempt from *mitzvot*, few resources existed to aid them in doing more than was required of them.

### **The Consequences of Being Exempt From *Mitzvot***

Within the system of *mitzvot*-based Judaism, status within the community depends upon the number of *mitzvot* one is obligated to observe.<sup>58</sup> Regardless of the reason for the exemption, those with fewer mandatory responsibilities, such as women, minors, and people with disabilities, occupy a lower level of power within the community.

One's obligation to perform *mitzvot* also relates to one's level of sanctity. In the strictest sense, one's level of sanctity can influence one's priority in receiving an allocation of limited resources. Although exceptions exist to this general rule,<sup>59</sup> the primary model of societal position is based upon one's *halakhic* responsibilities. *Horayot* 13a presents an example of this. On that page of the *Talmud Bavli*, the *Gemara* provides a list of who takes precedence over one another. In Rambam's commentary on this discussion, he explains that the needs of a man take precedence over the needs of a woman because he is obligated to more *mitzvot* than she. Therefore, the man is more *sanctified* and thus more significant to the community.

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<sup>58</sup> Marx p. 180

<sup>59</sup> As an example of an exception, Marx cites (p. 181) *Ketubot* 57b in the *Talmud Bavli* where women are given priority over men in receiving charity because of their more vulnerable status



One who is exempt from the *mitzvot* is not only excluded from the activities of communal life, but also that he automatically holds a low position of power and respect within the social system. Hauptman proposes that the consequences of exemption could instill feelings not of relief from obligation, but of shame and a desire to engage in the system in more substantial ways.<sup>60</sup> In a culture based on the performance of responsibilities commanded by God, one wishing to be an equal member within that society must therefore find ways of entering the existing system of obligation regarding *mitzvot*.

### **The Performance of *Mitzvot* By Those Who Are Not Legally Obligated**

The question then arises as to how people exempt from the obligations of fulfilling *mitzvot* can participate in a system of practice based upon these activities. Even if a person is not obligated to fulfill a *mitzvah*, may he take that obligation upon himself anyway? As discussed in chapter 1, Rav Yosef's statement from *Bava Kamma* 87a teaches that one may indeed take the responsibility of a *mitzvah* upon himself even if he is exempt. The reasoning behind this desire stems from the wish of the exempted Jew to demonstrate his faith and differentiate himself from non-Jews.

The discussion between the sages continues with a statement from Rabbi Chanina who teaches that "Greater is the one who is commanded and does [*mitzvot*] than one who is not commanded and does."<sup>61</sup> This same statement appears in *Kiddushin* 31a when a Gentile demonstrates the *mitzvah* of honoring

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<sup>60</sup> Hauptman pp. 221 – 2

<sup>61</sup> Similar statements with slight differences appear in *Bava Kamma* 38a and *Avodah Zarah* 3a.



his father in a particularly considerate manner. In response to these actions, Rabbi Chanina declares "If one who is not commanded [to honor parents] yet does so, how much the more so [should] one who is commanded and does so [show equal devotion to the *mitzvah*]." The *Tosafot* commentary on the phrase within this section, "*gadol hametzuveh ve'oseh*" expounds more upon this idea. It explains the reason why one the Rabbis believed that one who was commanded to perform a task would complete it with more eagerness and determination than one who had the choice as whether or not he should carry out the same action. It reads in part, "The reason is that one who is commanded to do something will take more trouble and expend more effort to make sure that he completes the task." This reiterates that although one might be praised for fulfilling a commandment voluntarily, one receives greater validation for completing a *mitzvah* that is required of him.

The Talmud also provides examples of those who are not obligated regarding *mitzvot* to participate in them for their own spiritual edification. One such instance appears in *Chagigah* 16b as follows:

"Speak to the people of Israel...And he shall lay his hand [on the head of the sacrifice]"<sup>62</sup> – the men of Israel perform laying of hands; the women of Israel do not. Rabbi Yose and Rabbi Simon say: The women of Israel may perform the laying of hands on a voluntary basis. Rabbi Yose said: Abba Elazar told me that once we had a calf designated as a *shelamim* sacrifice and we brought it to the women's court, and the women performed laying of hands, not because the women were obligated to do so, but in order to give them spiritual satisfaction.<sup>63</sup>

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<sup>62</sup> Leviticus 1:2-4

<sup>63</sup> Hauptman p. 234

While this anecdote demonstrates a willingness to include even those not obligated in the performance of rituals, the *Talmud* makes explicit that this inclusion was done solely for the emotional or spiritual benefit of the women. In this case, the men aid the women in the performance of this *mitzvah* not because they are unable to fulfill an obligation, but purely as a means of gaining spiritual satisfaction. This example reveals a tradition within that system of pursuing ways to include those traditionally excluded.

### ***Mitzvot, Dignity, and Holiness***

The responsibility to be *chayav* regarding the *mitzvot* demonstrates one's status as a full participant within the system of Rabbinic Judaism. Accepting the yoke of the *mitzvot* serves as the defining factor in Israel's relationship with God. Those who devote themselves to this responsibility feel that observance of the *mitzvot* confer dignity. Zemer<sup>64</sup> notes that Julius Guttman takes this interpretation a step further in his 1955 work, *Religion and Science*. In his book, Guttman appraises what he calls "the *mitzvah* character of Judaism." In his interpretation, he notes that the Torah states that the overall purpose of *mitzvot* is "...so that you do not follow your heart and your eyes...but you shall observe all of My commandments and be holy to your God."<sup>65</sup> Thus, Guttman concludes, observance of the commandments originates from the notion of holiness itself.

Observance of *mitzvot* serves not as an end unto itself, but as a means for Jews to reach a higher degree of sanctification and develop a closer relationship

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<sup>64</sup> P. 50

<sup>65</sup> Numbers 15:39 – 40

with God.<sup>66</sup> Based on this, the desire for those who are not *halakhically* obligated to perform *mitzvot* to do this is certainly understandable. Taking the additional step of wishing full inclusion in the community by requesting voluntarily to accept the obligations of the *mitzvot* demonstrates an aspiration for full status as a member of the Jewish community by those who have been traditionally excluded from that position. The next chapter will explore the reasons why the movement for such inclusion on behalf of people with disabilities has been increasing in strength over the past several decades in America. Although the Jewish community has made some progress towards inclusion, many challenges remain.

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<sup>66</sup> Zemer p. 50

## **Chapter 3**

### **The Evolution of the Treatment of People with Disabilities in the United States and Reform Jewish Responses**

Over the last several centuries, dramatic shifts have occurred in the treatment of people with disabilities within America and the greater Western culture. In many cases, communities lacked the understanding or resources to incorporate people with disabilities smoothly into societal roles. When this occurred, people with disabilities were often locked up, hidden, or cast out of the typical societal systems. With the advancements of technology and science following the Industrial Revolution, disabilities began to be understood as medical conditions. This led to a change in the way people conceived of proper treatment for people with disabilities. Rather than considering them people to be pitied, scorned, or disposed of, Americans began to understand that people with disabilities often needed additional services and medical care. As opposed to seeing them as outcasts, the general population slowly began to understand that people with disabilities deserved the same rights and privileges of every other citizen.

As Judaism has long touted the belief that every person is created in the image of God, this movement towards improving the treatment of people with disabilities meshed well with the values of American Jews. By examining the evolution of the treatment of people with disabilities in the United States, parallels

emerge between the patterns of increasing awareness and advocacy within the American legal system and the responsa of the Reform Jewish community.

### **A Brief History of the Treatment of People with Disabilities in America**

According to the World Health Organization's research, approximately 10% of the world's population at any one time can be considered as disabled enough to qualify for support services.<sup>67</sup> Western Civilization has long ostracized people with disabilities in a variety of fashions. Irina Metzler, a historian in the field of disability in medieval Europe, points out that historical data on precise treatment of people with disabilities are scant.<sup>68</sup> Reports of incidents such as the existence of ships of fools,<sup>69</sup> ships which carried people with disabilities between ports where people paid to view the passengers, have relatively little basis in fact. However, enough records exist that indicate a long history of the mistreatment of people with disabilities and an attitude of considering them less than human. Some commonly cited examples of such actions and attitudes include the law in the ancient city of Sparta requiring the abandonment of "deformed and sickly" infants and the practice of keeping people with mental disabilities for entertainment in Rome and medieval courts.<sup>70</sup>

The United States, founded on the ideal that every person is granted rights "endowed by their Creator", has none the less struggled with the application of that value. The words of the Declaration of Independence with

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<sup>67</sup> World Health Organization, <http://www.who.int/en>

<sup>68</sup> P. 20

<sup>69</sup> Foucault pp. 5, 10-12

<sup>70</sup> *Parallels in Time*, "Ancient Era" and "The Middle Ages, Renaissance, and Reformation"

their noble intentions proved difficult to actualize. The citizens of the nation continue to try to fulfill the statement, "That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness...." Gaining equal legal rights for all people regardless of race, gender, and religion required hundreds of years of war, advocacy, and legislation.

By the 1960s and 1970s in the United States, the desire for civil rights expanded not only to include people of all colors and religions, but also those of all abilities. The Founding Fathers of the United States do not appear to have interpreted the concept of political and civil "rights" as applicable to the area of physical, mental, or emotional disability. This was outside of their worldview just as the idea that the term "men" would later be expanded to refer to all people regardless of gender or ethnicity. For the writers of the Declaration of Independence, the concept that a person who cannot walk, for example, is entitled to *demand* that public buildings be made accessible to him or her probably would have struck them as odd in the same way that the Rabbis of 2000 years ago do not seem to have regarded the "exclusion" of the disabled from various *chiyuvim* as a matter of unfairness or injustice. A dramatic cultural transformation was required before legal and philosophical texts such as the Declaration of Independence could be read so as to include people with disabilities.

The idea that all people merited respect and held inherent worth, a value central to the formation of the country itself, gained importance. The Jewish

community, active in the Civil Rights Movement early on, embraced this growing movement that encouraged all people be granted equal rights and that the concept of "rights" applies to access/inclusion for people with disabilities. If "equal rights" is defined as the right to free speech, press, and religion, then people with disabilities have always possessed these rights legally. However, many people with disabilities did not have the means to exercise those rights because of issues such as access and communication barriers which were not dealt with within the legal system until the mid-20<sup>th</sup> century. With a long history of concern for social justice, the Reform movement in particular gravitated towards including all people in their communities. By examining the disability movement in the United States and the Reform Jewish responsa on the topic of disability, a clear image emerges of an American Jewish community dedicated to the idea of inclusion.

### **The Long Road from Invisibility to Self-Advocacy**

The movement for improving the treatment of people with disabilities within the Western world emerged primarily from the grassroots efforts of individuals in the wake of the Industrial Revolution. As more people moved to urban areas, asylums, almshouses, and jails which housed those deemed "unfit" for society increased in numbers. Social reformers such as Dorothea Dix (1802-1887) sought to bring to light the horrific conditions of these institutions. In an address to the United States Congress on June 23, 1848, Dix said,

"I myself have seen more than nine thousand idiots, epileptics, and insane in these United States, destitute of appropriate care and protection; and of this vast and miserable company, sought out in jails, in poorhouses, and in private dwellings, there have been hundreds, - nay, rather thousands, - bound with galling chains, bowed beneath fetters and heavy iron balls attached to drag chains, lacerated with ropes, scourged with rods, and terrified beneath storms of profane execrations and cruel blows; now subject to gibes and scorn and torturing tricks, now abandoned to the most loathsome necessities, or subject to the vilest and most outrageous violations."<sup>71</sup>

As a result of the work of social reformers such as Dix, the importance of improving the treatment of people with severe disabilities gained attention.

Creation and improvement of the educational system within the country also impacted the lives of people with disabilities. In the mid-nineteenth century, a series of schools emerged intended to educate "feeble-minded" children with the goal of making them more productive members of society. Schools opened in such places as Germantown, Pennsylvania (1852), Albany, New York (1855), and Columbus, Ohio (1857).<sup>72</sup> Students received physical training, basic academics, and tutoring in social skills. Although the creation and nature of these institutions might seem rather primitive, the formation of these organizations indicates a desire on the part of the nation to improve the treatment of children with disabilities. Instead of being locked in asylums without any vocational or educational training, some children with special needs were able to receive training in skills that would allow them to lead better lives. At a time when

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<sup>71</sup> Tiffany pp. 169-170

<sup>72</sup> *Parallels in Time*, "The Rise of Institutions"



children with disabilities were often locked in basements or rooms as embarrassments, such facilities offered families an alternative.<sup>73</sup>

Unfortunately, as enrollment increased, these became little more than custodial institutions. A lack of funding was largely responsible for this shift. With the increasing demand for children to be accepted, overcrowding became a problem. Instead of having the luxury of using their resources for educational training, these schools were forced to limit the amenities to those of basic care.

Conditions in such institutions worsened during the first half of the twentieth century. It again took social reformers to begin improving the situation anew. In 1948, Albert Deutsch published what became a catalyst for change. *The Shame of the States* provided photographic and factual evidence of the conditions at New York's Letchworth Village. Patients were at time restrained, forced to live in crowded, dirty conditions, and forced to endure "therapies" such as prefrontal lobotomies and shock treatments. Deutsch described the conditions in a simple yet powerful phrase: Euthanasia through neglect. Considered to be one of the best institutions at the time, the horrific conditions at Letchworth Village appalled the public. An issue that had largely been ignored began to gain public attention.

Parents of institutionalized children with disabilities were at the forefront of the movement for change. Frustrated with the lack of services available for their children, local groups of parents began to organize groups for support and advocacy purposes. This represented a cultural shift in the minds of Americans.

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<sup>73</sup> See Appendix A p. 71 for an example of a letter written regarding the admission of a boy in 1841

In the post-New Deal era, people were beginning to consider that the government has a responsibility to provide social services for people with disabilities. This desire was only heightened by the needs of the brave World War II veterans who, thanks to advances in medical care, were returning having survived injuries that would have killed them in previous wars. For the first time, large numbers of American heroes were returning with life-altering injuries in large enough numbers that the United States public began to demand that they receive appropriate social services as a result of their sacrifices for their nation.

One of the early groups that formed in the United States with a goal of seeking improved services for people with disabilities was the National Association of Parents and Friends of the Mentally Retarded, later renamed the National Association for Retarded Children and finally the simple name, The Association of Retarded Citizens (The Arc.) Prior to the formation of this national organization in 1950, numerous smaller groups primarily composed of parents with children in institutions, including Letchworth Village, organized themselves. Many of these groups, such as the Council for the Retarded Child in Cuyahoga County in Ohio and the Children's Benevolence League (later changed to Washington Association for Retarded Children in 1952), dated to the 1930s. However, these groups operated independently were largely unaware of each other's existence until the late – 1940s.<sup>74</sup> By 1951, at least 125 groups existed throughout the United States and Canada representing approximately 13,000 active members.<sup>75</sup>

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<sup>74</sup> *Blueprint for a Crusade*

<sup>75</sup> Hays

In a document composed by Woodhull Hay, the founder and president of The Arc, in 1952, seven primary reasons for the formations of these groups appear. Hay gathered this information primarily through a survey of members. The reasons listed for their involvement in the group indicate the problems present in the institutions.

Among the reasons contributing to this growth these may be given: (1) evidence that institutions operating under state appropriations are limited in what they can do for the children; (2) increasing awareness that the usual regular public school programs are unsuited for such children; (3) more general dissemination of knowledge of advances in technologies relating to mental retardation; (4) rise of questioning and challenge of the validity of the finality implicit in the words: "Nothing can be done for your child"; (5) desire of parents to learn what more can be done for these children and to pursue projects in their behalf; (6) strengthening conviction that the responsibility is social – that, as funds are raised and appropriated for the benefit of the physically handicapped, money should be provided for building a fuller life also for the mentally handicapped; and (7) realization that it is not enough spiritually just to care for one's own child.

United in purpose, these small groups began collaborating, drawing attention to a cause that slowly gained national attention.

Several biographical works telling of family struggles with disability published in the 1950s also helped to uncover what had been considered a shameful secret for so many. Dale Evans Rogers along with her husband Roy, popular television stars, published *Angel Unaware* in 1953. In it, Mrs. Rogers tells the story of her daughter Robin who died at the age of two. Reprinted numerous times, this work was one of several that opened the door to discussion of Down 's syndrome and other disabilities that had remained family secrets for

so many. As people became more willing to be open about their personal stories, calls for national policy changes and legislation gained momentum.

### **American Legislation Relating to the Rights of People with Disabilities**

President John F. Kennedy, inspired by the work of his family and his own sister Rosemary who had mental retardation, played an influential role in bringing the treatment of the disabled to the attention of the nation.<sup>76</sup> Due to perinatal hypoxia, Rosemary grew up with mild mental retardation. She lived at home with her family with few problems until young adulthood. However, at that time, she underwent a prefrontal lobotomy that resulted in a severely reduced ability to function.<sup>77</sup> It was not until 1962 that the family publicly announced Rosemary's condition. In 1965, another famous brother of Rosemary, Senator Robert Kennedy accompanied a news crew on a tour of Willowbrook State School in Staten Island, New York. His remarks on film and the reporting of the media who accompanied him announced to the nation that these state institutions remained places where the residents were forced to live in terrible conditions.<sup>78</sup> The work of Burton Blatt and Fred Kaplan confirmed these reports. Their publication of photos secretly taken in mental institutions illustrated the horrors of people living in filth and recovering from gruesome procedures such as prefrontal lobotomies and forced sterilization.<sup>79</sup>

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<sup>76</sup> Shorter pp. 34-38

<sup>77</sup> Veehuis pp. 1893-1894

<sup>78</sup> Shorter p. 19 and *Parallels in Time*, "The Reawakening"

<sup>79</sup> Blatt and Kaplan

Many of the problems in these institutions stemmed from a lack of funding. The Minnesota Governor's Council on Developmental Disabilities noted that, "In 1964, the per diem rate for a person living in an institution was \$5.57, about one-half the amount devoted to tending animals in a zoo."<sup>80</sup> The Kennedy administration set out to improve research and funding in the area of disability.

On October 11, 1961, President Kennedy appointed eleven top physicians, educators, psychologists and scientists to the Presidential Panel on Mental Retardation. Among those on the committee were the chair, Dr. Leonard Mayo, and Dr. Elizabeth Boggs, a well-respected advocate with close ties to the parents' movement. The Committee's report submitted in 1962 included numerous recommendations for improving methods and quality of care in existing facilities, increased education on the subject of mental retardation, and more comprehensive legal support and financial funding for all of these activities. These recommendations prompted the enactment of Public Law 88-164 that provided funding for various types of research on people with mental retardation. Title V of the Social Security Act established increased funding for prenatal care for women in low-income families because of the high risk carried for birth defects within this cohort.<sup>81</sup>

Following Kennedy's assassination, President Lyndon B. Johnson continued the work his predecessor had begun. The Elementary and Secondary Education Act of 1965 provided a multi-billion dollar program to support education

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<sup>80</sup> *Parallels in Time*, "The Reawakening," p. 5a

<sup>81</sup> *Ibid.*, pp. 5b-d

of children classified as "educationally deprived."<sup>82</sup> Two years later, The Mental Retardation Amendment of 1967 increased the scope of the 1963 legislation. It provided additional funds for community mental health facilities. Additionally, The Bureau of Education for the Handicapped was established under the auspices of the United States Department of Health. Slowly, the financial support needed so desperately to provide services for people with disabilities began coming from the federal government.

In the 1970s, three major pieces of legislation significantly increased the services available for people with disabilities. The Rehabilitation Act of 1973 and The Education for All Handicapped Children Act of 1975 provided rehabilitation services for people with severe disabilities and created of appropriate education to all children free of charge.<sup>83</sup> Most importantly, Congress passed the Developmental Disabilities Assistance and Bill of Rights Act in 1975. The purpose of this legislation was "to ensure the humane care, treatment, habilitation and protection of mentally retarded and other persons with developmental disabilities."<sup>84</sup> This same law established the Protection and Advocacy System for Persons with Developmental Disabilities (PADD) as a group dedicated to actualizing the goals of the laws themselves.

While numerous other laws followed these, perhaps the most important came in 1990 with the passing of The Americans with Disabilities Act (ADA). With this, the cultural transformation continues to move forward. This law ensures equal civil rights to people with disabilities just as previous laws had formalized

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<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Advocacy, Inc. website – <http://www.advocacyinc.org/about.cfm>

these rights for people regardless of race, sex, nationality, and religion. Under this law, employers are forbidden from discriminating against employees with disabilities. In addition, public buildings and transportation must be handicapped accessible.<sup>85</sup>

The ADA demonstrates the general attitude of the citizens of the United States towards people with disabilities. Having changed significantly over the past century, the idea that every person possesses inherent worth is now widely accepted. People with disabilities have basic needs just as do so-called "normal" citizens, and therefore have the same rights to freedom from abuse, exploitation, and isolation. Additionally, every person's civil rights must be upheld meaning that everyone should have equal access to education, health care, and human services. Contradicting these values is viewed as unacceptable, and those who openly violate established laws are prosecuted for their actions.

While private clubs and religious organizations are exempt from the guidelines outlined by the ADA, many have done their best to make their facilities and literature as accessible as possible. While the Reform Jewish movement in America does not have a universal set of laws, numerous responsa reflect the community's struggle to merge the values exemplified in the ADA into its understanding of how to act as moral, American Jews.

### **Reform Responsa Relating to Disability**

The North American Reform Jewish community has maintained its relationship to *halakhah*. Whether it rejected the authority of traditional rulings or

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<sup>85</sup> Southwest ADA Center website



attempted to interpret the legal texts of our tradition in light of modern life, a dialogue continues. The difference between how the North American Reform Jewish community views *halakhah* as compared to more traditional streams of Judaism relates to its authority. Within Reform Judaism, *halakhah* is not binding. While one may choose to follow the *halakhah* or reject it as out-dated, the ability of the individual to make such choices for one's self is a central factor in the Reform view of *halakhic* obligation.<sup>86</sup>

One main method of interaction with the *halakhah* throughout Jewish history manifests itself in responsa literature. Questions are submitted to more knowledgeable people or groups by individuals or communities seeking advice. The questions are addressed from within the tradition of Jewish legal (*halakhic*) discourse. While traditional Jewish communities typically view the responses provided as authoritative legal rulings, Reform responsa tend to be viewed as opinions to be considered. Regardless of this fact, the responsa produced by the Central Conference of American Rabbis (CCAR) Responsa Committee illustrate ways in which Reform Jews utilize the sources of the Jewish legal tradition in thinking about contemporary problems. By examining these texts, we can gauge the evolution of the Reform Jewish response to the disability rights movement in America.

Parental Obligation to a Severely Retarded Child (February 1984)<sup>87</sup>

The question presented to the responsa committee in this case related to a child born with severe mental and physical disabilities. The child spent the

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<sup>86</sup> Washofsky pp. xix-xxi

<sup>87</sup> Jacob, ed., 1987. CCAR Responsa CARR 298-300. See Appendix B, pp. 72-73 for the full text.



majority of the time lying in a crib, unable to communicate or move with intention. Rabbi Michael Remson of Naperville, IL submitted a two-part question regarding the care of this child. First, what were the obligations of the parents to visit the child when they did not consider such interactions helpful in the care of the child? Second, although the child's swallow reflex allowed for the intake of food at the time, if that reflex should fail, what would the responsibility of the parents be according to Jewish law regarding the use of a feeding tube to sustain the life of the child?

In response to this difficult question, the writer of this responsum cited the obligation within Jewish law requiring a father specifically to provide for the needs of his children according to his ability.<sup>88</sup> The responsum continued by explaining that none of the Jewish sources place restrictions on this requirement based on a child having a mental or physical disability. Therefore, the writer of the responsum concluded, "...that this child, despite its very limited abilities, deserves both the maintenance and affection which the parents can provide."<sup>89</sup> The writer suggested that not only does Jewish law indicate that visits would be appropriate, but he also proposes that such interactions could also be beneficial for the parents and their other children in the long run.

The impetus for the second opinion regarding this case stems from "[his] personal experience with a severely handicapped daughter and that of others who have dealt with parents of handicapped children." This piece of information from the writer inspires a controversial question: what role do one's personal

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<sup>88</sup> *Yad Ishut* 13.6 and *Shulhan Arukh Even Haezer* 73.6 ff

<sup>89</sup> Jacob, *Contemporary American Reform Responsa* p.299

experiences play in making ethical decisions? To what extent are subjective feelings relevant in cases such as this? Ideally, lawyers or *halakhists* would seek to base all of their legal rulings on pure and irrefutable fact. Philosopher James Rachels<sup>90</sup> explains that one's personal feelings are one's own "property." As such, they are beyond criticism from others. Yet moral argument presupposes the ability of a community to debate the issue and to critique each other's points against some accepted or "objective" standard of evaluation. If the entire community involved in a debate does not agree on those standards, the dialogue is not possible.

In the case of the writer of this responsum, he mentioned his own subjective position only after arriving at his decision. By doing this, he implied that his ruling was based in objective review of the sources rather than personal opinion. However, by revealing his own experiences openly, the writer called his own objectivity on the matter into question. Simultaneously, he demonstrated that considering one's subjective feelings in cases such as this could be acceptable.

Regarding the second part of the question, the writer referred to traditional rabbinic rulings<sup>91</sup> which teach that while one may not perform any positive actions to hasten a death, one should not impede the death of a person when recovery is impossible. Taking these laws into consideration, the committee responded that the parents had no obligation under Jewish law requiring them to have the doctors insert a feeding tube should their child's swallowing reflex fail.

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<sup>90</sup> Gaskill p. 1

<sup>91</sup> *Talmud Bavli*, Shabbat 151b and *Shulhan Arukh* Yoreh Deah 339

The posing of this question by Rabbi Remson and its subsequent selection for response by the committee indicated awareness within the Reform Jewish movement of issues surrounding families and individuals with disabilities. With improving medical technology came more difficult questions of medical ethics. For example, now that genetic testing of a fetus for Tay-Sachs Disease is available, should parents be permitted to elect to end a pregnancy when that test is positive? Do parents have the right to choose an elective abortion rather than giving birth to a child who would suffer a horrible death?

In the case of this particular question submitted by Rabbi Remson, the responsa committee demonstrated an awareness of the Jewish traditions regarding the treatment of all persons with dignity. At the same time, those values were being applied to modern dilemmas. By selecting this particular issue to address, the committee acknowledged the increasing prevalence of such cases among families in the American Jewish community. Just as changes within the American legal and social services systems reiterated the shifting values of the American public towards creating a community with equal rights for all people, so too this attitude presented itself in the writings of the American Jewish community.

While many Reform Jews might not consider the responsa of the CCAR binding rulings, they remain invested in seeking out the answers Jewish tradition offers. Especially at times when such painful choices must be made, the Reform community in America returns to our long history of ethical and legal discourse on the proper treatment of every person as being created *b'tzelem elohim*, in the

image of God. If this is the case, then no life can be considered more inherently valuable than another.

Handicapped Access (December 1988)<sup>92</sup>

This responsum was inspired by a question submitted by Rabbi Stanley Davids of Central Synagogue in New York City. The leadership of the synagogue decided to make architectural changes to their building in order to make it more handicapped accessible. However, some members argued against making any changes to the architecture because of the building's status as a historical landmark. Rabbi Davids sought the opinion of the responsa committee regarding the responsibility a synagogue holds for helping its handicapped members gain access according to Jewish tradition.

The reply of the committee began with a summary of many of the texts and *halakhah* covered in chapter one of this thesis regarding the traditional exclusion of people with disabilities from *mitzvot*. The group continued by presenting additional evidence that supports all people having physical access to the synagogue. According to the CCAR responsum, a ruling made by R. Meir of Rothenburg explained that during "...the medieval period when synagogues were often located in a common courtyard, access could not be blocked in any way, nor could it be made difficult [for one to enter.]"<sup>93</sup> The committee concluded that while the historic nature of the building itself might cause hesitation in making significant changes to the architecture, "...the primary object of the synagogue is to serve all the members of our community. As the number of aged increases so

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<sup>92</sup> Jacob, ed., 1992. CCAR Responsa NARR 70-71. See Appendix B, p.74 for the full text

<sup>93</sup> Ibid., pp. 70-71

will the number of individuals who are handicapped. It is an obligation for us to serve all segments of the community and to provide access to our synagogue for those who are handicapped."<sup>94</sup>

The significance of this responsum is two-fold. First, the committee reiterated the idea that the importance of the building in which Jews congregate is secondary to the needs of the people wishing to attend. Jewish practice centers on communal worship and study, not on needing to have a particular type of location in which to perform them. Secondly, the response of the committee put forth evidence of an increasingly diverse definition of "disability." In this instance, the committee recognized that not every person with a disability begins life with it. All of us are "temporally able-bodied people,"<sup>95</sup> meaning that at any time, an accident, disease, or old age may render us unable to perform tasks that were once simple. By acknowledging that more congregants will need these architectural adaptations as they age, the committee mirrored the larger American community in understanding the wide range of situations which can suddenly cause a person to find him- or herself labeled as "disabled" in some capacity.

By stating that the priority of a congregation should be to serve the *entire* community above the preservation of a historical structure, the responsa committee established a hierarchy of values. While both of these concerns have merit, the committee ruled that the needs of the people who want to participate in communal life trump the desires of the preservationists. By doing this, the

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<sup>94</sup> Ibid., p. 71

<sup>95</sup> This is a term used generally to refer to people who are not disabled. For uses of this term, see "To: The Temporarily Able-Bodied" and Frank p. 80

*teshuvah* called upon the members of a proud and historic congregation to rethink the mission of their synagogue building. Although the message of the responsa committee was directed at this congregation in particular, it spoke to the American Reform community as a whole to carefully consider how we define the role of our centers of worship, meeting, and education.

Disabled Persons (5752.5; 1992)<sup>96</sup>

In the case of this third responsum, the *she'elah* came not from a single rabbi but from the CCAR Committee on Justice and Peace. This fact demonstrated that issues surrounding appropriate treatment of people with disabilities within our community are now being classified as social justice concerns. The *she'elah* itself is as follows: "What are the obligations of the community, and specifically of congregations, toward physically and mentally disabled persons?"<sup>97</sup> As in the case of the previous responsum, this question illustrated an increasing awareness within the Reform movement that people with disabilities should be given the same access to *tefillah*, education, and social programs that the so-called "normal" congregants have.

The response of the committee began with many of the traditional rulings regarding people with various disabilities covered in chapter 1 of this thesis. Much of the material discussed the exemptions from specific halakhic obligations granted to persons with various disabilities. However, numerous examples appeared which demonstrate the notion that each person should be held responsible for fulfilling all *mitzvot* unless his particular circumstances prevent

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<sup>96</sup> Plaut and Washofsky, eds. CCAR Responsa TFN no.5752.5 297-304. See Appendix B, pp. 75-81 for the full text.

<sup>97</sup> Plaut and Washofsky p. 297

him from being able to complete specific *mitzvot*. More modern *halakhic* authorities reiterate this methodology, permitting the use of hearing aids, for example, to help those who are hard of hearing to be able to participate in *mitzvot* that require this sense.

This *teshuvah* reflected the tendency within recent *halakhah*, both Orthodox and liberal, to include people with certain disabilities within the sphere of *chiyuv* regarding *mitzvot* from which they would have previously been exempt. For example, according to the *Shulhan Arukh* Orach Chayim 53:14, a person who is blind is not permitted to read from the Torah as part of a public worship service.<sup>98</sup> This ruling relates back to *Talmud Bavli* Gittin 60b, which specifies that one who reads Torah in this capacity must be able to read the written words of the Torah from the text of the scroll. As the traditional role of one called up to the Torah was to read the actual text, numerous authorities prohibited a person who was blind from even coming up to recite the *berachot*.<sup>99</sup>

However, numerous Orthodox and liberal authorities, basing their interpretations on the medieval commentators, have found ways in which people with visual impairments can indeed be called to the Torah. Part of this relates to the fact that the role of the person called up longer necessitates that he read from the Torah in addition to reciting the blessing. Therefore, a person who is blind may accept an *aliyah* and recite the blessings even though he cannot see the words within the Torah scroll.<sup>100</sup> Taking this a step further, Toiv refers to the

<sup>98</sup> "A Blind Person as a Witness" note 19. For the entire text of this responsum, see Appendix B pp. 82-88. For note 19, see Appendix B p. 87

<sup>99</sup> Ibid., note 22

<sup>100</sup> Toiv p. 63; "A Blind Person as a Witness"



same writings of the Rama in the name of the Maharil to explain that a person who is blind may even read the *maftir*.<sup>101</sup> The text of the CCAR Responsum "A Blind Person as a Witness" agrees with this view and goes on to comment that this ruling exemplifies the ideology of the Reform movement. It states, "As Reform Jews, we regard it as a positive duty to include the blind and all others who are physically disabled in the activities of our congregations and communities."<sup>102</sup>

Most significantly within the responsa "Disabled Persons" and "A Blind Person as a Witness," the committee provided statements of their dedication to include people with disabilities in every possible aspect of synagogue life. In their opinion, synagogues are required to provide access to community life in as many ways as possible. They consider this "...a *mitzvah* and include it under the obligation we have with regard to our fellow human beings (*mitzvot bein adam l'chaveiro*)."<sup>103</sup>

The committee dedicated a large section of this discussion to the importance of inclusion of all people within the worship settings. Several suggestions were provided to guide congregations in small steps towards a spectrum of changes which could be made, many of which are now foci of the work of the Union for Reform Judaism (URJ) Disability Taskforce which will be discussed in chapter four.

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<sup>101</sup> P. 63. As this final section of the weekly Torah portion has already been read by the previous reader, a person who is blind may read this section from a Braille copy of the Torah as the congregation has already fulfilled their obligation to hear the words read from the scroll itself.

<sup>102</sup> "A Blind Person as a Witness." See Appendix B, p. 82-88

<sup>103</sup> Plaut and Washofsky pp. 303-304



Most importantly, the committee made an important statement regarding how American's Jewish Reform movement regarded the conflicts that arose between traditional *halakhah* and a modern desire for inclusion of all people in synagogue life: "As Reform Jews, we should allow for a creative interpretation of the *mitzvot* that would help to incorporate disabled persons into the congregation in every respect."<sup>104</sup> This short yet powerful statement epitomizes the desire within liberal Judaism to find innovative ways to include the entire community in activities. As demonstrated in the examples provided in this responsum, this can be done by continuing a long tradition of basing an individual's participation not on what is physically or mentally impossible for him to do, but on what he can accomplish successfully.

### Conclusion

For all of human history, people with disabilities have been part of our communities. At times, they have been ostracized as unworthy of participation in the mainstream culture. For example, it was not until the mid-twentieth century that the treatment of people with disabilities truly shifted from a system of isolation and confinement to one of providing proper education and training for all children. At other times, they have participated within society as autonomous individuals. Our American culture continues to struggle to make this a reality for people with disabilities today. Laws such as the ADA have made physical access to public buildings mandatory and various government and privately

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<sup>104</sup> Ibid., p. 304

funded organizations seek to aid as many people as possible to live independent and dignified lives.<sup>105</sup>

Judaism has long sought ways of balancing including people with disabilities in religious practice while not obligating them to fulfill *mitzvot* that would prove impossible. Within American society, the idea that all people should have equal rights served as a founding principle of our nation. While we still struggle to make this a reality, progress has been made. For Jews living in such an environment, we have modeled our desire for inclusion of all peoples in the same light. Finding ways of including all members of the Jewish community in worship, education, and social programming has become more of a focus as that same desire has permeated the surrounding American culture. More and more, congregations are creating innovative ways of making Judaism accessible to each unique Jewish individual. Chapter four will focus on current initiatives and creative programs happening within the Reform movement and how the URJ is encouraging the proliferation of such valuable programs.

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<sup>105</sup> Such as the Social Security Administration, Early Childhood Intervention programs, and many others

## Chapter 4

### Increasing Liturgical Inclusion in URJ Congregations

#### The Long Road Ahead

As long as Jewish tradition has existed, it has struggled with the issues surrounding disability. Our most central and sacred texts reveal that our greatest ancestors and leaders possessed disabilities. The Torah describes Leah as having "weak eyes," some form of visual disability, as did Isaac who lost his sight towards the end of his life.<sup>106</sup> Jacob too suffered from a visual impairment in his old age as well as having suffered an injury that left him with a limp.<sup>107</sup> Perhaps the most important of all of the figures in the Torah, Moses describes himself as having some type of a speech impediment,<sup>108</sup> yet he alone experiences God "face to face."<sup>109</sup> In each of these cases, the *Tanakh* and the accompanying rabbinic tradition teaches us that one does not have to be perfect in order to participate in Jewish life.

Yet, what of the Priestly tradition that only those without physical defect could serve God in the Temple? Verses such as, "No man among the offspring of Aaron the priest who has a defect shall be qualified to offer the YHVH's offering by fire; having a defect, he shall not be qualified to offer the food of his God. He may eat of the food of his God...but he shall not enter behind the curtain or come near the altar, for he has a defect"<sup>110</sup> Does this mean that one

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<sup>106</sup> Genesis 29:17; 27:1

<sup>107</sup> Ibid., 48:10; 32:32-33

<sup>108</sup> Exodus 4:10

<sup>109</sup> Deuteronomy 34:10

<sup>110</sup> Leviticus 21:21-23

must be perfect in order to have a relationship with God? We can attempt to explain away such passages as remnants of a Temple cult that no longer defines Judaism. However, they remain a part of our heritage and pose a difficult theological question: If all humans are created in the image of God, then how can any of them be "blemished?"

The Rabbis use ingenious methods to reframe how we read the texts of the *Tanakh* to clarify these apparent contradictions. For example, Deuteronomy 32:5 presents the statement, "Is corruption God's? No! It is His children who are blemished!" *Sifrei Devarim (Parashat Ha'azinu, Piska 3)* demonstrates how the Rabbis reinterpret this text to mean, "Even though they are full of imperfections, they are still God's children."<sup>111</sup> Each and every human being has imperfections and these disabilities do not render anyone less valuable than another.

Yet, for too long, the American Jewish community has not been proactive in finding methods of providing aid to those members of the community whose disabilities make it difficult to participate in synagogue life. Despite the formation of numerous groups aimed at supporting people with disabilities and their families during the mid – twentieth century, the Jewish community was slow in forming their own organizations such as The Council for Jews With Special Needs (1985). While some groups do have longer histories, such as the Jewish Braille Institute (1931)<sup>112</sup>, the Jewish community as a whole has tended to use non-sectarian organizations rather than creating their own. This is evident in the list of resources provided by the URJ Department of Jewish Family Concerns

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<sup>111</sup> Artson p. 7

<sup>112</sup> <http://www.jewishbraille.org/>

website.<sup>113</sup> While this does not indicate a complete attitude of apathy on the part of the Jewish community, it indicates that developing organizations to serve Jews with disabilities specifically has not been a high priority.

One organization that has enjoyed a great deal of success in this area is Yachad/Nation Jewish Council for Disabilities. Sponsored by the Orthodox Union, Yachad provides a wide range of services for Jews with disabilities from guidance of making synagogues more accessible to hosting a Jewish Dating service for people who are deaf. Similarly, the Jewish Heritage for the Blind provides assistance in translating books into Braille and large print.<sup>114</sup> Perhaps this increased level of activism within the Orthodox community relates to a lifestyle of tight-knit communities or to the importance placed upon being able to observe *mitzvot* as fully as possible.

No matter the reasons, the Reform movement in America has lagged behind the Orthodox in creating organizations and resources for Jews with disabilities. It was not until the 2006 Biennial that the URJ released an official statement<sup>115</sup> dedicating itself to creating more inclusion for people with mental illness. It was after this statement that the next stage of the URJ's work, the Disability Task Force, came into being.

### The Disability Task Force

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<sup>113</sup> Available on the URJ's Department of Jewish Family Concerns website at [http://urj.org/\\_kd/items/actions.cfm?action=Show&item\\_id=16339&destination=ShowItem](http://urj.org/_kd/items/actions.cfm?action=Show&item_id=16339&destination=ShowItem)

<sup>114</sup> Brenner; Toiv

<sup>115</sup> See Appendix C

Over the past several decades, synagogues, rabbis, cantors, educators, and other Jewish professionals have struggled with how to actualize their desires to make their congregations more inclusive. Communities have come up with innovative solutions for a variety of issues as they have arisen. Yet, many synagogues have been unaware of each other's trials and successes. For a movement that values the skills, opinions, and abilities of its members so highly, the lack of a centralized group intent on guiding congregations in matters of inclusion represented a problem. In an attempt to respond to this issue, the URJ's Department of Jewish Family Concerns convened a Disability Task Force. The task force includes clergy, educators, lay leaders, people with disabilities, family members of people with disabilities and professionals in the areas of social work, medicine, the law, and numerous other fields. What unites the individuals within the task force is their mission. The central goal of the task force is "to help facilitate change in the culture of Reform institutions by cultivating a desire to eliminate architectural, communication and attitudinal barriers."<sup>116</sup> Some of the key areas identified by the task force for improvement are the accessibility of educational instruction, the availability of tools to guide congregations in becoming more welcoming to people with disabilities, and the broadening of the sensitivity of URJ congregants and leadership to issues surrounding inclusion.<sup>117</sup> It is the hope of the task force that their work will produce resources and training materials available to guide all URJ congregations in becoming more welcoming communities to all of their members

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<sup>116</sup> Christensen, "Inclusion of Jews with Disabilities..."

<sup>117</sup> Ibid.

### **Breaking Down Barriers: Architecture and Access, Attitudes, and Communication**

The Disability Task Force organized the barriers it seeks to break down into three categories: architecture and access, attitudes, and communication. The first set of barriers encompasses many of the physical challenges within synagogues that make participation difficult for people with disabilities. Barriers of this type can range from stairs that prevent access to all or parts of the building for people with mobility issues to poor lighting or acoustics in the sanctuary which makes participation difficult for people with declining eyesight or who are hard of hearing.

Barriers of attitude relate largely to the biases and apprehension community members retain, making them hesitant to make changes to increase inclusion. Some of the problems of attitude relate to negative feelings or opinions held by so-called "normal" people towards people with disabilities. Other problems that fall into this category can relate to reservations people have not towards other people, but to changes in architecture or ritual practice that they fear will be detrimental to the identity of the congregation as they understand it. As barriers that relate primarily to the internal struggles of congregants, changing attitudes has often proven to be one of the most difficult areas to address innovation.

Finally, barriers of communication are comprised largely of the problems that result when people with disabilities utilize different tools or languages to communicate that are not understood by those around them. This can include,

but are not limited to, American Sign Language (ASL), Braille, or the use of facilitated communication. For people who have no exposure or understanding of these types of communication, knowing how to interact appropriately with those who depend on them can be confusing and difficult.

URJ congregations around the country have already identified numerous creative methods of tackling some of these barriers. As far as architectural accessibility, Beth-El Congregation of Fort Worth, TX excels with the design of its new building. Opening its doors in 2000, the third home of Beth-El Congregation was constructed with the goal of creating a place of worship, education, and social interaction for the entire community. With the exception of a balcony in the sanctuary, the entire building is wheelchair accessible. In addition, superb natural and artificial lighting throughout the building as well as an advanced sound system makes participation in all aspects of synagogue life possible for members with physical challenges.<sup>118</sup> Similarly, Bet Shalom Congregation of Minnetonka, MN presents a welcoming environment by having a completely wheelchair accessible *bimah*, including the area leading to the Ark.<sup>119</sup> While changes such as these to an existing building can be financially prohibitive, simple ways of making a synagogue more accessible include placing *mezuzot* at a lower position on door frames so that people in wheelchairs can reach them or by having reserved seating for people with special needs during Shabbat services.

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<sup>118</sup> Mecklenburger, personal conversations and synagogue tour, November 16, 2007

<sup>119</sup> Christensen, phone interview, January 17, 2008



In coping with barriers of attitude, education and training often prove to be the most effective tools. Educating the congregation about various types of disabilities and raising awareness about inclusion can be helpful, yet attitudinal barriers remain some of the most difficult to overcome. One of the most powerful tools in breaking down these barriers comes when the leadership of the synagogue demonstrates support for inclusion without reservations. Especially in cases in which the rabbi *introduces* the need for change to the community through sermons and education, congregants tend to follow his or her lead more so than when the clergy begrudgingly acquiesce to requests from lay members.<sup>120</sup>

Neil Jacobson points out that when clergy and lay leaders model appropriate behavior, other members of the community can benefit from observing these teachable moments.<sup>121</sup> He gives the example of how he experiences a typical *oneg Shabbat* at his congregation. As a man in a wheelchair, he believes that people too often stand while speaking to him. He experiences this as an uncomfortable power dynamic. When people sit next to him instead of standing over him in these situations, Neil feels that he is interacting with them on a more equal level. Simple changes in behavior by clergy such as speaking to congregants in wheelchairs as physical and intellectual equals helps teach other members of the community how to make people with disabilities feel more welcome.

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<sup>120</sup> Ibid.; Paskoff, Phone interview, January 15, 2008; Jaffe, phone interview, January 15, 2008

<sup>121</sup> Jacobson, conversations on October 7, 2007 and February 29, 2008

Overcoming barriers of communication can be accomplished with simple changes within the synagogue. Having large print and Braille *siddurim* or an ASL interpreter available for services are popular places to start. However, even simple things such as improving lighting in the sanctuary or installing assisted listening devices can help a larger number of people participate in worship.

Barriers of communication can also be broken down through interpersonal interactions. Last summer, the URJ Greene Family Camp hosted a pilot program attempting to bridge barriers of communication on a larger scale. Camp Simcha, a program dedicated to provide children with autistic spectrum disorders<sup>122</sup> and their families with a meaningful camp experience, took the form of a one-week adventure. During its first year, Greene's camp director, Loui Dobin, noted that one of the most successful parts of the program was watching the children bridge barriers better than their parents had thought possible.<sup>123</sup> The children with autism spectrum disorders and those considered neuro-typical<sup>124</sup> learned how to communicate and play together through patience, activities, and practice. This year, the program will be expanded in size and include more training for parents, caregivers, and siblings.<sup>125</sup> This type of integrated, immersion program in which entire family units are brought together with the support of trained staff and

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<sup>122</sup> The term "autism" (from the Greek *autos* meaning self) was coined by child psychologist Leo Kanner in a 1943 paper. Kanner's research featured eleven children who showed little interest in other people, demonstrated unusual body movements, and insisted on fixed schedules. These children displayed a wide range of verbal abilities, from having virtually no verbal skills to reciting entire books from memory. The functional level and specific symptoms of the children Kanner studied inspired him and others to place a variety of disorders including various types of autism and Asperger Syndrome under the umbrella term of "autism spectrum disorder." (Ozonoff p. 5)

<sup>123</sup> Dobin

<sup>124</sup> This term refers to individuals who do not have autism spectrum disorders. (Bogdashina p. 12)

<sup>125</sup> Dobin, phone interview, January 23, 2008; Rozen, e-mail communication, January 28, 2008

professionals in the field has the potential to become a model for new modalities of overcoming barriers of communication. It also has the potential of increasing awareness within the community of the continued existence of barriers of access, attitude, and communication and the importance of focusing resources on bridging those obstacles.

### **Inclusion of People with Disabilities in Liturgical Practice**

More so than in other aspects of Jewish life, encouraging people with disabilities to participate in *tefillah* often draw more attention to them within the community. Perhaps this is because of the spot light placed upon those leading worship experiences. In working with numerous rabbis, Shelly Christensen found that many hesitated to call people with disabilities to the *bimah* because they did not want to single them out as different. Christensen explains that once the rabbis voiced this concern and realized that they would in fact be treating people with disabilities *more* like a member of the community by inviting them to participate, this apprehension disappeared.<sup>126</sup>

Another common reason for a hesitancy to include people with disabilities in services comes from the idea that there is a single, correct way to worship. If a person cannot participate in *tefillah* in the same way as everyone else, then that person would be doing things incorrectly. For example, some might believe that if a person cannot stand for the *Barechu*, then he should not even attempt to recite the prayer.

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<sup>126</sup> Christensen, phone interview, January 17, 2008

Rabbis and congregations around the country are finding ways to break down traditions of exclusion. As opposed to involving complex programs or high-tech equipment, many of the most successful examples of inclusion stem from rabbis and communities who are open to seeing people with disabilities simply as members of the congregation rather than "people who need help."<sup>127</sup>

### Creating a Welcoming Atmosphere

Again and again, the most successful stories of congregations creating welcoming environments arose in places in which the clergy inspired an atmosphere where different forms of worship are acceptable. Rabbi Jaffe remembers being told to alter the prayer service for the Jewish residents of the Hunteaton Developmental Center because they could not understand a regular service.<sup>128</sup> He found this to be insulting to the residents of the center. His approach seeks to keep the rubrics of the service intact while incorporating various ways for participation. Some prayers are signed so that those without verbal skills can participate. Others are sung with as many simple sounds such as "hey" or "rah" incorporated as possible. This allows those with limited mobility or those who relate best through music to participate. Additionally, those congregants with minimal speech ability can participate by saying these simple syllables along with all those around them.

Other success stories focus on allowing thinking about *tefillah* in more creative or unconventional ways. Christensen often recommends a set of cards with pictures to cue people on the autistic spectrum as to where they are in the

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<sup>127</sup> Jacobson, phone interview, February 29, 2008

<sup>128</sup> Jaffe, Phone interviews, December 14, 2006 and January 15, 2008

service.<sup>129</sup> While many people with autism cannot connect the parts of the service to the auditory instructions given or the pages in a *siddur*, they can connect a familiar picture with a favorite song. Rabbi Paskoff tells of one service he led as the community celebrated a boy who negotiates life in a wheelchair becoming *bar mitzvah*. During that service, Rabbi Paskoff had the congregation remain seated for the entire service. While this was uncomfortable for many people used to standing for specific prayers, the experience reiterated for the community that Jewish worship should not be thought of as a static and unchanging set of practices, but as a place where innovation and creativity should be welcomed. At the same time, many congregants expressed that such *tefillah* experiences helped them to understand how people with mobility challenges can feel excluded at times many people had never even thought to consider.

Rabbi Paskoff sums up the perspective of his colleagues with a simple way: Instead of beginning by asking what a person cannot do, start by asking what he *can* do. For one of his students, it took months just to teach him how to hold the *Kiddush* cup without dropping or throwing it. For him to participate in *tefillah* by holding it for the blessing was a wonderful achievement. In the case of one student of Rabbi Jaffe who could only make the sound "rah," standing on the *bimah* for an *aliyah* and saying that syllable each time it appeared in the blessing without prompting demonstrated a moment of pride for the student and his family. For that student, whose parents had never envisioned their son being able to even stand on the *bimah* with appropriate respect, Rabbi Jaffe believes that his

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<sup>129</sup> Christensen, phone interview, January 17, 2008; Christensen, *Jewish Community*

participation in the service in this simple way demonstrated a greater understanding for what becoming a *bar mitzvah* truly means. To Rabbi Jaffe, the man in this story showed a deeper commitment to his Judaism during this service than many of his neuro-typical students.

By starting from a place of affirmation, inclusion of people with disabilities in liturgical ritual demonstrates a pride in their abilities instead of a shame in their shortcomings. Judaism's rich tradition of innovation has kept its practice meaningful for millennia. The challenges of including people with disabilities within our communities more completely should be understood as a necessary continuation of Judaism's history of adaptation.

#### **The Future of the URJ Disability Task Force and Inclusion within the Reform Movement**

Compared to the country as a whole, the Reform community as a movement began the process of focusing on inclusion recently. While the Reform movement has been at the forefront of other issues such as civil rights and the atrocities taking place in Darfur, other movements within American Judaism have surpassed us in developing programming and resources for people with disabilities. The Orthodox community has produced numerous resources for its constituents to help all members of the community participate as fully as possible in the life of the synagogue.

Despite this late start, the work of the task force is receiving enormous support from within the movement. Synagogues all over the country are forming

inclusion committees<sup>130</sup> and even bringing in professionals to help with the process. The task force has collected programs and ideas from URJ congregations, and slowly, an anthology of resources is being assembled for the benefit of all the members of the Union. With the continued support of its clergy, lay leaders, and congregants, the inclusion of people with disabilities in congregational life will shift from an issue to be addressed into a normative and integrated part of every aspect of congregational life. Instead of having to expend energy identifying and welcoming people with disabilities into our communities, we will instead simply be able to appreciate the gifts of each member as unique and valuable.

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<sup>130</sup> Caplan, Phone interview, January 14, 2008 and Materials; Jacobson, e-mail communication, January 9 -10, 2008.

## Conclusion

Judaism's rich history has always demonstrated awareness for the holiness of each individual within the greater community. Within traditional *halakhic* literature, this awareness affected debates that determined who in the community was *chayav* regarding specific *mitzvot*. For an individual to be obligated regarding a *mitzvah*, he must possess the physical and mental (*da'at*) capacity to fulfill this requirement. Within a system based on performing *mitzvot* as a means of participation, those who lacked *da'at* or who had physical disabilities were not fully included. For the Rabbis, this was not intended as a punishment or as a disparaging comment on the worth of the individual. On the contrary, the Rabbis considered requiring a person to be *chayav* regarding a *mitzvah* he was incapable of fulfilling to be improper.

Within liberal Judaism in America today, our understanding of the role of *mitzvot* in our lives has evolved. Reform Jews base their religious practice on fulfilling *mitzvot* because of informed choice and religious devotion rather than obligation. Within this mode of thinking, "exempting" people with disabilities from performing *mitzvot* amounts to exclusion. This view was heightened historically and socially by the national movement in the United States advocating for increased rights and better treatment for all citizens regardless of race, gender, or disability.

Despite a desire on the part of the Reform movement to be inclusive of people with disabilities, the URJ and individual congregations have been slow in



change. Too often, "access for all" stopped at the building of a ramp into the building and the addition of handicapped-accessible restrooms. With the formation of the Disability Task Force, the URJ has demonstrated a desire to break down barriers of access and architecture, communication, and attitude. No longer is it enough for a person who uses a wheelchair to be able to sit in the back of the sanctuary or for a person with a developmental disability to be a passive as a passive participant in the community. With a dedication and true commitment to change, the Reform movement has the opportunity to aid every Jew in living up to their full potential. Hopefully, these transformations will not come simply from a desire to be politically correct, but from the understanding that such change and inclusion is a part of our Jewish identity. For us to treat each person as being created in the image of God, we must provide everyone in our communities with the access to our rich heritage and traditions.

**Appendix A**  
**A Letter Requesting**  
**the Admission of Boy to an Institution**

Found in *Parallels in Time*, <http://www.mnddc.org/parallels/four/4b/7.html>

Dear Dr. Samuel Gridley Howe,

I left an application at your office in Bromfield Street yesterday on behalf of James [Doe] who desires to have his son admitted into the Institution for Feeble-minded Youth. James is an industrious man who has been employed as a gardener by my father and myself, more or less, for the last four years. His boy has grown to be exceedingly troublesome, escaping from home as often as possible and causing his parents much anxiety. Of late they have felt obliged to confine him in the cellar during the father's enforced daily absence. I beg you will give the case your kind consideration, assured that it is a worthy one and deserving prompt treatment.

Very respectfully yours,

William [Doe] July 7, 1841

## Appendix B

### American Reform Responsa Relating to Disability

#### CCAR RESPONSA (CARR 298-30)

#### *Contemporary American Reform Responsa*

#### 202. Parental Obligation to a Severely Retarded Child

**QUESTION:** A couple with two healthy, normal children has a third child who is severely malformed and retarded. The child is not aware of people around him, and his intelligence is limited to a few reflexes. His face will occasionally form what appears to be a smile, and if food is placed in his mouth he will swallow by reflex. There is no hope for a future beyond this, however. The child has, for several years, simply lain in a fetal position in a crib in a nursing home. Do the parents have a continued obligation to visit this child or is it sufficient that they see to it that he is cared for in the institution where he now resides? Does the tradition provide some guidelines for determining the degree of medical care to be given to this child in a crisis? Physicians are generally surprised that the child has lived this long. If the reflex by which the child eats stops functioning, how far should the medical staff intervene to preserve life? Is there the obligation to feed him through a stomach tube, for example? (Rabbi M. Remson, Naperville, IL)

**ANSWER:** Let us begin by dealing individually with each question which you have asked. Traditional Judaism places an obligation for the maintenance of children upon the father; it is his duty to provide for all of his children's needs in accordance with his ability (*Yad Ishut* 13.6; *Shulhan Arukh* Even Haezer 73.6 ff). This includes formal education, learning a trade or anything else which will enable a child to take her place in the adult world (*Kid.* 29a ff; *Shulhan Arukh* Yoreh Deah 245.1, 4). There is some discussion about the number of years for which this obligation exists. Originally tradition limited it to six years (*Ket.* 49b, 65b; *Shulhan Arukh* Even Haezer 71.1) and indicated that after that time, the father was duty-bound to maintain the child as an act of *tzedakah* (*Yad Hil.* *Ishut* 12.14, 15, 21.17; *Shulhan Arukh* Yoreh Deah 251.4). However, the demands of *tzedakah* were to be enforced rigidly according to the actual needs of the child (*Yad Hil.* *Ishut* 13.6; *Shulhan Arukh* Even Haezer 73.6). This obligation then continues until age thirteen or in modern times until the child reaches an independent adult status.

Little has been said in our legal tradition about the emotional needs of the child, but such thoughts have been conveyed through the *aggadic* literature.

Nothing in the traditional literature limits such care to normal children. In other words, the obligation is universal and applies to every child regardless of her mental or physical abilities.

Tradition, therefore, indicates that this child, despite its very limited abilities, deserves both the maintenance and affection which the parents can provide. As I view this problem through my personal experience with a severely handicapped daughter and that of others who have dealt with parents of handicapped children, it is clear that unless ongoing relationships of some kind are established with such a handicapped child, the parents and other children will always feel guilty. Obviously this child can not be made part of the normal family life, but ongoing visits and continued concern with his welfare rests as any obligation upon all the members of the family. Practically speaking, such visits also assure a higher standard of care for such an individual, as those institutionalized children who receive no visits are frequently neglected.

Now, let me turn to the second portion of your question which asks about medical procedures in case this child's normal reflexes stop. We should follow the advice of the *Mishnah*, which states that no positive action which will hasten death may be instituted (*M. Shab* 23.5, 151b; *Shulhan Arukh* Yoreh Deah 339). On the other hand, the same sources indicate that we need not impede the individual's death when no recovery is possible. This matter has been discussed at some length by Solomon B. Freehof (*W. Jacob, American Reform Responsa*, # 77). Nothing unusual needs be done by the attending physician; there would be no obligation to feed this individual through a stomach tube, etc. We followed the decision with our own child.

In summary, as long as this handicapped child remains alive, he should be given all care and affection possible. If his reflexes stop and no recovery is possible, he should be permitted to die peacefully.

February 1984

## CCAR RESPONSA (NARR 70-71)

*New American Reform Responsa***43. Handicapped Access**

**QUESTION:** My synagogue is interested in designing access to the building for the handicapped. We face unusual difficulties because of our landmarks status at Central Synagogue in New York. Although we have engaged an outstanding architect to prepare the plans and supervise the construction, some individuals connected with the historic landmark institutions object to any change in the building. What responsibilities does a synagogue have toward handicapped congregants? What does tradition say about this matter? (Rabbi Stanley M. Davids, New York NY)

**ANSWER:** The Jewish Biblical tradition, and later rabbinic tradition, dealt primarily with the deaf, the mute, and the blind (Lev. 19.14 ff). Rabbinic literature separated the deaf and mutes from the others as these individuals were considered unable to understand like the insane, and so incapable of participating in general or religious life (Hag 3.5; R H 29a; Eruv 31b; Hul 2a). For the lame no disabilities were indicated except that along with the blind they could not serve as priests (Lev 21.18); neither could anyone else with a permanent blemish. The blind were free from religious obligations (B K 87a; Kid 31a), but according to their ability were permitted to participate and lead services. So a blind *hazan* was permitted to officiate although he was not to read from the *Torah* (Meg 24a; Get 60b; Yad Hil Tef 8.12; *Shulhan Arukh* Orah Hayim 53.14; Git 60b). There was no discussion of other physical disabilities as such individuals have been considered part of the general community. They possessed all the rights and obligations of any other Jew including the obligation to pray with a *minyan* in a formal service (*Shulhan Arukh* Orah Hayim 90, 109, etc.; Peter S. Knobel (ed) *Gates of Mitzvah* p 12). No Jew could be excluded from religious service except in those rare occasions when the community used the *herem* as punishment (Rabenu Gershom Taqanot in Louis Finkelstein's *Jewish Self-Government in the Middle Ages* pp 120 f). Extraordinary steps have always been taken to assure a *minyan* for mourners and for those unable to attend synagogue services.

In the medieval period when synagogues were often located in a common courtyard, access could not be blocked in any way, nor could it be made difficult (Meir of Rothenburg *Responsa* #541, 542 *Shulhan Arukh* Orah Hayim 150).

Landmark status is important and serves us well in our effort to preserve historic synagogues and to maintain the Jewish artistic architectural tradition, however, the primary object of the synagogue is to serve all the members of our community. As the number of aged increases so will the number of individuals who are handicapped. It is an obligation for us to serve all segments of the community and to provide access to our synagogues for those who are handicapped.

December 1988

## CCAR RESPONSA (TFN no.5752.5 297-304)

**Disabled Persons\***

5752.5

***She'elah***

What are the obligations of the community, and specifically of congregations, toward physically and mentally disabled persons? (CCAR Committee on Justice and Peace)

***Teshuvah***

Jewish tradition speaks repeatedly of the role that elderly, deaf, blind, mentally and physically handicapped persons play in the ritual and ceremonial realm, but there is little discussion of the community's obligation toward such persons. What follows is a brief overview of the relevant attitudes found in the biblical and rabbinic sources, and the Reform perspectives we might bring to them.

**1. Blind Persons.**

We are obligated to treat a blind person (*ivver*) with special consideration. For example, the Torah prohibits putting a stumbling block before the blind and warns, "Cursed be the one who causes the blind to wander out of the way."<sup>1</sup>

However, tradition saw the blind as lacking certain legal and ritual capacities.<sup>2</sup> and a talmudic passage, contains different opinions about issues affecting the sightless. What is remarkable about it is that, at its end, a blind Torah scholar's reaction to the discussion becomes "the last word" on the matter.

R. Joseph [who was blind] stated: Formerly I used to say: "If someone would tell me that the halakhah is in accordance with R. Judah who declared that a blind person is exempt from the commandments, I would make a feast for our Rabbis, because though I am not obligated I still perform commandments. " But I have heard the statement of R. Hanina, who said that greater is the reward of those who are commanded to do [mitzvot] than of those who without being commanded [but merely do them of their own free will]. If someone would tell me that the halakhah is [after all] not in accordance with R. Judah, I would make a feast for our Rabbis, because if I am enjoined to perform commandments the reward will be greater for me."<sup>3</sup>

In general, the halakhah goes with R. Hanina and obligates the blind to observe all the commandments, though there were numerous discussions about it.<sup>4</sup> Thus, while the *Shulchan Arukh* rules that the blind may not say the blessing over the *havdalah* candles, other authorities permit them to recite all the benedictions for



the ceremony.<sup>5</sup> Further, the blind are obligated to wear *tzitzit*, even though the wording of Numbers 15:39 would seem to demand eyesight for the fulfillment of this mitzvah.<sup>6</sup> We also learn that two blind rabbis recited the Pesach *Haggadah* for themselves as well as others.<sup>7</sup>

## 2. Deaf Persons The deaf person (*cheresh*) is dealt with in the Mishnah:

We have learnt: "Wherever the Sages speak of *cheresh*, [it means] one who can neither hear nor speak." This [would imply] that he who can speak but not hear, or hear but not speak is obligated [to do all mitzvot]. We have [thus] learnt what our Rabbis taught: One who can speak but not hear is termed *cheresh*; one who can hear but not speak is termed *illeim* [mute]; both are deemed sensible in all that relates to them.

This passage is contradictory in that it offers two definitions of the word *cheresh* one who is a deaf-mute and one who is simply deaf.

Said Ravina, and according to others, Rava: [Our *mishnah*] is defective and should read thus: All are bound to appear [at the Temple] and to rejoice (Deuteronomy 16:14), except a *cheresh* that can speak but not hear, [or] hear but not speak, who is exempt from appearing [at the Temple]; but though he is exempt from appearing, he is obligated to rejoice. One, however, that can neither hear nor speak (as well as a *shoteh* [simpleton]) and a minor are exempt from rejoicing, since they are exempt from all the precepts stated in the Torah.<sup>8</sup>

In our day, R. Eliezer Waldenberg holds that anyone who can hear anything at all, including using a hearing aid and that anyone who can speak is considered *pikui'ach* (as if without disability) and therefore obligated regarding all mitzvot, except those that require hearing. They are married *d'oraita* (based on Torah law directly) and require biblically ordained divorce.<sup>9</sup> Under this very limited definition of *cheresh*, most people with hearing and speaking disabilities will be considered as having no handicap.

Similarly, R. David Bleich maintains that the ability to speak, no matter how acquired and even if the speech acquired is imperfect, is sufficient to establish full competence in all areas of halakhah.<sup>10</sup> However, he notes that the status of a normal person who subsequently becomes a deaf-mute is the subject of controversy among halakhic authorities. Some consider them to be like congenital deaf-mutes, while others hold that such persons are not to be regarded as legally incompetent.<sup>11</sup>

The development of schools for the deaf was one of the greatest factors in liberalizing halakhic thinking regarding deaf and mute persons. R. Isaac Herzog, chief rabbi of Israel until 1959, ruled that, "those [rabbis] who remain in the ivory tower and say the schools [for the deaf] are not good enough do not realize the techniques that have been developed in the schools." He goes on to describe the

techniques used in the schools and suggests that once they are known, one's point of view must change. You have got to do so and then remove all limitations that still exist surrounding the technically deaf-mute."<sup>12</sup>

### 3. Otherwise Physically Disabled Persons.

Little systematic consideration is found in rabbinic sources regarding their needs. Such handicapped persons are permitted to recite the Megillah while standing or sitting. We find a discussion about prostheses worn on Shabbat, and such exceptional circumstances as a woman's ability to perform *chalitzah* (the removal of a shoe from her brother-in-law who refuses to marry her)<sup>13</sup> when her hand was amputated. The Sages generally attempted to include handicapped or disfigured individuals in public ceremonies, except when their participation would cause people to gawk at them rather than concentrate on worship.<sup>14</sup>

### 4. Mentally Disabled Persons.

The word *shoteh* ("simpleton," "imbecile" or "idiot") has generally been taken to refer to a mentally disabled individual. However, close examination of the use of the word in the Mishnah and Talmud reveals that there are two basic kinds of *shotim*:

(1) the mentally ill and the retarded (little distinction is made between the two), and

(2) the morally deficient who do not act in accordance with the communal ethos, though having the intelligence to do so.

Tradition identified particular types of behavior as falling in category (1) of the definition: One that goes out alone at night, spends the night in a cemetery, tears his garments, or always loses things.<sup>15</sup> Clearly, these activities were meant to characterize the mentally ill rather than the retarded.

In our day, R. Moshe Feinstein differentiated between a *peti* (the mentally retarded whom the community must provide with an education once s/he has reached the understanding of a six-year-old) and the *shoteh*. He urged the welcoming of the *peti* to synagogue worship once s/he has reached majority (12 or 13 years of age) and would count such a person in a *minyan*. On the other hand, he would not include a *shoteh* who might be diagnosed as severely mentally ill and truly unaware of, or unable to relate to a worship service. Even so, such persons should be encouraged to join as much as possible in the life of the community, to the degree that they can do so without being disruptive to others or are themselves unhappy.<sup>16</sup>

### 5. Reform Perspectives.



We should be sensitive to the fact that disabled persons, particularly the deaf, have traditionally been regarded in light of what they can *not* do, rather than considering positively the unique capabilities they have. We should encourage the inclusion of all disabled persons in our congregations and, where indicated, encourage the formation of special support groups.

Our *she'elah* asks whether the community or congregation has an express "obligation" in this respect. The answer is yes with regard to the principle. We deal here with a mitzvah and include it under the obligations we have with regard to our fellow human beings (*mitzvot bein adam l'chaveiro*), and the important part such *mitzvot* play in Reform Jewish life and theology.<sup>17</sup>

Of course, their application must be considered in the context of the congregation's and rabbi's resources. We cannot obligate any rabbi or congregation to provide special services to all disabled persons who come within their purview, but the obligation to be of whatever service possible has the status of a mitzvah. Without stating what is or what is not possible in a particular community, the following opportunities may serve as examples:

When we include the disabled in our *minyanim*, we must attempt to include them fully and facilitate their participation in the spiritual life of the community. For instance, large-print and Braille prayer books and texts, hearing aids, sign-language interpreters, wheelchair access to all parts of the synagogue building and sanctuary, fall under the rubric of mitzvah and present the community with challenges and opportunities. New technologies will facilitate in-home electronic participation in services and classes. Sometimes, aesthetics and mitzvah may seem to clash: a ramp for wheel chair access to the pulpit may present a visual detraction, but it will also be inspiring for the congregation to know that its religious obligations toward the handicapped have been fulfilled. And obviously, where new buildings are constructed the needs of the disabled must be taken into consideration in the planning. As Reform Jews, we should allow for a creative interpretation of the mitzvot that would help to incorporate disabled persons into the congregation in every respect.<sup>18</sup>

In addition to providing physical facilities, we must provide the handicapped with the education that they will need to participate fully, or as fully as they can, in the life of the congregation. Where necessary, several congregations in the city should combine their resources to make this possible.

The aim of inclusion of the disabled is their complete participation in Jewish life. Therefore, we would, for instance, permit a blind student to read the Torah portion from a Braille Bible, if not from the Torah scroll itself though this would not constitute a halakhically sanctioned reading, since it may not be done from memory.<sup>19</sup> We see the mitzvah of including the deaf as overriding the traditional prohibition.

A deaf bar/bat mitzvah student, depending on his/her capacity, could read from the Torah, or write a speech and have someone else deliver it, or deliver it in sign language him/herself and have an interpreter speak it to the congregation.<sup>20</sup>

Mentally disabled persons could be encouraged to do as much as possible.

Many of these issues are not only similar to, but directly concern, elderly individuals. Indeed, hearing, visual, mental and physical disabilities often come as part of the aging process. Just as the Jewish community has gone out of its way to provide proper facilities for the aged, so should it make adequate resources available for the mentally and physically disabled of all ages. The fate of the tablets of the Decalogue describes our obligation: "The tablets and the broken fragments of the tablets were deposited in the Ark."<sup>21</sup> There was no separate ark for the broken tablets: they were kept together with the whole ones.

In sum, our worth as human beings is based not on what we can do but on the fact that we are created in God's image.<sup>22</sup> We should aim for the maximum inclusion of the disabled in the life of our communities.

### Notes

\*One might well consult *Who Makes People Different*, Carl Astor, United Synagogue of America: New York, 1985, for an even more in-depth analysis of this topic.

1. Leviticus 19:14 and Deuteronomy 27:18.
2. For example, BT Gittin 2:5, 22b prohibits a blind person from delivering a get (the religious divorce document). M Terumot 1:6 does not allow a blind person to separate terumah (a special donation to priests and sanctuary). M Megillah 3:6 and BT Megillah 24a teach that a person blind from birth may not recite the Shema and its blessings for the congregation since s/he would not have experienced the light mentioned in the morning prayer, but this is overruled by the Gemara.
3. BT Baba Kamma 86b.
4. Tosafot (medieval talmudic comments, a genre begun by Rashi's descendants) on BT Baba Kamma 87a. Others argue that even if the law does not require the blind to observe the commandments, their own desire to observe them becomes, in effect, an obligation to do so. See Chiddushey HaRashba, BT Baba Kamma 87a. However, Rambam disqualifies blind persons from serving as witnesses (Yad, Hilkhot Edut, 9:12; Sh. A., HM 35:12; Resp. Tashbetz, v.3, # 6. See also R. Asher b. Yechiel, Resp. Ha-Rosh 4:21, R. Shelomo Luria, Yam shel Shelomo, Baba Kamma 8:20, Meiri to BT Baba Kamma 87a and Mishnah Berurah to Sh. A., OH 53, 41. Others argue that even if the law does not require the blind to observe the commandments, their own desire to observe them becomes, in effect, an obligation to do so. See Chiddushey HaRashba,

- Baba Kamma 87a. However, Rambam disqualifies blind persons from serving as witnesses (Yad, Hilkhot Edut, 9:12; Sh. A., HM 35:12; Resp. Tashbetz, v.3, #6.
5. The reason for denying them the privilege arises from the argument that, in order to say a blessing over light, one must be able to enjoy its benefits.
  6. Numbers Rabbah, Sh'lach Lecha 17:5, BT Menachot 43a-b, and Sh. A., OH 17:1.
  7. R. Sheshet and the above-cited R. Joseph; BT. Pesachim 116b.
  8. BT Hagiga 2a; he cited passage is from M. Terumot 1:2.
  9. Resp. Tzitz Eliezer, 15, # 46, p. 120 ff.
  10. "Survey of Recent Halakhic Periodical Literature: Status of the Deaf-Mute in Jewish Law", Tradition, 16 (5): 79-84, Fall, 1977, p. 80.
  11. Ibid. Note that Bach, Sh. A., YD 1; Shakh, Sh. A., YD1:22; and Divrei Chaim, II, EH, # 72, take the former position, and Rambam and Bertinoro (in their commentaries on M Terumot 1:2) adopt the latter.
  12. Jerome D. Schein and Lester J. Waldman, eds. The Deaf Jew in the Modern World (New York, 1986), p 17.
  13. BT. Shabbat 65b and Yevamot 105a. The latter tractate is devoted to this biblically ordained ceremony, which obtained when a married man died before he could sire a child. His brother was then obligated to marry the widow in order to "build up a name" for his deceased brother. In modern Israel, the brother is no longer permitted to marry his sister-in-law, but the ceremony of chalitzah is still necessary in order to release her so that she can marry again.
  14. See, e.g., the question of whether a priest whose hands are discolored may lift them in blessing the congregation; BT Megillah 24b.
  15. BT. Hagiga 3b-4a. The discussion revolves around the question whether any one of these acts is enough to characterize one as a shoteh. Sh. A., Yoreh De'ah 1:5, deems one of these actions sufficient.
  16. "The Difference Between 'Shoteh' and 'Peti' and the Obligation of Keeping Commandments and Learning Torah in Relation to a 'Peti,'" Behavioral Sciences and Mental Health, Paul Kahn, special issue editor (New York: Sepher Hermon Press, 1984), p.229.
  17. See Gates of Mitzvah, Simeon J. Maslin, editor (New York: CCAR, 1979), pp. 97-115 for a discussion of the role of mitzvot in Reform Judaism
  18. Rabbi Joseph Glaser recounts an example of such creativity: a deaf, and basically speechless, boy calligraphed his Torah portion, incorporating its theme (the burning bush) into the artwork (personal communication, 1991).
  19. BT. Gittin 60b, Rambam, Hilkhot Tefillah 12:8, Sh. A., OH 53:14 and YD 139:3, cited in J. David Bleich, Contemporary Halakhic Problems, Volume II (New York, 1983), p. 30. Though the Shulchan Arukh rules that a blind person may not be called to the Torah, since one is not permitted to read it from memory (OH 139:3), this ruling is challenged by a number of authorities who hold that the obligation of the one called up to read the Torah portion personally no longer applies (Maharil, quoted by Isserles ad

loc.; Mordechai Yaffe, *Levush*, OH 141:3; *Bayit Chadash to Tur*, OH 141; *Magen Avraham*, OH 139, n. 4; *Turei Zahav*, *Orach Chayim* 141, # 3; *Mishnah Berurah*, OH 139, # 12). The Conservative Movement issued a responsum in 1964 regarding a blind man's wish to read the Torah for the congregation on Shabbat using Braille. The responsum, signed by Ben Zion Bokser, then Chairman of the Committee on Jewish Law and Standards, states, "We would not regard it appropriate for a person to read the Torah from Braille. Such reading would have the same status as reading from the printed text of Humash, which is not regarded as valid." However, a blind man may bless the reading of the Torah when it is read on his behalf by a reader. The bar mitzvah may, according to some authorities, recite the haftarah from memory or from a Braille text, while others require that a sighted reader repeat the haftarah prior to the final blessings over the reading by the Bar mitzvah.

Mark Washofsky notes: "R. Binyamin Slonick, a student of R. Moshe Isserles in the 16th century, in *Resp. Mas'at Benyamin*, # 62, addresses the question whether a blind person may be called to the Torah. In doing so, he remarks that he himself has become blind in his old age and that those such as R. Yosef Karo (*Beit Yosef*, OH 141) who prohibit this practice would 'expel me from God's portion, the Torah of Truth and eternal life.' His language testifies not only to his ultimate halakhic conclusion that the blind are in fact permitted to be called to the Torah, but also to his fervent wish that the law not be otherwise. His is not an attitude of resignation, a passive readiness to accept whatever lot assigned to him by the Torah; he actively desires that halakhah not exclude him from a ritual which has long been a source of much satisfaction to him." ("Some Notes on the Rights of the Disabled"; unpublished paper, 1991)

20. Such a student might be reminded of Moses' speech impediment, which did not hinder him from becoming Judaism's greatest leader. He or she might also want to read Les Gruber's article, "Moses: His Speech Impediment and Behavior Therapy," *Journal of Psychology and Judaism* 10:5-13 (Spring/Summer, 1986), pp. 5-13. He takes Moses' description of himself as *k'vad peh u- khevad lashon* (Exodus 4:10) to mean that he stuttered and that the Torah account accurately describes the sort of therapy stutterers use today to overcome their disability.
21. *Numbers Rabbah*, *Bamidbar* 4:20.
22. *M Sanhedrin* 4:5, *BT Sanhedrin* 37a.

## CCAR RESPONSA

NYP no. 5759.8

## A Blind Person as a Witness

*She'elah*

From a traditional and from a Reform perspective, may a blind person serve as a witness at a wedding? (Rabbi Joseph Forman, Elkins Park, PA)

*Teshuvah*

We say "yes" to this question, though traditional *halakhah* would likely answer it in the negative. Maimonides includes the blind among the ten persons disqualified from serving as witnesses before a court.[1] The exclusion, he tells us, is Toraitic, derived by way of a midrash on Leviticus 5:1. The verse speaks of a public adjuration (*kol alah*) imposing a requirement to testify upon "one who has either seen or learned of the matter." Since blind persons have not "seen" the matter, they are exempted from the responsibility of giving testimony upon it.[2] The ceremony of betrothal (*kidushin*), if it is to be valid according to Jewish law, must occur in the presence of two witnesses[3] who see the transfer of the ring from groom to bride.[4] These witnesses must meet the standards of eligibility demanded of all witnesses; should either or both of them be among the ten "disqualified witnesses" (*pesulei edut*) mentioned above, it is as though no testimony exists and the wedding is invalid.[5]

Our contrary viewpoint is based upon the following three arguments. First, it is quite possible that the *halakhah* recognizes the validity of a marriage even when the wedding ceremony is conducted in the presence of ineligible witnesses. Second, despite the description of the law in the preceding paragraph, a case can yet be made that blind persons are *not* to be disqualified from serving as witnesses to a wedding. And third, as Reform Jews we endorse the general tendency of Jewish law to include the blind in religious life to the greatest extent possible.

1. *Valid Testimony Without Qualified Witnesses.* Our first point is the subject of a responsum by R. Moshe Sofer ("Chatam Sofer," d. 1839).[6] The case concerns a wedding at which the officiating rabbi (the *mesader kidushin*) designated himself and the local synagogue sextant (*shamash*) as the witnesses to the ceremony. Some weeks later, the rabbi discovered that the *shamash* was a relative of the bride and hence disqualified to serve as a witness concerning her.[7] Should he require that a second wedding ceremony be held in the presence of two qualified witnesses, or is it sufficient that the first ceremony was conducted in the presence of a large assembly of people (including a number of rabbis) who, though they did not witness the actual exchange of the ring (the



*ma'aseh kidushin*), could at least testify that a wedding ceremony did take place? Sofer responded that the wedding ceremony was valid on the basis of the concept *anan sahadei* ("we are all witnesses").[8] Since the couple entered the *chupah* in the presence of numerous qualified witnesses-among whom were the rabbi and other individuals knowledgeable of the law--with the obvious intention to marry, and since the couple left the *chupah* under the unchallenged presumption (*chazakah*) that they were married, "then surely 'we are all witnesses' to the fact that a valid act of *kidushin* took place, including the transfer of the ring and the proper verbal formula, following the instructions of the officiating rabbi who is knowledgeable of the laws concerning marriage." The fact that one of the designated witnesses under the *chupah* turned out to be ineligible does not invalidate this testimony, based upon the common knowledge of the wider community.[9] Similarly, R. Yosef Eliyahu Henkin, one of the outstanding twentieth-century *poskim* in the United States, ruled that if no witnesses are present at the wedding, the marriage of two Jews is still valid according to *halakhah* by virtue of the fact that they live together in public as husband and wife. Thus, "common knowledge" is sufficient testimony that a wedding has taken place and that a marriage exists.[10]

"Common knowledge" also suffices to establish a valid marriage in cases where the witnesses do not actually see a vital aspect of the transaction. For example, it is a custom in some circles for the bride's face to be veiled during the wedding ceremony. The question is raised: since the witnesses in such a case do not actually see her face, how can they identify her as the bride, the one who accepted the *kidushin* from the groom? Is a second act of *kidushin* required to validate the marriage? Some say "yes," that the marriage cannot be declared valid when the witnesses did not actually see the bride's face.[11] Most authorities, however, side with the author of the commentary *Avnei Milu'im*,[12] who holds that such testimony is valid.[13] He writes: "we require the testimony of witnesses to a wedding only in order to make the fact of the marriage public knowledge, so that neither party can deny the wedding took place." Since the identity of the wife will become public knowledge as soon as the wedding is ended, it is as though the witnesses had seen her at the actual moment of *kidushin*. The presumption (*chazakah*) that the wife was in fact the one standing under the *chupah* substitutes for actual eyewitness testimony.[14]

Thus, while testimony (*edut*) is an absolute requirement for determining the legal validity of a wedding, this testimony may be established by "common knowledge" as well as by the presence at the wedding of two "kosher" witnesses. The authors of these rulings do not, of course, mean to say that it is perfectly permissible to invite disqualified witnesses to perform that function at a wedding. These cases involve situations that are *bedi'avad*, "after the fact." In principle (*lekhatchilah*), these authorities would demand that the officiating rabbi make sure in advance of the wedding that the witnesses are qualified under *halakhah* to give testimony. Yet so long as it is "common knowledge" that the couple have

married, we need not demand the testimony of two qualified witnesses in order to declare their marriage valid.

2. *The Blind As Qualified Witnesses.* Although, as we have seen, Maimonides rules that the blind are disqualified as witnesses on the basis of Torah law, the Talmud offers an alternative theory as to their disqualification. We find this in *BT Gitin* 23a, which discusses the Mishnah's ruling that a blind person is not permitted to act as the agent for transporting a bill of divorce (*get*) from the husband to the wife.[15] The Talmud inquires as to the reason for this disqualification. Rav Sheshet responds: "because a blind person cannot tell from whom he receives the *get* and to whom he gives it." His colleague, Rav Yosef, rejects this argument: "if so, then why is a blind man permitted to live with his wife? Surely this is because he recognizes her voice; in the case of a *get* as well, a blind person might be able to identify the sender and receiver by their voices (and thus be eligible to transport the document)." Rather, concludes Rav Yosef, this *mishnah* deals with a *get* sent to the land of Israel from the Diaspora; in such a case the agent must be able to testify that "this document was written and signed in my presence." [16] That is, the blind person is disqualified simply because this particular agency requires that the agent actually see the persons who commission the *get*. The implication is that a blind person might well be accepted as a witness to matters upon which he can speak reliably and that do not require eyewitness knowledge. This conclusion, writes R. Barukh Halevy Epstein (d. 1942), runs directly counter to that of Maimonides. According to the latter, the Torah disqualifies the blind from serving as witnesses simply because they cannot see; a blind person may therefore never testify, even to matters that do not require eyesight. By contrast, should we follow the approach taken in *Gitin* 23a, we might conclude that "there is a logical basis (*sevara*) to say that a blind person may testify" on matters that can be established by means other than eyesight.[17]

We agree with this logic. Since it is not absolutely certain that Maimonides is correct—that the Torah disqualifies the blind from testifying on *all* matters—there does not seem to be any good reason to deny them the right and the duty to serve as witnesses in matters that do not require eyewitness testimony. A wedding partakes of this latter category. Although a blind person cannot see the wedding transaction, so long as he or she recognizes the couple by their voices, can follow the exchange of rings by touching their hands during the moment of *kidushin*, and can hear them recite the formulae of marriage (*harei at/ah mekudeshet/mekudash etc.*), he or she can reliably testify that a wedding has indeed taken place.

3. *Inclusion of the Blind in Jewish Religious Life.* We should remember as well that Jewish law does not as a general rule seek to exclude or exempt the blind from the circumference of religious obligation. Despite the view of an early rabbinical authority to the contrary,[18] the accepted *halakhah* requires the obligated to fulfill the *mitzvot*, exempting them only from those duties and

experiences that require eyesight.[19] Concerning those exemptions, moreover, the tradition has demonstrated that it is capable of change, bringing the blind into the orbit of an observance from which they were originally excluded. The question whether a blind person may be "called up" (given an *aliyah*) to the public reading of the Torah is a case in point. Originally, those who were called up to the Torah were the ones who actually performed the reading.[20] Since the text must be read directly from the scroll and not from memory, the person called to the Torah (the *oleh*) must possess the ability to read it, even if he assigns that task to a designated reader (*chazan* or *ba'al keriah*).[21] For this reason, a number of leading authorities prohibit a blind person from being called to the Torah.[22] Yet others dissent from this ruling on the grounds that, since the *ba'al keriah* is in fact the one who performs the reading, we do not insist that the *oleh* be capable of reading on his own. It is enough that he (and now she) recite the benedictions and stand by the *ba'al keriah*. [23] The blind may therefore be "called up" to the Torah, and such has long been the accepted practice.[24]

The example of the public reading offers a particularly helpful analogy to our case. At a time in history when the Torah was read by those "called up" to the scroll, those who could not physically read from the scroll were quite appropriately excluded from this observance. Over the years, the nature of this ritual changed: those "called up" to the scroll were no longer expected to perform the reading themselves. Accordingly, the exclusion no longer made sense, and the blind were allowed to participate. In a similar way, our understanding of the nature of "wedding testimony" (*edut kidushin*) has also changed. Given that the *halakhah* is prepared to accept "common knowledge" as sufficient testimony that a wedding has taken place, and given that "there is a logical basis" upon which to conclude that the blind may offer testimony on matters that do not strictly speaking require eyesight, a good argument can be made that it no longer makes sense to exclude blind persons from this aspect of Jewish ritual life.

As Reform Jews, we regard it a positive duty to include the blind and all others who are physically disabled in the activities of our congregations and communities. We base this affirmation, in part, upon the traditional insight that to exclude the blind from the *mitzvot* is to exclude them from Jewish experience altogether.[25] Our movement's historic commitment to the cause of social justice transforms this insight into a call to action: it is our obligation to do whatever we can to remove barriers that prevent the disabled from participating as fully as possible in Jewish life.[26] In this case, since Jewish text and tradition can be understood so as to permit the blind to serve as witnesses to a wedding, we must adopt that understanding as our own. So long as a blind person, through the use of the senses of hearing and touch, can identify the bride and the groom and can testify that the act of *kidushin* has taken place, we must permit them the opportunity to do so.



## NOTES

1. *Yad*, Edut 9:1. The full list: women, slaves, children, the insane, the deaf-mute, the blind, the wicked, the despised (*bezuyin*, "uncouth" or "shameless"; see *Yad*, Edut 11:5), relatives, and those who are implicated in their own testimony.
2. *Yad*, Edut 9:12. The midrash is found in *Tosefta* Shevu'ot 3:6
3. *BT* Kidushin 65b; *Yad*, Ishut 4:6; SA EHE 42:2.
4. Isserles, EHE 42:2.
5. *Yad*, Ishut 4:6; SA EHE 42:5. The validity of the wedding depends upon the nature of the witness's disqualification. If the witness is disqualified by Torah law (*mide'oraita*), the wedding is certainly invalid; if the disqualification is based upon rabbinic ordinance (*miderabanan*), the *halakhah* may require a divorce before permitting the parties to remarry. See *Magid Mishneh* to *Yad ad loc.*
6. *Resp. Chatam Sofer*, EHE 100.
7. The disqualification of witnesses is derived from the verse Deut. 24:16. See *M. Sanhedrin* 3:1 and 4; *BT* Sanhedrin 27b; and *Yad* Edut 13:1.
8. See *BT* Bava Metzi'a 3a and 4a. This principle is invoked in cases where the court will rely upon estimate (*umdana*), legal presumption (*chazakah*), or custom (*minhag*) to establish facts, so that no direct or eyewitness testimony (*edut berurah*) is required.
9. Sofer deduces his conclusion from the commentary of R. Nissim Gerondi to the *Halakhot* of Alfasi, *Gitin*, fol. 47b-48a. There are two types of witnesses to the procedure of divorce: the *eidei mesirah*, those who witness the transmission of the *get* from husband to wife, and the *eidei chatimah*, the witnesses to the writing of the *get* who sign their name thereto. The *halakhah* follows Rabbi Eleazar, who holds that the *get* becomes valid because of the *eidei mesirah* and that the witnesses to the writing of the *get* are necessary only as a precaution, in the event that the *eidei mesirah* should be unavailable to testify that the *get* was properly handed to the wife (*M. Gitin* 4:3 and 9:4; *BT* *Gitin* 36a; *Yad*, *Gerushin* 1:15). R. Nissim suggests, however, that even Rabbi Eleazar would accept the validity of the *get* based upon the signatures alone. This is not because those signatures themselves validate the *get*; only the witnesses to its transmission accomplish that. Rather, the signatures allow us to conclude that this *get* was properly filled out before a qualified *beit din*, so that (in Sofer's words) "we all know that the document passed from the husband to the wife. Even if witnesses did not see this transmission, we are all witnesses to the transmission." In other words, though there is no actual testimony to the act of transmission-and it is upon that act that the *get*'s validity depends-our common knowledge allows us to presume with confidence that a proper transmission took place. Sofer applies this logic to the case of witnesses to the wedding.
10. Henkin makes this point in the following works: *Teshuvot Ibra*, no. 76; *Lev Ibra*, pp. 14-15; and *Perushei Ibra*, ch. 2.

11. See especially R. Moshe Trani (16<sup>th</sup> century), *Resp. Mabit* 1:226: since at the time of the wedding there was no firm knowledge of the identity of the one who accepted the *kidushin*, the discovery of her identity at a later point does not retroactively validate the marriage. We require knowledge at the time of the wedding itself.
12. *Avnei Milu'im* 31, no. 4.
13. See *Otzar Haposkim*, EHE 42:4, no. 22, for an exhaustive list of these authorities.
14. And see R. Eliezer Waldenberg, *Resp. Tzitz Eliezer* 11:82, at p. 216.
15. *M. Gitin* 2:5. The technical term for such an agent is *shaliach leholakhah*.
16. *M. Gitin* 1:1.
17. *Torah Temimah* to Lev. 5:1, no. 18.
18. *BT Bava Kama* 87a.
19. Thus, the blind are included in the practice of *tzitzit*, even though they cannot see the fringes on the four corners of their garments (*SA OC* 17:1); the blind may lead the *tefilah* (*SA OC* 53:14) as well as the *Shema* for the congregation (*SA OC* 69:12). On the other hand, the blind do not recite the blessing "who has created the lights of the fire" at *havdalah*, since one must be able to make use of the light before reciting this benediction (*SA OC* 298:13; yet they are permitted to recite the other benedictions of the *havdalah* service; see *Mishnah Berurah ad loc.*). A blind person may not serve as a *shochet* under ordinary circumstances (*SA Yore De'ah* 1:9). Finally, a blind person is not permitted to read from the Torah as part of a public service (*SA OC* 53:14), since one must be able to read the words of Torah from the actual text. On this, however, see below.
20. On the history of this practice, see Ismar Elbogen, *Jewish Liturgy: A Comprehensive History* (Philadelphia-New York: Jewish Publication Society/Jewish Theological Seminary, 1993), 140-141.
21. "Words of Torah that are written down may not be recited from memory"; *BT Gitin* 60b. Thus, "it is forbidden to read aloud from the Torah even one word not directly from the text;" *Yad*, *Tefilah* 12:8.
22. *SA Orach Chayim* 53:14 and 139:3; *Tur* and *Beit Yosef*, *Orach Chayim* 141. Similarly, an illiterate person should not be called to the Torah, since he cannot read from the text. He is not permitted, therefore, to recite a blessing over the *chazan's* recitation of the Torah unless he himself can discern the letters and read them along with the *chazan*. See R. Asher b. Yechiel, *Resp. Harosh* 3:12, and R. Yitzchak b. Sheshet Perfet, *Resp. Rivash*, no. 204.
23. R. Ya'akov Molin (15<sup>th</sup>-century Germany), *Sefer Maharil*, Hil. Keri'at Hatorah, no. 3; Isserles, *SA OC* 139:3; R. Binyamin Selonik (16<sup>th</sup>-century Poland), *Resp. Masat Binyamin*, no. 62; R. Mordekhai Yaffe (16<sup>th</sup>-century Poland), *Levush*, *OC* 141:3; *Magen Avraham*, *OC* 139, no. 4; *Turey Zahav*, *OC* 141, no. 3.
24. *Mishnah Berurah*, *OC* 139, no. 13; *Arukh Hashulchan*, *OC* 139, par. 3.
25. See *Tosafot*, *Bava Kama* 87a, s.v. *vekhen haya R. Yehudah potero mikol hamitzvot*: "if you exempt the blind from the requirement to observe all the

commandments, even if this requirement is rabbinically-imposed, you make him as though he is a Gentile, who does not walk in the path of Judaism at all."

26. This Committee has written that the inclusion of the disabled in our synagogues and other Jewish institutions is itself a *mitzvah*, an obligation that demands concrete action on our part. See *Teshuvot for the Nineties*, no. 5752.5.

## **Appendix C**

### **2006 Biennial Statement**

#### **ESTABLISHING A COMPREHENSIVE SYSTEM OF CARE FOR PERSONS WITH MENTAL ILLNESSES**

66th General Assembly  
December 2001  
Boston, Massachusetts

#### **BACKGROUND**

While the definitions and terms are varied, we here refer to both persons defined as having a diagnosable mental disorder and those with a serious mental illness, as well as those with co-occurring substance-abuse disorders, when using the term "persons with mental illnesses."

Mental illness can shatter lives. It is a condition often lacking explicit physical manifestations and thus is both easily hidden and easily denied. Like physical illnesses and perhaps even more so, mental illnesses and their ramifications are experienced in every sector of life. Treatment-or the lack thereof-of persons with mental illnesses is therefore best considered not only as a medical issue but also as an important social one, with far-reaching economic and human welfare implications.

Judaism concerns itself with the health and well-being of the mind and the soul as well as of the body. Maimonides wrote:

When someone is overpowered by imagination, prolonged meditation, and avoidance of social contact, which he never exhibited before, or when he avoids pleasant experiences that were in him before, the physician should do nothing before he improves the soul by removing the extreme emotions.

The reality is that mental illness continues to be stigmatized in our society. While people with physical illness are usually treated with solicitude and concern, persons with mental illness are frequently the objects of ridicule, contempt, or fear. While we often go to great lengths to accommodate and include people with physical illness, the mentally ill are frequently marginalized and excluded.

In this context, we examine the issue of mental illness and its multiple and far-reaching manifestations for individuals from all walks of life.

#### **Adults**

Mental illness strikes often, affecting millions of men, women, and children across America in both our communities and our synagogues. Approximately 23 percent of American and Canadian adults (ages 18 and older) suffer from a diagnosable mental disorder at some point during their lives, but only half of those report impairment of

their daily functioning due to the mental disorder. Of this number, approximately 5 percent are diagnosed as having a serious mental illness, such as schizophrenia, major depression, or bipolar disorder. In addition, between 25 percent and 50 percent of all people with mental illnesses are believed to have a substance-abuse disorder.

Almost 20 percent of the U.S. population age 55 and older experience specific mental illnesses that are not part of the normal aging process. This population is also the U.S. demographic group most likely to commit suicide.

### **Children**

Mental illness is also prevalent among children and teenagers in North America. Approximately 20 percent of children and adolescents-11 million in all-are believed to have mental health problems that can be identified and treated. At least 1 in 20 children-3 million in all-may have a serious emotional disturbance, defined as a mental health problem that severely disrupts a juvenile's ability to function socially, academically, and emotionally. Each year, almost 5,000 young people age 15 to 24 commit suicide in this country.

### **Parity**

An important issue facing North America today is the lack of availability of and access for individuals to mental health treatment, exacerbated by the need for mental health insurance parity, defined as the requirement that health plans provide the same annual and lifetime limits for mental health benefits as they do for other health care benefits. The UAHC has consistently supported health care for all, declaring in 1975, for example: "In the United States there should be made available national, comprehensive, prepaid, single-benefit standard health insurance with no deductible to cover prevention, treatment, and rehabilitation in all fields of health care." Currently, however, great disparities exist between coverage of mental health care and physical health care.

### **Employment and Mental Illness**

According to a report by the Association for Health Services Research and the National Alliance for the Mentally Ill, employers bear significant costs due to mental disorders of their employees, probably more than they realize since many costs are difficult to measure or are not easily recognizable as being caused by mental illness. Depression, for example, results in \$30 billion a year in direct and indirect costs to employers. Depressed employees use 1.5 to 3.2 more sick days per month than other employees-lost time that costs employers \$182 to \$395 per worker per month, according to a study by the U.S. Centers for Disease Control and Prevention (CDC). Mental illness also takes many potential workers out of the labor force. Of disabled workers, more than 22 percent of those who receive Social Security Disability Insurance (SSDI) benefits and 30 percent of those who receive Social Security Insurance (SSI) qualify because of mental illness. Yet research has shown that people with mental illness have high productivity potential and that they can work and remain in the labor market for significant periods of time. It is thus vital to advocate for increased attention to ways in which persons with mental illnesses can



continue to serve as productive members of the workforce and to advocate for protections of these persons once they are in the workplace.

### **Homelessness and Mental Illness**

According to the National Coalition for the Homeless, approximately 20 to 25 percent of the single adult homeless population in the United States suffer from some form of severe and persistent mental illness. In Canada, it is estimated that approximately one-third of the homeless in major Canadian cities suffer from a mental illness. The problems of homelessness and mental illness exacerbate each other. Without proper treatment, mental illnesses prevent people from carrying out essential functions of daily life, thus pushing individuals out of mainstream society, out of jobs, and ultimately out of homes. Mental illness and lack of medical treatment also lead to the use of drugs and alcohol as forms of self-medication, increasing the inability of individuals to function within society. At the same time, homelessness prevents recovery or worsens mental illness: A mentally ill individual will often slip through the cracks of conventional programs and treatments, never obtaining the treatment and medication necessary to regain wellness. Many of these homeless, mentally ill individuals then end up in the criminal justice system, as discussed in the next section. According to the U.S. Department of Justice, mentally ill state-prison inmates in the United States were more than twice as likely as other inmates to report living on the street or in a shelter in the twelve months prior to their arrest (20 percent compared to 9 percent).

A shortage of affordable housing also exists, compounding the problem. Between 1973 and 1993, 2.2 million low-rent units disappeared from the market. These units were either abandoned, were converted into condominiums or expensive apartments, or became unaffordable because of cost increases. Between 1991 and 1995, median rental costs paid by low-income renters rose 21 percent; at the same time, the number of low-income renters increased. In the past, Single Room Occupancy (SRO) housing served to house many poor individuals, especially poor persons suffering from mental illness or substance abuse. From 1970 to the mid-1980s, an estimated one million SRO units were demolished.

### **Mental Illness and the Criminal Justice System**

An additional area of concern is the intersection between mental illness and the criminal and civil justice systems. In 1998, some 283,800 people with mental illnesses were incarcerated in American prisons and jails. This is four times the number of people in state mental hospitals throughout the country. Sixteen percent (179,200) of state inmates, 7 percent (7,900) of federal inmates, 16 percent (96,700) of people in local jails, and 16 percent (547,800) of probationers have reported a mental illness. According to a 1999 U.S. Department of Justice study, approximately 53 percent of mentally ill inmates were in prison for a violent offense, compared to 46 percent of other inmates. While many believe that these mentally ill offenders must be held in jail because of the serious, violent nature of their offenses, it is vital that they receive treatment while incarcerated.

We must be concerned as well with the civil-liberties consequences of some forms of treatment for mental illness within the criminal justice system, especially the use of

physical restraints and the imposition of mandatory treatments. It is equally important that nonviolent offenders receive proper medical treatment and that noncustodial treatment programs be explored and made accessible to offenders with mental illnesses, who are often turned away from community treatment programs because of reluctance to treat them.

Notwithstanding our existing policy of opposition to the death penalty in all circumstances, we take special note of the number of persons with mental illness who have been executed in the United States.

The prevalence of youth with mental illnesses within the juvenile justice system is astounding. Approximately 50 to 75 percent of those in juvenile-detention facilities suffer from mental illnesses, and approximately half of these suffer from co-occurring substance-abuse disorders. Each year approximately 11,000 youths make 17,000 suicide attempts while living within juvenile facilities. According to the Department of Justice's Office of Juvenile Justice and Delinquency Prevention, however, 75 percent of juvenile facilities do not meet basic suicide-prevention guidelines, and many detention-facility staff are never trained to recognize and respond appropriately to the symptoms of mental health disorders.

#### **Coordinated Systems of Care**

The absence of a coordinated system of care for individuals with mental illnesses has resulted in a dangerous dispersal of responsibility for their care and treatment. This is especially true for individuals with co-occurring substance-abuse disorders, who are often turned away from mental illness treatment facilities. The U.S. government has begun to draw attention to the situation of the mentally ill in America today. In 1999, President Clinton hosted the first White House Conference on Mental Health, calling for a national campaign against stigmatizing the mentally ill. The Surgeon General issued a Call to Action on Suicide Prevention in 1999, and the Surgeon General's first "Report on Mental Health" was also issued in 1999. For decades, private and nonprofit organizations have worked tirelessly to establish access to services, to protect the rights of persons with mental illness, and to call for a comprehensive system of care for those who are in need.

#### **Caregivers**

Currently, federal funding for twenty-two statewide family organizations is provided through the Child and Family Branch, Center for Mental Health Services, and Substance Abuse and Mental Health Services Administration. Support and technical assistance are also provided by government agencies as well as by consumer groups via family-support groups and respite-care services. An emphasis on the development of a coordinated system of care has also drawn attention to the needs of caregivers of individuals with mental illnesses. Over the past several decades, there has been a growing awareness of the difficulties families face because services are provided by so many different public and private sources. In addition to problems with coordination, parents and caregivers encounter conflicting requirements, different atmospheres and expectations, and contradictory messages from system to system, office to office, and provider to provider.

**THEREFORE,** the Union of American Hebrew Congregations resolves to:

1. Prepare materials to be used for training synagogue, religious school, camp, and youth-program personnel to recognize and deal appropriately with members and participants with mental illnesses;
2. Call upon all member congregations to:
  - a. Participate in communal efforts aimed at destigmatizing mental illness and work with the entire Jewish community to develop resources and programming aimed at addressing the stigmatization of mental illness;
  - b. Work with persons with mental illness and their families so that they feel welcome within our synagogues;
  - c. Make use of the materials prepared by the UAHC to train personnel to recognize and deal appropriately with members and participants with mental illness; and
  - d. Work with other groups performing mental health outreach within the Jewish community to persons with mental illness.
3. Call for increased governmental and community support and development of programming for caregivers of persons with mental illnesses;
4. Call on the U.S. and Canadian governments to maintain and increase funding for federal programs aimed at treating persons with mental illness and assisting them to live healthy and independent lives;
5. Call on the U.S. and Canadian governments to increase funding for mental health research and the development and testing of innovative mental health programs, including those focusing on the co-occurrence of mental health disorders and substance-abuse disorders;
6. Encourage governmental integration and coordination of quality housing and mental health systems to provide comprehensive assistance, with special attention paid to persons with mental illness who live on our streets and in our shelters;
7. Call for federal and state legislation in the United States to require parity between physical and mental health coverage by health insurance carriers, both private and public, similar to the system of universal comprehensive mental health coverage in Canada;
8. Call for state legislation in the United States to provide the necessary funding to fully implement the Olmstead Supreme Court decision to provide community-based treatment for those persons with mental illness when such placement in a less restrictive setting is appropriate.
9. Call on member congregations and the UAHC to provide health coverage for employees that guarantees parity in mental health coverage;
10. Call for increased attention to the many inmates in our nations' prisons with mental illnesses, focusing on the need to:
  - a. Place nonviolent, mentally ill criminal offenders into community-based mental health programs and also work to ensure that persons with mental illness who are sentenced to prison receive appropriate and humane treatment, including access to appropriate medication;
  - b. Limit the use of involuntary physical restraints and the imposition of mandatory treatment solely to cases that are not otherwise manageable.



- c. Limit civil commitment and mandatory treatment to circumstances where it is used only with due-process protections;
  - d. Call upon law-enforcement agencies to develop policies, practices, and specialized training for police officers and corrections officers to recognize and deal appropriately with persons with mental illnesses;
  - e. Call for increased governmental attention to the youth within the justice system and the need for increased funding for community-based treatment programs for mentally ill juvenile offenders;
  - f. Call on state and federal jurisdictions in the United States that retain the death penalty to exclude from consideration for the death penalty persons with mental illness; and
  - g. Work to find common ground with all groups-including those who otherwise support the death penalty-who oppose the execution of persons with mental illnesses.
11. Encourage an end to workplace discrimination against persons with mental illness in fact as well as in law, encourage governmental development of further programs to assist persons with mental illness in returning to the workplace, and assist employers in working with them;
12. Call for an increased focus on the mental health needs of children, including teenagers, by advocating for:
- a. A coordinated system of care for children and teenagers with mental health problems;
  - b. An emphasis on early recognition, prevention, and intervention, especially focusing on the prevention of suicide;
  - c. Increased research on the mental health problems of juveniles; and
  - d. Increased attention toward mental health needs within the schools and among professionals dealing with children in child care facilities and schools, as well as toward the development and implementation of training programs for these individuals; and

Call for an increased focus on the recognition, prevention, intervention, and treatment of depression and other mental illnesses in the adult population.

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