

Beyond the Stumbling Block: *An Analysis of the Rhetoric of
Inclusion in Rabbinic Literature from Talmud to Today*

Samantha Frances Schauvaney

Submitted in Partial Fulfillment of Requirements for Ordination

Hebrew Union College-Jewish Institute of Religion
Rabbinical School
Cincinnati, OH

Date: February 23, 2021

Adviser: Rabbi Mark Washofsky, Ph.D.

Contents

Introduction	3
Chapter 1: Understanding Obligation in Rabbinic Texts	6
The <i>Soma</i> , Their Obligations, and Their Status	7
Conclusion	15
Chapter 2: Rabbinic Rhetoric of Inclusion.....	17
<i>Mishnah Rosh Hashanah</i> 3:6-8.....	19
<i>Hagigah</i> 2b-3a	22
Berakhot 15a	27
<i>Yevamot</i> 112b.....	29
<i>Megillah</i> 24b.....	33
Conclusion	34
Chapter 3: A Modern Obligation.....	36
Electronic Augmentative and Alternative Communication Devices on Shabbat	37
Allowing Individuals Who are Blind to Participate in Torah Reading.....	41
Allowing Individuals Who are Blind to Act as Witnesses	46
Conclusion	49
Conclusion	50
Works Cited	52

Introduction

In 2011, the Union for Reform Judaism adopted a resolution meant to increase the inclusion of people with disabilities in all aspects of Jewish life in Reform communities. In the resolution, the Union for Reform Judaism “commits to creating and sustaining welcoming communities of meaningful inclusion, enabling and encouraging people with disabilities and their families to participate fully in Jewish life in a way that promotes a sense of personal belonging for all individuals.”¹

A decade later, in 2021, inclusion is still a central tenet of the Reform Movement yet continues to be an ongoing challenge. In fact, inclusion is the foremost issue across the spectrum of Jewish practice. Publishers are coming out with new accessible prayer books designed specifically for those with intellectual disabilities.² February is recognized as Jewish Disability Awareness and Inclusion Month, during which there are many interdenominational educational programs designed to bring awareness to the needs and experiences of Jews with disabilities. Even with these innovations, there are still opportunities for improved access in all aspects of Jewish life.

This is not the first study of how Judaism understands disability and inclusion. Prominent scholars including Judith Abrams³ and Tzvi Marx have written about how disability is viewed in traditional texts. Additionally, current responsa literature from the entire spectrum of Jewish observance has asked questions about the *halakhic* permissibility

¹ “Resolution in Support of Access to Lifelong Jewish Learning for Jews with Disabilities,” Union for Reform Judaism, 2011, <https://urj.org/what-we-believe/resolutions/resolution-support-access-lifelong-jewish-learning-jews-disabilities>.

² The *Koren Yachad Siddur* was published in May of 2020. Another siddur, the *JWEB Accessible Siddur* was published in November of 2020. Masorti Foundation has published an egalitarian accessible prayer book called *B’chol D’rachecha*.

³ Judith Z Abrams, *Judaism and Disability: Portrayals in Ancient Texts from the Tanach through the Bavli* (Washington, D.C.: Gallaudet University Press, 2014).

of individuals with disabilities participating in a variety of ritual practices. The majority of this scholarship focuses on answering specific halakhic questions or examining how disability is portrayed in the rabbinic texts that they cite. Some even look at how the Rabbis understand specific types of disability and the *halakhic* implications of said disability. What is not prominently discussed is how Rabbis from the era of the Talmud through today use inclusive rhetoric in their *halakhic* discourse.

In Rabbinic society, one's status is linked to being obligated to perform mitzvot. Obligation implies an ability to fulfill the responsibility. Thus, the Rabbis' may be trying to be compassionate when they exempt those with disabilities from the ritual obligations. This exemption, however, leads to the individuals being excluded from the community.

Despite the consequences for those with disabilities, Talmudic texts and post-Talmudic *halakhic* commentaries are frequently used to justify the exclusion of those with disabilities. This does not have to be the case. There are alternative ways of interpreting these same texts which reveal the Rabbis' gravitation towards inclusion when making *halakhic* decisions. In a variety of texts, the Rabbis try to rule leniently while also balancing the demands of adhering to *halakha*. When interpreted in this way, it becomes clear that inclusion is inherently Jewish and is rooted deeply in traditional Jewish texts.

A modern understanding of inclusion requires that accessibility factor into all *halakhic* discourse. *Halakha* is not only theoretical. When individuals are exempted from mitzvot, the result is exclusion not only from a single obligation, but from Judaism as a whole. As evidenced by the growing numbers of responsa which answer questions regarding how to include those with disabilities in the community and in ritual observance, it is possible to maintain the integrity of the text while also ensuring integrity and inclusion for

individuals with disabilities. Contemporary Jews, like the Talmudic Rabbis, must choose to interpret the texts leniently for the sake of accessibility. Inclusion is not merely a value; it is an obligation.

Chapter 1: Understanding Obligation in Rabbinic Texts

In order to fully evaluate the halakhic implications of using inclusive rhetoric, one must first examine the role of *halakhic* obligation in forming one's sense of self.

To begin, this chapter will examine how obligation affects one's communal identity. Does communal identity hinge on shared obligation or is there room for diverse obligations? Rabbinic Judaism, building upon Biblical roots, sees mitzvah and *hovah* (obligation) as essential factors in defining the relationship between the Jew and God. What makes someone a full-fledged member of the community is the completion of these mitzvot. When the rabbis exempt a subset of the community from *halakhic* obligations, there is no evidence they are stripping them of their Jewish identity. In fact, in traditional *halakhah*, women are exempt from certain mitzvot.

Prior to our modern rhetoric of "inclusion", our rabbis may have focused on being realistic; an individual should not be held responsible for something they are incapable of doing. However, as we will see in *Bava Kamma*, sometimes the exemption is applied more broadly, and applies to mitzvot which are unrelated to the individual's disability and thus are within the capacity of the individual.

If one is exempt, to what extent can they still choose to perform the mitzvot of which they are capable? ⁴ In *Kidushin*, it is taught that voluntarily performing the mitzvot is

⁴ In post *halakhic* literature, the Rabbis debate whether or not one is entitled to perform mitzvot voluntarily and if one who is performing mitzvot voluntarily are permitted to say the blessing, which implies an obligation. See Rambam, *Mishneh Torah*, *Hilkhot Tzitzit* 3:9, Rabad ad loc. and the *Hagahot Maimoniot* no. 40.

less valuable than performing mitzvot out of obligation. By devaluing voluntary practice of the mitzvot, the Rabbis make it impossible for those with disabilities to have equal status with their non-disabled counterparts. Even if it was not the intent of the Rabbis, does exemption from a *halakhic* obligation cause those who are exempt to feel isolated, devalued, or excluded from the community? While each individual will answer this question differently, I believe that our texts can teach us that, in general, being exempted from the mitzvot, while perhaps originally meant compassionately, leads to exclusion, isolation and a loss of dignity.

The *Soma*, Their Obligations, and Their Status

In *Bava Kamma* 86b, Rabbi Yehudah uses linguistic associations, *gezerah shavah*, to make a determination of the *halakhic* obligations of a *soma*, a blind person. While Rabbi Yehudah's opinion is a minority opinion and not accepted *halakhah*, his ruling is nonetheless cited in many *halakhic* debates throughout the Talmud when discussing the obligations of those who are blind. His exemption of the *soma*, the blind person, excludes those who are blind from Rabbinic society and brings into question the broader effects of exemptions on an individual's dignity and status in the community.

MISHNA: One who humiliates a naked person, or one who humiliates a blind person, or one who humiliates a sleeping person is liable, but a sleeping person who humiliates another is exempt. If one fell from the roof onto another person, and thereby caused him damage and humiliated him, then the one who fell is liable for the indemnity of damage, since a person is always considered forewarned, and

exempt from the indemnity of humiliation, since a person is not liable for humiliation **unless he intends** to humiliate the other person.⁵

Masekhet Bava Kamma, focuses on civil law regarding liability for damages. Specifically, Chapter 8 focuses upon damages for bodily injury. In this *sugya*, the rabbis are examining *boshet*, one of the five major categories of damage resulting from bodily injury⁶, which may be translated as embarrassment or, in modern legal terms, mental anguish. The *Mishnah* begins with the statement that one who causes embarrassment to a naked person, a blind person, or a sleeping person is still considered liable, and thus must compensate the victim. The *Mishnah* discusses these three groups because they are all groups who would, according to the rabbis, be unaware that the embarrassment had occurred.

The *Gemara* goes on to explain that this *mishnah* is not in accordance with the opinion of Rabbi Yehuda. What is the opinion of Rabbi Yehuda? According to the *Gemara*, he rules that a blind person may not collect compensation for embarrassment; in other words, a blind individual cannot experience humiliation.

The *mishnah* teaches: **One who humiliates a blind person** is liable to pay compensation. The *Gemara* comments: **The *mishnah* is not in accordance with** the opinion of **Rabbi Yehuda, as it is taught** in a *baraita* that **Rabbi Yehuda says: A blind person** who humiliated another **does not have** liability for **humiliation**. **And in this way Rabbi Yehuda deemed** a blind person **exempt from** being among **those liable to be exiled** for killing unintentionally, **and from** being among **those liable** to receive lashes, **and from** being among **those liable** to receive **court-imposed capital punishment**, if he transgresses a prohibition for which the Torah mandates one of these punishments. The *Gemara* asks: **What is the reasoning of Rabbi Yehuda?** He **derives** a verbal analogy to: **“Your eye shall not pity”** (Deuteronomy 25:12), stated with regard to humiliation, **from: “Your eye shall not pity”** (Deuteronomy 19:21), stated with regard to **conspiring witnesses**. The analogy teaches that **just as there,**

⁵ Bava Kamma 86b Adin Steinsaltz et al., *Koren Talmud Bavli, The Noé edition*. 2014 .תלמוד בבלי, vols. 23–24. The Noé edition uses bold text to denote direct translation, while the not bold text denotes Steinsaltz's commentary providing context and clarity.

⁶ see M. Bava Kama 8:1

with regard to the *halakhah* of conspiring witnesses, **blind people** are **not** included, as blind people cannot see events occur in order to testify, **so too here**, with regard to the *halakhah* of compensation for humiliation, **blind people** are **not** included. The *Gemara* continues its explanation: Why did Rabbi Yehuda deem a blind person exempt **from** being among **those liable to be exiled** for killing unintentionally? **As it is taught** in a *baraita* that the verse states with regard to an unintentional killing: “Or with any stone, whereby one may die, **seeing him not**” (Numbers 35:23), this formulation serves to **exclude a blind person**; this is **the statement of Rabbi Yehuda. Rabbi Meir says**: The verse serves **to include a blind person**.

From this exemption Rabbi Yehuda discerns that those who are blind are also exempted from other forms of liability including exile for involuntary manslaughter, capital punishment, and lashes. The *Gemara* continues with an additional *baraita* which states Rabbi Yehudah exempts the blind from all civil laws, and by extension, all the mitzvot in the Torah.

The *Gemara* presents another statement of Rabbi Yehuda: It is taught in another *baraita* that **Rabbi Yehuda says: A blind person does not have humiliation, and so did Rabbi Yehuda exempt a blind person from all judgments of civil law that are in the Torah.** The *Gemara* explains: **What is the reasoning of Rabbi Yehuda? The verse states** with regard to an unintentional killing: “**Then the congregation shall judge between the smiter and the avenger of blood, according to these laws**” (Numbers 35:24), to teach that **anyone who is subject to the *halakhah* of a smiter and to the *halakhah* of an avenger of blood is subject to civil laws, and anyone who is not subject to the *halakhah* of a smiter or to the *halakhah* of an avenger of blood, including a blind person, is not subject to civil laws.** The *Gemara* presents another statement of Rabbi Yehuda. It is taught in another *baraita* that **Rabbi Yehuda says: A blind person does not have**, i.e., receive, compensation for humiliation, and so did Rabbi Yehuda exempt a blind person **from all mitzvot that are stated in the Torah. Rav Sheisha, son of Rav Idi, said: What is the reasoning of Rabbi Yehuda? The verse states: “And this is the commandment, statutes, and laws”** (Deuteronomy 6:1), to teach that **anyone who is subject to civil laws is also subject to the commandments and statutes, and anyone who is not subject to civil laws, including a blind person, is also not subject to the commandments and statutes.**⁷

⁷ Bava Kamma 86b-87a Steinsaltz et al., *Koren Talmud Bavli, The Noé edition*. תלמוד בבלי, vols. 23–24.

For Rabbi Yehuda what starts as a single exemption ends up a sweeping exemption from all the mitzvot. This blanket exemption from all the laws in Torah would certainly lead to exclusion from the community.

While the *halakhah* does not follow the opinion of Rabbi Yehuda, his opinion, and the commentary on it, are still components of the rhetoric the rabbis use when discussing and ruling on the obligations of those with disabilities.

The following passage in *Kidushin* 31a, which is paralleled in *Bava Kamma* 86b-87a, cites the statement of Rav Yosef, a blind rabbi⁸, who is trying to understand his obligations in the *halakhic* system. As he grapples with the implications of his disability on his personal reward as well as his identity in the community, it becomes clear that discussion about exemption and obligation are intertwined with questions of status and dignity.

Rav Yosef, who was blind, said: At first I would say: If someone would tell me that the *halakhah* is in accordance with the opinion of Rabbi Yehuda, who says: A blind person is exempt from fulfilling the mitzvot, I would make a festive day for the rabbis, as I am not commanded and yet I perform the mitzvot. This means my reward is very great. Now that I have heard that which Rabbi Ḥanina says: Greater is one who is commanded to do a mitzva and performs it than one who is not commanded to do a mitzva and performs it, on the contrary: If someone would tell me that the *halakhah* is not in accordance with the opinion of Rabbi Yehuda, and a blind person is obligated in mitzvot, I would make a festive day for the rabbis.⁹

When Rav Yosef felt that his reward was enhanced by performing mitzvot despite being exempted, his exemption, and therefore his disability, did not prevent him from being included. He felt, quite naturally, that he deserved a greater reward for performing mitzvot voluntarily rather than out of obligation. However, once Rav Yosef learned of Rabbi

⁸ Rashi tells us this on Kiddushin 31a, s.v. לא מיפקידנא

⁹ Kidushin 31a Steinsaltz et al., *Koren Talmud Bavli, The Noé edition*. תלמוד בבלי, vol. 22.

Hanina's opinion that the reward is greater for those who are obligated, Rav Yosef yearns to be obligated to do the mitzvot.

The Rabbis come to the conclusion that it is better to be obligated than to do mitzvot voluntarily while discussing how to fulfill the mitzvah of honoring your mother and father. In *Kidushin* 31a, the Talmud recounts the story of Dama ben Netina. Once the sages offered Dama ben Netina a high price for some of his precious stones, but he declined because he would have had to wake his father to retrieve the jewels. A year later, the eternal rewards Dama ben Netina with a red heifer in his herd. When the rabbis came to buy the red heifer, Dama ben Netina does not become greedy, he asks only for the money that he lost the previous year when he refused to wake his father to sell the precious stones. From this tale the Rabbis conclude if the reward for fulfilling mitzvot is so great for someone who is not Jewish (and thus not obligated), it must be even greater for those who are obligated, which is supported by the opinion of Rabbi Hanina.

The text provides three possible scenarios for Rav Yosef's obligatory status based on Rabbi Yehuda and Rabbi Hanina's teachings. Each scenario reflects a different combination of feelings towards doing the mitzvot voluntarily and if blind people are obligated.

The first scenario the *halakhah* follows Rabbi Yehudah but not Rabbi Hanina. Here, Rav Yosef is exempt but is receiving a greater reward for performing mitzvot despite this exemption. In the beginning of the *sugya*, Rav Yosef believes these are the accepted *halakhot* in the beginning of the passage. the opinion of Rabbi Yehuda is welcomed by Rav Yosef because he is still able to fulfill mitzvot and engage with the *halakhic* community. In

fact, his practice of mitzvot is of equal value, if not greater value, as those who are obligated.

In the second scenario, the *halakhah* follows the opinions of both Rabbi Hanina and Rabbi Yehudah. Rav Yosef is exempt and gets a lesser reward¹⁰ for doing the mitzvot voluntarily. In this scenario, Rav Yosef is unable to participate fully in the *halakhic* community and his performance of mitzvot is devalued. The exemption eliminates Rav Yosef's ability to opt-into obligation and diminishes his status in the *halakhic* community. Because he accepts R. Hanina's statement as the correct understanding of Rabbinic Judaism, Rav Yosef responds to this scenario with great distress, saying that he will celebrate anyone who is able to teach that those who are blind are obligated to perform the mitzvot. His distress and plea to the rabbis show that the exemption is not solely a practical and, perhaps, compassionate act. Rather, it is excluding Rav Yosef from the larger community.

In the final scenario the *halakhah* is not in accordance with Rabbi Yehudah but is in accordance with Rabbi Hanina. Since Rav Yosef is obligated, even as a blind person, his performance is valued equally to the men in his community who are sighted.

Rav Yosef's has a greater sense of dignity and increased status when afforded the opportunity to perform mitzvot. He is not demanding complete equality; in fact, he recognizes in the beginning that his obligations may be different because of his disability. Instead, he is asking to be included and to be valued. While being exempt does not

¹⁰ This is analogous to women (see b; see Rambam, Mishneh Torah, Hil. Talmud Torah 1:1 and 1:13.

inherently mean being excluded, but if we do not provide a way for those who are obligated to remain active in our communities and feel valued, exemption can only lead to exclusion.

To fully understand why the Rabbis rule that the reward is higher for those who are obligated, one must look at the commentary from the *Tosafot* on *Kidushin* 31a¹¹. The *Tosafot* suggest that it is better to be obligated because an individual who is fulfilling a commandment will be more careful and diligent when performing the mitzvah lest they transgress. The *Tosafot* compares one who is not obligated to someone who has bread in their basket and does not need to worry about how to get their next meal; thus, there is no consequences for not fulfilling the obligation, so they are less motivated to diligently perform mitzvot.

The *Tosafot* on *Bava Kamma* 87a¹² recognize the exclusivity inherent in a blanket exemption. The *Tosafot* draws an analogy between those who are blind and women since both are exempt from mitzvot. Women are exempt only from time bound mitzvot but are still obligated to perform many mitzvot. Comparatively, those who are blind would be exempt from all mitzvot, so the Sanhedrin must have obligated them by rabbinic decree, otherwise they would be like non-Jews: living outside of the laws of Israel.

What defines a community as a Jewish community, according to the rabbinic tradition, is having accepted the עול המצות, the yoke of obligation, and are living by the laws of Torah. Some exemptions are inevitable. As mentioned above, women are exempt from

¹¹ *Tosafot* Kiddushin 31a... גדול המצווה ועושה

¹² *Tosafot* Bava Kamma 87a... בתורה [האמורות] מכל המצות

time bound mitzvot, but they remain obligated to all of the other laws, both civil and ritual. These exemptions may shape their role in the community but do not completely separate them from it. If the *halakhah* followed the opinion of Rabbi Yehuda, individuals who are blind would be exempt from all obligations and excluded from the community as a whole. By not following Rabbi Yehudah, the rabbis of the Talmud and *Tosafot* use the rhetoric of inclusion to ensure that they are obligated to some laws in order to include them in the community.

A woman who studied the Torah has a reward coming to her but it is incomparable to the reward of a man because she was not commanded to do so, and whosoever does something which is not mandatory upon him to perform receives not a hire equal to the hire of him who is commanded to perform it but less than he.¹³

Ultimately, Rabbinic sources conclude that it is better to be obligated than to perform mitzvot voluntarily. In *Mishnah Torah*,¹⁴ Rambam teaches this *halakhah* in regard to a woman who is learning Torah. While she is exempt from the mitzvah of Torah study, she will receive a lesser reward for engaging with Torah. However, the Rambam teaches, despite the lesser reward one should not teach his daughter Torah because they are unable to understand it. In this case, the act is not only devalued it is actively discouraged, which makes clear the status and benefit associated with being obligated.

While the Rambam's writing is more overt in its discouragement, providing a lesser reward, as in *Kidushin* 31a, could also be interpreted as discouraging voluntary performance

¹³ Hil. Talmud Torah 1:13 Moses Maimonides and Abraham ben David Rabd, *Book of Mishnah Torah Yod Ha-Hazakah*, trans. Simon Glazer, as digitized on sefaria.org (New York: Maimonides Publishing Co., 1927).

¹⁴ *Mishna Torah Hilchot Talmud Torah* 1:13

of Mitzvot. It is safe to conclude that in many cases exemption is not providing an opportunity to opt out; instead, it discourages the exempted individual from opting in.

Conclusion

The Jewish community is defined by its practice of Jewish law¹⁵, both civil and ritual. To be a member of the community, one must live by the same laws. In *Bava Kamma*, Rabbi Yehuda rules that blind individuals are exempt from all mitzvot. The *halakhah* does not follow Rabbi Yehuda because, according to the *Tosafot*, it would make those who are blind no different from a non-Jew. The *halakhah* does exempt those with disabilities, including the blind, from certain mitzvot but it is not a blanket exemption.

If individuals who are blind, or have other disabilities, are obligated to perform other mitzvot, do individual exemptions matter? As evidenced in *Kidushin*, being obligated to perform mitzvot confers a great sense of dignity, greater ability to participate in the community and ultimately a higher status. Rav Yosef's plea for a ruling that he, as a blind person, is obligated to perform mitzvot conveys the impact that exemptions can have on someone.

These passages are particularly compelling because they are written from the perspective of someone who is blind. When Rav Yosef implores the rabbis to rule that the *halakhah* is not in accordance with Rabbi Yehuda, he disrupts the abstract nature of the

¹⁵ While this chapter has focused on understanding how the rabbis defined the Jewish community, this statement also applies to Jewish communities today. All Jewish communities today are also defined by Jewish law, but how the law is interpreted, which texts are given authority, and what is considered binding will depend on the movement.

sugya by responding emotionally. His reaction is a reminder that *halakhah* is not solely a theoretical exercise; Rav Yosef is directly impacted by the outcome of this *halakhic* ruling. While learning and debating for the sake of heaven are highly valued in Judaism¹⁶, it is also necessary to remember, more often than not, *halakhic* rulings can directly impact the lives of others and can affect quality of life and communal identity. Therefore, it is critical to understand how rabbis use the rhetoric of inclusion, even if not labeled as such, when talking about the performance of mitzvot.

¹⁶ *Pirkei Avot* 5:17 states an argument for the sake of heaven is one whose goal is to endure or to find truth.

Chapter 2: Rabbinic Rhetoric of Inclusion

Having established the importance of obligation on an individual's status and dignity, the next step is examining some of the Talmudic debates which examine the *halakhic* obligations of individuals with disabilities. In doing so, it is possible to further understand how the Rabbis' use a rhetoric of inclusion when ruling on if individuals are exempt from mitzvot.

When the Rabbis' discuss disability, they are usually discussing a specific condition, often in order to determine the effect of that condition upon the individual's obligation to fulfill a particular *mitzvah*. To understand how the Rabbis' do or do not attempt to bring people with disabilities into the community - that is, to declare them obligated to fulfill the *mitzvah* - it is necessary to examine how the text does so for the individual disabilities and attempt to extrapolate to the larger umbrella category of disability known today.

"Obligation" implies the *ability* to perform a particular act. Therefore, rabbinic exemptions are often given because it is viewed as unrealistic or impossible for an individual to fulfill the obligation. For example, an individual who is deaf cannot hear, in the literal sense of the word, the shofar. Logically then, it would be unreasonable to require an individual to be responsible for an obligation they cannot physically fulfil. The same logic can be found in *Mishnah Rosh Hashanah*. The Rabbis' pragmatically exempt the *heresh*, *shoteh*, *v'katan*, those who are deaf and non-verbal, those who are not of sound mind, and minors from *halakhic* obligations. The Rabbis believe that individuals within these groups

are unable to have the mental competence, the *da'at*, necessary to fulfill the mitzvot with the appropriate intentions.

Despite these pragmatic and clear rules governing who is exempt, the Rabbis often seem to be dissatisfied with the exemption and in response they debate and interpret texts in such a way as to be as inclusive as possible while still meeting the recognized *halakhic* requirements to fulfill the mitzvot. As we will see in *Berakhot*, depending on how the Rabbis interpret different aspects of the text can affect how inclusive or exclusive the text is for those with disabilities. By interpreting the Biblical phrase *shema yisrael* as literally meaning “Hear, O Israel,” they exclude deaf individuals from the obligation to recite the indicated passages. However, by interpreting it as “pay attention” they make room for the possibility that those who cannot hear to direct their hearts with intention and fulfill the obligation to say the *Shema*.

A similar interest in bringing those with disabilities into the community can be found in *Yevamot*. The rabbis enact a decree allowing those who are deaf and nonverbal to participate in the institution of marriage using gestures instead of speech. In doing so, they not only allow more people to access the benefits of marriage, but they provide validity to non-verbal methods of communication, opening up a plethora of opportunities for inclusion. This is also seen in *Hagigah* when the Rabbis teach that one cannot determine the mental capacity of an individual based on their ability to express themselves verbally.

Finally, in *Masekhet Megillah*, the Rabbis are unwilling to accept the exclusion of priests who have blemishes or other disabilities. These priests are fully capable of the

reciting the benediction, and thus the prohibition is not due to a physical inability to perform the mitzvah but rather upon the people's "ability" to accept the blessing.

Ultimately the Sages leave the decision in the hands of the community. The burden is on the community to become accustomed to the priest and his appearance in order to ensure the community will not stare inappropriately at the priest's hands.

By surveying a sample of the rabbinic texts regarding the *halakhic* obligations of individuals with disabilities, it becomes clear that the Rabbis recognized the importance of *halakhic* obligation in communal life and attempted to find ways to keep people in the community instead of exempting, and ultimately excluding them.

Mishnah Rosh Hashanah 3:6-8

In *Mishnah Rosh Hashanah* chapter 3, the Rabbis are discussing what is required to fulfill the obligation of hearing the shofar or megillah reading. Earlier in the chapter the Rabbis rule that it must be an intact shofar (not one made up of many broken pieces of other shofarot). Then the Rabbis come to the question of what it means to "hear" the shofar or megillah reading, a theme common to many rabbinic texts regarding fulfilling mitzvot. The Rabbis debate if it is enough to simply hear the sound of the shofar or if one must hear it with the specific intention of fulfilling the mitzvah.

And similarly, if one was passing behind a synagogue, or his house was adjacent to the synagogue, and he heard the sound of the shofar or the sound of the Scroll of Esther being read, if he focused his heart, i.e. his intent, to fulfill his obligation, he has fulfilled his obligation; but if not, he has not fulfilled his obligation. It is therefore possible for two people to hear the shofar blasts, but only one of them fulfills his obligation. **Even though this one heard and also the other one heard, nevertheless, this one focused his heart** to fulfill his obligation and has therefore

indeed fulfilled it, **but the other one did not focus his heart**, and so he has not fulfilled his obligation.¹

The *Tannaim*² declare that it is not enough to physically hear the shofar or the megillah you must also have the intention of fulfilling the mitzvot. Practically, this means that if one is walking down the street and happens to hear the shofar but did not intend to hear the shofar then he has not fulfilled the obligation of hearing the sound of the shofar.

A *heresh*, an individual not of sound mind, or a minor who sounds the *shofar* cannot discharge the obligation on behalf of the community. This is the principle with regard to similar matters: Whoever is not obligated to do a certain matter cannot discharge the obligation on behalf of the community.³

Having established the requirement for intention, the *Tannaim* rule the *heresh*, *shoteh*, *v'katan*, those who are deaf and non-verbal, those who are not of sound mind, and minors are all exempt from ritual obligations and are unable to fulfill obligations on behalf of another. The blanket exemption is similar to the opinion of Rabbi Yehuda, that the *soma*, blind individual, is exempt from all the mitzvot (as mentioned previously). However, this text is not refuted in the same way, leading to the exemption of these subgroups to be the accepted *halakhah*. The *soma* was excluded by Rabbi Yehuda, not on the basis of his disability but because of a formalistic interpretation of textual sources, but his is a minority opinion. The prevailing opinion is that a *soma* has the capacity to fulfill the majority of the mitzvot and therefore is obligated to do so. From the point of view of the Rabbis, these three populations are all lacking *da'at*, the mental competence, to be held responsible for

¹Mishna Rosh Hashana 3:6-7 as translated in, Adin Steinsaltz et al., *Koren Talmud Bavli, The Noé edition*. 2014, תלמוד בבלי, vol. 11.

² “The rabbis who were active before the oral publication of the Mishnah around the year 200 CE” (Wimpfheimer 28)

³ Translation adapted from Mishna Rosh Hashana 3:8 as translated in, Steinsaltz et al., *Koren Talmud Bavli, The Noé edition*. תלמוד בבלי, vol. 11.

the performance of mitzvot and the consequences for failing to perform them. For those who are considered to be *heresh*, *shoteh*, *v'katan*, the exemption is more pragmatic and is a direct result of their disability. Thus, the Rabbis and the medieval commentators do not attempt to be lenient, or more inclusive, in their rulings.⁴

Exempting an individual from *halakhic* obligations not only relieves them of their responsibility, it also restricts their ability to or fulfill mitzvot on behalf of others.⁵ In a situation where one is exempt but wants to perform the mitzvot voluntarily, they would be unable to do so in a leadership role.⁶ This limitation reveals the far-reaching effects an exemption can have for an individual.

Herein lies the dilemma. On one hand, obligating individuals who lack the mental competence, *da'at*, to fulfill the mitzvot is cruel. It seems logical that one should not be held responsible for something they are incapable of doing. On the other hand, exempting an individual can lead the individual to feel isolated and can lower their status in the community. Finding the balance between these conflicting values is at the heart of the Talmudic *mahloket* regarding the *halakhic* obligations of individuals with disabilities. The

⁴ There are a few exceptions which prove the rule. One such example, permitting a *cheresh* to marry, is discussed in detail below. Additionally, in *Mishnah Torah*, *Hil. Chametz Umatzah* 6:3, the Rambam rules that a *shoteh* is obligated to eat matzah on Passover. Similar exceptions are made with regards to the *katan* who can be included in the performance of mitzvah, despite not yet being obligated to fulfill them (see: B. Sukkah 28b and MT, *Hil. Shofar, Sukkah, V'lulav* 6:1).

⁵ See *Shulchan Arukh Orach Chayyim* 589:1: כל שאינו מחוייב בדבר אינו מוציא אחרים ידי חובתו.

⁶ For further study on the relationship between obligation and gender see Joel Roth, "On the Ordination of Women as Rabbis," *The Committee of Jewish Law and Standards of the Rabbinic Assembly*, November 7, 1984, 736–86, <https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19861990/ordinationofwomen2.pdf>.

question becomes, in what situations do the Rabbis decide to make exceptions or alternative methods for fulfilling mitzvot?

Hagigah 2b-3a

In *Hagigah 2b*, the text discusses who is obligated to appear at the temple during pilgrimage festivals. The Rabbis quote *Mishnah* text similar to that in *Mishnah Rosh Hashanah*, which states that the *heresh*, *shoteh*, *v'katan* are exempt from mitzvot. The *Gemara* clarifies that these three groups of people are lumped into one category with regards to obligations because they all lack *da'at*, mental competence. Then the *Gemara* clarifies the *mishnaic* exemption further by distinguishing an individual who is deaf and non-verbal, someone who is deaf and verbal, and someone who is hearing and nonverbal.

And this teaches us as we learned in a *mishnah* (*Terumot* 1:2): The *heresh*, whom the Sages discussed everywhere, is one who does not hear and does not speak, and therefore his mind is not lucid. It can be inferred from this that one who speaks but does not hear and one who hears but does not speak are obligated in mitzvot like any other person. The *Gemara* notes: We already learned this, as the Sages taught in the *Tosefta* (*Terumot* 1:2): One who speaks but does not hear, this is a deaf person. One who hears but does not speak, this is an *illem*. Both this one and that one are in the same legal category as those who can see and hear with regard to all matters. This shows that the *heresh* exempted by the Sages is one who neither hears nor speaks. The *Gemara* asks: And from where is it derived that one who speaks but does not hear is a deaf person, and one who hears but does not speak is an *illem*? As it is written: "But I am as a deaf man, I hear not; and I am as an *illem* who does not open his mouth" (Psalms 38:14). If you wish, say instead that this is as people say: His speech has been taken [*Ishtakeil Milulei*]; the term *illem* is an acronym for this phrase. The *Tosefta* taught that one who speaks but does not hear and one who hears but does not speak are obligated in mitzvot.⁷

⁷ Translation adapted from Hagigah 2b, Steinsaltz et al., *Koren Talmud Bavli, The Noé edition*. תלמוד בבלי, vol. 13.

The *Gemara* reasons that perhaps those who fall in the latter two categories are indeed obligated to perform mitzvot. There is *mahloket* between the *Tosefta* and a *baraita* regarding the obligations of those who are deaf or nonverbal. While the Rabbis could have chosen to exempt them from all mitzvot solely on the basis of their disabilities, instead the Rabbis chose to obligate them to specific mitzvot when possible.

The *Gemara* asks: **Isn't it taught** in a *baraita* that **one who speaks but does not hear** and **one who hears but does not speak** are **exempt** Ravina said, and some say it was Rava who said: The *mishnah* is **incomplete and is teaching the following: All are obligated in** the mitzvot of **appearance** in the Temple and **rejoicing** during the pilgrim Festival by eating the sacrificial meat, **except for a deaf person who speaks but does not hear** and nonverbal person **who hears but does not speak**, each of whom **is exempt from** the mitzvah of **appearance**. **And even though he is exempt from** the mitzvah of **appearance**, **he is obligated in** the mitzvah of **rejoicing**. **But one who does not hear and does not speak, and a *shoteh* and a minor**, each of these is **exempt even from rejoicing, since they are exempt from all the mitzvot mentioned in the Torah**, as they are not of sound mind.⁸

The *Tosefta* teaches that those who are deaf or nonverbal are obligated, while the *baraita* says they are exempt. In order to resolve the *mahloket*, the *Gemara* introduces the opinion of Ravina. He teaches that the statement that one is not obligated refers specifically to the obligation to appear at the temple and rejoice during pilgrimage festivals. Ravina learns this by comparing the use of the word “appearance” in the mitzvah of appearing at the temple and in the mitzvah of assembly. The *Gemara* elaborates that those who are deaf or nonverbal are exempt from the mitzvah of assembly because of Deuteronomy 31:12.

Gather the people—men, women, children, and the strangers in your communities—that they may hear and so learn to revere the Eternal your God and to observe faithfully every word of this Teaching.⁹

⁸ Translation adapted from Hagigah 2b Steinsaltz et al., vol. 13.

⁹ Translation adapted from Deuteronomy 31:12 Jewish Publication Society, 7"27. (Philadelphia: Jewish Publication Society, 1985).

One may conclude from this text that an individual who is nonverbal is unable to learn, but this is rejected because of a parable. Again, despite following what the straightforward conclusion that these individuals are excluded and are unable to learn, the Rabbis lean towards bringing people into the community by citing an example of two nonverbal young men learned in the *beit midrash*. By using this parable, the *Gemara* shifts out of the hypothetical and into the personal and humanizes the individuals whose *halakhic* obligations are being debated.

The *Gemara* asks: **Is that to say that one who is not able to speak is not able to learn? But consider the following incident.** There were **two illemei who were in the neighborhood of Rabbi Yehuda HaNasi.** They were the **sons of the daughter of Rabbi Yoḥanan ben Gudgeda, and some say that they were the sons of the sister of Rabbi Yoḥanan ben Gudgeda.** **Whenever Rabbi Yehuda HaNasi would enter the study hall they would also enter and sit before the Sages, and they would nod their heads as if they understood and move their lips. And Rabbi Yehuda HaNasi prayed for God to have mercy upon them, and they were healed. And it was discovered that they had learned** and were proficient in *halakhah*, i.e., *Mishnah*; *Sifra*, the halakhic midrash on Leviticus; *Sifrei*, the halakhic midrash on Numbers and Deuteronomy; **and the entire Talmud.** This shows that those who cannot speak are able to learn.¹⁰

While the parable uses the controversial medical framework¹¹ to describe disability, making curing the ultimate goal, it is radical¹² in its recognition that verbal ability is not indicative of mental capacity. In the parable two young men from a prominent family are nonverbal. They regularly attend the *beit midrash* and study under Rabbi Yehudah HaNasi. While they study, the young men show signs of engagement, such as nodding or moving their lips.

¹⁰ Hagigah 3a Steinsaltz et al., *Koren Talmud Bavli, The Noé edition*. תלמוד בבלי, vol. 13.

¹¹ The medical model of disability sees disability as requiring cures or treatment for an individual to successfully participate in mainstream society. This is contrasted with the social model which recognizes that individuals with disabilities are excluded from mainstream society because of physical and social barriers present in society. Melinda Jones, "Judaism, Theology and the Human Rights of People with Disabilities," *Journal of Religion, Disability & Health* 10, no. 3–4 (January 2, 2007): 107,

¹² At least in its time.

Rabbi Yehudah HaNasi's prayer for healing for these boys is heard and the young men become verbal. As they speak, it becomes evident that they have mastered the content which they have been learning in the *beit midrash*.

Mar Zutra concludes from this that the verse from Deuteronomy should be read as "that they may teach" instead of "that they may learn."¹³ Therefore, this parable that while nonverbal individuals are capable of learning, they are not capable of teaching and are exempted from the mitzvah of assembly and of appearing at the temple during pilgrimage festivals. At the end of this *sugya*, the Talmud lists other groups of people who are also exempted from the commandment to appear, including those who are deaf in one ear and those who walk with a limp or a prosthetic leg.

As noted previously, the Rabbis do not view exemptions as inherently othering. Instead, exemptions may be seen as compassionate or simply pragmatic. The mitzvah of appearing at the temple during a pilgrimage festival likely would have been a burden for many. By exempting large swaths of the community, especially those who are already vulnerable or for whom the burden would be even heavier, the Rabbis may be acting out of compassion.¹⁴

On its surface, the text appears to be antithetical to the modern understanding of disability rights and inclusion. While there is no denying that some aspects of the texts are antiquated,¹⁵ other aspects of the text are revolutionary. Rabbinic society was centered

¹³ Rambam Mishneh Torah Hil. Hagigah 2:1

¹⁴ Tzvi C Marx, *Disability in Jewish Law* (London: Routledge, 2002), 208.

¹⁵ Although these views are no longer viewed as "correct" they are by no means eradicated from the minds of the general public.

around mitzvot and valued *da'at*, mental competence. Without Sign Language, or other augmentative and alternative communication (AAC) methods, it would have been difficult for those who were deaf or nonverbal to express themselves and prove their mental acuity. Despite the potential communication barriers, the Rabbis are able to recognize that those who cannot communicate are capable of understanding and learning.¹⁶

In fact, as further evidence of the Rabbis' leaning towards inclusion, even before Rabbi Yehudah HaNasi knows that the two young men are mastering the content, the men are still permitted to be in the beit midrash. They are not prohibited or seen as an embarrassment to the community.¹⁷

Today, with a variety of technological advancements, such as real time closed captioning or transcription and text to voice applications, which make communication easier for those who are nonverbal, deaf, or deaf-blind, it is realistic to assume that these individuals can teach and learn. As such, it is necessary to evaluate if the exemptions, as laid out by the Rabbis, still apply.¹⁸ If not, how do we, like the Sages, veer towards a more inclusive ruling.

¹⁶ However, the Rabbis do not extend this logic to one who is both deaf and non-verbal.

¹⁷ A similar argument is made regarding women reading from Torah. (Megillah 23a Steinsaltz et al., *Koren Talmud Bavli, The Noé edition*. תלמוד בבלי, vol. 12.)

¹⁸ R. Eliezer Yehudah Waldenberg (20th-century Israel) notes that "some of the leading poskim hold" that a deaf person who communicates successfully with hearing persons is obligated to fulfill the mitzvot (Res. Tzitz Eliezer 15:32, sec. 2)

Berakhot 15a

In *Berakhot* 15a, the Rabbis are detailing the minimum requirements for fulfilling the commandment of saying the Shema. Similar to *Mishnah Rosh Hashanah* 3:8, The Rabbis' scrutinize the meaning of the word *shema*, to hear. Is it intended to be literal and thus one must be able to hear himself say the *Shema*? Or is it intended metaphorically and thus one should focus their attention when saying the prayer? How this single word is interpreted affects if an individual who is deaf can fulfill the mitzvah.

MISHNAH: One who recites *Shema* and did not recite in a manner audible to his own ear, either because he read inaudibly or because he is deaf, fulfilled his obligation. Rabbi Yosei says: He did not fulfill his obligation.¹⁹

GEMARA: The discussion in our *mishnah* dealt with the question of whether or not one who recites *Shema* without hearing it fulfilled his obligation. The *Gemara* clarifies the opinions cited in the *mishnah*: **What is the reason for Rabbi Yosei's** opinion that one must recite *Shema* in a manner audible to his own ear? **Because it is written: *Shema*, hear,** and Rabbi Yosei holds that this is to be understood literally, meaning: **Make your ears hear what your mouth utters. The first *tanna*,** who holds that one fulfills his obligation even if he does not hear his recitation of *Shema*, **holds** that ***Shema*, hear,** comes to teach something else; one may recite *Shema* in any language that one can hear and understand, and there is no requirement to recite *Shema* specifically in Hebrew **And Rabbi Yosei** agrees with the principle derived by the first *tanna* from the word *Shema*; however Rabbi Yosei holds: **Derive two halakhot from** the word *Shema*; first, one may recite *Shema* in any language, and second, one must recite it in a manner audible to his own ears.²⁰

Rabbi Yosei teaches that the word "*shema*" demonstrates the mitzvah of saying the *Shema*, requires one must say it loud enough to be audible to their own ears and in any language

¹⁹ Berakhot 15a Steinsaltz et al., *Koren Talmud Bavli, The Noé edition*. תלמוד בבלי, vol. 1.

²⁰ Berakhot 15a Steinsaltz et al., vol. 1.

the individual understands. Rabbi Yehuda quoting his teacher Rabbi Elazar ben Azarya argues that the *Shema* must be said audibly in order to fulfill the mitzvah.

Rabbi Meir understands it differently. He teaches that the *Shema* does not need to be audible but does require that the individual is directing their heart towards the words of the *Shema*. This intention is similar to that which is discussed in *Mishnah Rosh Hashanah*.

As it was taught in a *baraita*: Rabbi Yehuda said in the name of Rabbi Elazar ben Azarya: One who recites *Shema* must make it audible to his ears, as it is stated: “Hear, Israel, the Lord is our God, the Lord is One.” The *baraita* continues: Rabbi Meir said to him: But it says: “Which I command you this day, upon your heart”; meaning that the significance of the words follows the intention of the heart and even *ab initio* one need not recite *Shema* audibly. The opinion that after the fact, a deaf person fulfilled his obligation to recite *Shema* is the opinion of Rabbi Elazar ben Azarya.²¹

Sometimes when making a *halakhic* ruling the Rabbis will be lenient *bedi’avad*, after the fact, but stringent *l’hathilah*, initially. This distinction grants the Rabbis the opportunity to teach the ideal way of fulfilling an obligation, while also empowering individuals to perform mitzvot, even in less-than-ideal circumstances.

Ultimately, the *halakhah* is of that opinion that ideally, one is able to hear themselves say the *Shema*. However, if one is unable to hear themselves say the *Shema* they can still be considered as having fulfilled their obligation²².

Therefore, **he teaches us that the *halakhah* is in accordance with the opinion of Rabbi Yehuda; *ab initio* one must recite *Shema* in a manner audible to his own ears, but if he failed to do so, after the fact his recitation is valid.²³**

²¹Berakhot 15b Steinsaltz et al., vol. 1.

²²Berakhot 15a compares the question of a deaf individual fulfilling the obligation of reciting *shema* with the obligation of reciting grace after meals and separating *terumah*. These examples raise similar questions regarding the requirement for the blessing to be heard by the individual who is reciting it.

²³ Berakhot 15b Steinsaltz et al., *Koren Talmud Bavli, The Noé edition*. תלמוד בבלי, vol. 1.

If the only way to fulfill an obligation was to do so perfectly, it could deter people from attempting to fulfill obligations in the first place and may cause individuals to feel detached from the community. The Rabbis' willingness to be lenient *bedi'avad* fosters a more accessible *halakhic* community, for those with and without disabilities²⁴.

Yevamot 112b

In *Yevamot* 112b the Rabbis are examining how disability affects the institutions of marriage. This includes questions pertaining to the *halakhic* status of an individual with disabilities regarding a levirate marriage²⁵, the requirement for a ketubah, and the process of divorce. While the rabbis discuss all three of the categories: *heresh*, *shoteh*, *v'katan*, the majority of their analysis is focused on the *heresh*. Right away in the *Mishnah* text, it is clear that the Rabbis are attempting to bring individuals into the community.

MISHNA: With regard to a *heresh* who married a *halakhically competent woman*, and a *halakhically competent man* who married a *hereshet*: If either man wants to divorce his wife, he may divorce her, and if he wants to maintain her as his wife, he may maintain her. The reason why a שרש can divorce his wife is that just as he marries her by intimation, i.e., his marriage is not performed by explicit speech, as *hereshim* rely on gestures, so too, he divorces her by intimation²⁶.

A marriage ceremony would traditionally require a verbal recitation of a blessing²⁷, as well as the *da'at* to be held responsible for the obligations associated with marriage. However, in this *Mishnah*, there is a reference to an adapted ceremony which permits gestures to be a substitute for speech. This adapted ceremony is a rabbinic construct compared to its

²⁴ Berkahot 15a-b also discusses if the *heresh*, *shoteh*, *v'katan*, are permitted to read megillah. In this case, the Rabbis rule that even after the fact someone who is deaf is unable to fulfill the obligation of reading megillah.

²⁵ Levirate marriage is the marriage of widow to her husband's brother (or other kin).

²⁶ Translation adapted from *Yevamot* 112b Steinsaltz et al., *Koren Talmud Bavli, The Noé edition*. תלמוד בבלי, vols. 14–15.

²⁷ See M. Ketubot 7a for a detailed discussion about the blessing said upon betrothal.

traditional counterpart which is based in Torah law. Whether Toraitic or Rabbinic, both fulfill the idea that “In Judaism, marriage is the ideal human state of affairs and considered the basic institution established by G-d (sic.) from the time of creation”²⁸.

One cannot conclude that the Rabbis’ ruling arises from an alternative *halakhic* interpretation of the text.²⁹ Rather, they are creatively addressing a practical legal reality that would otherwise limit the participation of those with disabilities in Rabbinic society. As Michael Satlow writes,

“While the rabbis certainly recognize that there might be love and attraction accompanying marriage and that the union is a social relationship that can lead to individual fulfillment for both partners, these ideas are largely secondary to their thinking about marriage. Marriage, first and foremost, defines a legal relationship that creates new rights and responsibilities, particularly in the areas of sexual relationships and property transfer.”³⁰

Since the institution of marriage is more than just a relationship between two individuals, creating an alternative, more accessible, marriage ceremony brings Jews in from the margins of society, thus impacting society as a whole.

Understanding what motivates the Rabbis to permit this accommodation to the institution of marriage can provide unique insight into what extent they value inclusion of

²⁸ Isack Kandel, Katherine Bergwerk, and Joav Merrick, “Marriage and Parenthood Among Persons with Intellectual Disability in Jewish Law,” *Journal of Religion, Disability & Health* 10, no. 3–4 (January 2, 2007): 208, https://doi.org/10.1300/J095v10n03_12. The rabbinic origins of this ceremony do however have implications when discussing *kidushin* or the process of divorce. For example, what happens if a woman who is married to a deaf nonverbal man has sexual relations with a man with whom she could have *kidushin*? Does she need a get from her current husband? See M. *Yevamot* 112b for a more detailed analysis of these implications.

²⁹ Marx, *Disability in Jewish Law*, 17.

³⁰ Michael Satlow, “‘According to the Law of Moses and Israel’: Marriage from Social Institution to Legal Fact,” *AJS Perspectives*, 2013, 16–17, <https://search.ebscohost.com/login.aspx?direct=true&AuthType=sso&db=jph&AN=IJP0000260854&site=ehost-live&authtype=sso&custid=s9003419>.

those with disabilities³¹ into communal life. The Talmud attempts to understand the motivations of the Rabbis in instituting a rabbinic ordinance in the case of the *heresh* but not in the case of a minor.

The Gemara asks: **And what is the difference between a minor, that the Sages did not enact marriage for him, and a *heresh*, that the Sages did enact marriage for him?** The Gemara explains: In the case of a *heresh*, as he will not reach the stage of eligibility for **marriage** by Torah law, **the Sages enacted marriage** for him. Conversely, with regard to a **minor**, as he will eventually reach the stage of eligibility for **marriage** by Torah law when he matures, **the Sages did not enact marriage** for him³².

The Rabbis institute an alternative marriage ceremony because a *heresh* is unable to be married according to the Torah. A minor will one day be the age of legal maturity and be able to marry, thus the Rabbis do not feel compelled to provide the minor an alternative to traditional marriage. The Rabbis are not attempting to broaden the scope of the Toraitic law or ensure that those who are obligated are fulfilling their obligations. Instead, recognizing the role marriage plays in communal life, they attempt to create additional, more accessible communities by enacting a ruling which allows a *heresh* to get married rabbinically.

The Rabbis' willingness to forgo the requirement of a *ketubah*, a marriage contract, for a *hereshet* further strengthens the notion that the Rabbis allow the institution of marriage to be adapted for those who are deaf and non-verbal because they value inclusion.

³¹ As noted in Marx, *Disability in Jewish Law*, 117. And in Julia Watts Belser, "Brides and Blemishes: Queering Women's Disability in Rabbinic Marriage Law," *Journal of the American Academy of Religion* 84, no. 2 (June 1, 2016): 401–29, <https://doi.org/10.1093/jaarel/lfv070>. The rabbinic adaptations to marriage do not apply to all disabilities. Instead, the rabbis focus on the inclusion of one specific group, those who are deaf and non-verbal.

³² Translation adapted from Yevamot 112b Steinsaltz et al., *Koren Talmud Bavli, The Noé edition*. תלמוד בבלי, vols. 14–15.

The *Gemara* further asks: **And what is the difference between a minor girl, that she has a marriage contract, and a *hereshet*, that she does not have a marriage contract?** The *Gemara* answers: The reason is **that if so**, if the husband of a *hereshet* would be obligated to give her a marriage contract, men **would refrain from marrying her** at all... The *Gemara* asks: **If so**, in a case of a *halakhically competent woman* who was married **to a *heresh***, **let the Sages enact a marriage contract for her, for if so**, i.e., if women would not receive marriage contracts in this situation, they **would refrain from marrying *hereshim*** entirely. The *Gemara* answers: **More than the man wants to get married, a woman wants to be married.** Consequently, women will not be too discriminating with regard to marriage with a *heresh*, even if they are not entitled to a marriage contract³³.

The text explicitly states the reasoning behind these accommodations, without them people would refrain from marrying a *hereshet*. The Sages justify adapting the rituals of marriage to reduce any barriers to participation by those who are disabled and to alleviate undue burden on the individual³⁴.

The implications of this accommodation by the Rabbis extends far beyond the realm of marriage.³⁵ In fact, “validating these forms of communication is an innovation.”³⁶ By allowing individuals who are deaf and non-verbal to use alternative means of communication for a marriage ritual the Rabbis not only create a more accessible institution of marriage, but they open opportunities for inclusion in any situation which calls for clear communication. In our modern time, alternative forms of communication are more easily understood and aided by technology. Therefore, in cases where communication is required

³³ Translation adapted from Yevamot 112b Steinsaltz et al., vols. 14–15.

³⁴ The underlying concept that one who has a disability is less desirable for marriage is problematic in and of itself. For further reading on disability and marriage in rabbinic culture see Belser, “Brides and Blemishes.”

³⁵ The Rabbis rule similarly regarding non-verbal communication when discussing business transactions. For additional information see Marx, *Disability in Jewish Law*, 118. And Gitin 59a Steinsaltz et al., *Koren Talmud Bavli, The Noé edition*. תלמוד בבלי, vol. 21.

³⁶ Marx, *Disability in Jewish Law*, 118.

to fulfill a mitzvah, it is in line with rabbinic tradition to allow for all clear methods of communication to be accepted.

Megillah 24b

MISHNA: A priest who has blemishes on his hands may not lift his hands to recite the Priestly Benediction. Because of his blemish, people will look at his hands, and it is prohibited to look at the hands of the priests during the Priestly Benediction.

Rabbi Yehuda says: Even one whose hands were colored with *satis*, a blue dye, may not lift his hands to recite the Priestly Benediction **because the congregation will look at him.**³⁷

According to the *mishnah*, priests who have blemishes on their hands may not say the priestly benediction, which requires the priest to extend their hands over the congregation.

Any blemish may cause the congregation to stare at the priest's hands which is forbidden.

Perhaps the exclusion of priests with blemishes dates back to biblical texts and the requirements of those who handled sacrifices and serviced the *Mishkan*, the tabernacle.

However, the Rabbis' leniency with regard to this ruling suggests that it may be more pragmatic than Toraitic.

Rav Huna said: A priest **whose eyes** constantly **run** with tears **may not lift his hands** to recite the Priestly Benediction. The *Gemara* asks: **Wasn't there a certain priest** with this condition **in the neighborhood of Rav Huna, and he would spread his hands** and recite the Priestly Benediction? The *Gemara* answers: **That priest was a familiar figure in his town.** Since the other residents were accustomed to seeing him, he would not draw their attention during the Priestly Benediction. **This is also taught** in a *baraita*: **One whose eyes run should not lift his hands** to recite the Priestly Benediction, **but if he is a familiar figure in his town, he is permitted** to do so.

Rabbi Yoḥanan said: **One who is blind in one eye may not lift his hands** to recite the Priestly Benediction because people will gaze at him. The *Gemara* asks: **Wasn't there a certain priest who was blind in one eye in the neighborhood of Rabbi Yoḥanan, and he would lift his hands** and recite the Priestly Benediction? The

³⁷ Megillah 24b Steinsaltz et al., *Koren Talmud Bavli, The Noé edition*. תלמוד בבלי, vol. 12.

Gemara answers: **That priest was a familiar figure in his town**, and therefore he would not attract attention during the Priestly Benediction. **This is also taught** in a *baraita*: **One who is blind in one eye may not lift his hands** and recite the Priestly Benediction, **but if he is a familiar figure in his town, he is permitted** to do so.

We learned in the *mishnah* that **Rabbi Yehuda said: One whose hands are colored should not lift his hands** to recite the Priestly Benediction. It was **taught** in a *baraita*: **If most of the townspeople are engaged in this occupation, dyeing, he is permitted** to recite the Priestly Benediction, as the congregation will not pay attention to his stained hands.³⁸

The *Gemara* examines three instances in which an individual, based solely on the *mishnah*, would be excluded from reciting the priestly benediction over the community. In each case, the Rabbis conclude that if the priest with a disability or blemish is known to the congregation, then he is permitted to recite the benediction. The exclusion of priests who have blemishes or are disabled is not due their inability to perform the mitzvah, but because of the “ability” of the community to accept the benediction. Thus, if a community is accustomed to the individual, and will not stare, there is no reason to prohibit the priest from performing priestly duties.

The Rabbis get as close to inclusion as possible. They leave the decision of who can say the priestly benediction up to the community, which can be educated or made familiar with the disability. It is our role, as Jews living in modern times, to follow the Rabbis example. It is of utmost importance that we educate our communities about disabilities. As taught in *Megillah* 24b, the burden of inclusion and acceptance does not fall on those with disabilities but on the larger community.

Conclusion

³⁸ *Megillah* 24b Steinsaltz et al., vol. 12.

In each of the texts analyzed in this chapter, the Rabbis actively work to interpret *halakhah* in such a way as to include those who, in their minds, are capable of fulfilling the mitzvot. While each text addresses a small subsection of *halakhah*, when juxtaposed together a proclivity for broadening interpretations such that those with disabilities are included in communal life.

These rulings do not erase the ableism³⁹ in rabbinic society. When the rabbis attempt to be inclusive often it is only for a specific subset of the disability community, thus, many with disabilities are still excluded from the community. In *Yevamot*, for example, the Rabbis decree applies to the *cheresh* but not to the *shoteh*.

The Rabbis take a pragmatic approach to inclusion. Sometimes, as in *Hagigah*, what seems most compassionate for the Rabbis is exemption. The rabbinic rhetoric of inclusion is best defined as an attempt balance the integrity, as they define it, of the legal system with their own sense of moral imperative to create a rabbinic society that removes stumbling blocks from the blind. Having proved the inherent Jewishness and rabbinic roots of accessibility, one must then examine how modern rabbis have, or have not, prioritized inclusion and the justification for doing so

³⁹ That is to say, those with disabilities are not seen as equal to those without disabilities. "The modern concept of ableism emerged in the 1960s and '70s, when disability activists placed disability in a political context" "Ableism," in *Encyclopedia Britannica*, December 13, 2013, <https://www.britannica.com/topic/ableism>.

Chapter 3: A Modern Obligation

The ancient Rabbis, recognizing the role of obligation in communal and individual wellbeing in their context, were inclined to be inclusive in their *halakhic* interpretations. Similarly, modern rabbis have also accepted upon themselves the yoke of obligation to create inclusive spaces. While each movement has a slightly different approach¹, valuing inclusion transcends denominational boundaries. Thus, this chapter will analyze texts from rabbis across the spectrum of Jewish practice.

Inclusion, as we know it today, is considered throughout these modern *halakhic* texts. This is evidenced by the fact that most of the *halakhic* discussions analyzed included a section which acknowledged that inclusion must be weighed when making legal determinations. An analysis of these modern rabbinic texts further solidifies the potential real-world implications of interpreting *halakhah* exclusively.

Interpreting *halakhah* is, in some ways, subjective. As evidenced by Rabbi Nevins and Rabbanit Sperling, two scholars can read the same texts and come to two different conclusions. Thus, it is on communities to educate themselves by reading a variety of opinions to decide which best meets the needs and values of their community.

The proclivity for inclusion through lenient *halakhic* rulings is not a thing of the past. Each of the modern Rabbis attempt to find the balance between remaining authentic to

¹A future study should be done regarding how each movement has been affected by the broader cultural shifts in understanding disability and how those shifts have shaped each movement's understanding of inclusion throughout its history.

their understanding of the law as well as their moral obligation of ensuring inclusion for those with disabilities.

Electronic Augmentative and Alternative Communication Devices on Shabbat

Rabbi Tzvi Hirsch Weinreb is the Executive Vice President Emeritus of the Orthodox Union, and a Doctor of Clinical Psychology.² In a *psak halakha* written in 2013 for *Yachad*, an organization committed to disability inclusion in the Jewish community, Rabbi Weinreb permits the use of and charging of electronic AAC³ devices on Shabbat. Due to the fact that the *psak halakhah* is written for families and staff associated with *Yachad*, Rabbi Weinreb focuses on providing an answer over explaining his reasoning.⁴ What is clear, however, is that in a space designed to be accessible to those with disabilities, a foremost orthodox rabbi answers *halakhic* questions in a way that unequivocally considers and values inclusion. Accessible social programs for individuals with disabilities is one of the many opportunities offered by *Yachad*. The question was asked of Rabbi Weinreb,

Some *Yachad* members use an electronic talking board to communicate; are advisors allowed to turn it on for them on Shabbat? Additionally, are advisors allowed to plug in the talking board to recharge it?⁵

² "Rabbi Tzvi Hersh Weinreb," *Yachad*, accessed February 21, 2021, <http://www.yachad.org/rabbi-tzvi-hersh-weinreb/>.

³ Augmentative and Alternative Communication

⁴ . While it is noted in the publication that this *psakei halakhah* are written in consultation with other rabbinic authorities, Rabbi Weinreb did not respond to an email request for further insight into his *halakhic* rulings. Therefore, additional study may be required to understand how he reaches his conclusion.

⁵ Rabbi Tzvi Hersh Weinreb, "Ask Rabbi Weinreb...," *Belong: Supplement to Jewish Action 2013*, 2013, 29–29.

To answer the question, he begins by explaining that a *Yachad* member who has disabilities is considered a *choleh she'ain bo sakanah*, someone who is sick but not in imminent danger. This status allows for leniency in shabbat practice in order to care for the individual⁶.

The *Shulchan Aruch Orach Chayim* 328:17 examines these leniencies. If an individual requires care which would break a prohibition on Shabbat because of illness or disability it is considered ideal for a non-Jew to perform the act. This *halakhah* does not address situations regarding *Pekuah Nefesh*, saving a life, because in a case where someone is in imminent danger, it is always permissible to break Shabbat to save their life. However, the text does address less severe situations; it delineates between situations in which there is an endangered body part and when there is not an endangered body part since losing the use of a limb or organ can profoundly impact one's life.

In the case of a sick person who is in bed with his illness but is not in danger, we tell a non-Jew to provide medical treatment, but we do not violate Toraitic Shabbat prohibitions even if he has an endangered body part. Regarding a Jew actively breaking a rabbinic prohibition, there are some who allow it even if he does not have an endangered body part.⁷

According to the text, one does not violate toraitic prohibitions on Shabbat even if there is an endangered body part. Some sages, however, allow breaking rabbinic prohibitions even if there is not an endangered body part. The text outlines three possible interpretations of the *halakhah*.

There are those who say that if he has an endangered body part we break and if he doesn't, we do not break. There are those who say that if he doesn't have an

⁶ Weinreb.

⁷ sefaria.org, "Shulchan Arukh, Orach Chayim 328:17," Sefaria: a Living Library of Jewish Texts Online, accessed February 22, 2021, <https://www.sefaria.org/new-home>.

endangered body part, we desecrate with a slight change, and if he has an endangered body part, we break without a change. And there are those who say that even if he has an endangered body part, we do not break any prohibition that is related to a Toraitic labor, and things that have no connection, we do even if he does not have an endangered body part. This third position is right.⁸

The first possible interpretation allows an individual to break a rabbinic prohibition only in the case of an endangered body part. While the second permits breaking a rabbinic prohibition even if there is not an endangered body part as long as it is done using a *shinui*, an unusual method of performing the action. In this second interpretation, an individual is not required to use a *shinui* to perform the action if there is an endangered body part. The third interpretation is the considered by the *Shulchan Aruch* to be the correct interpretation. It states, even if one has an endangered body part one may not break a toraitic prohibition, but the individual may break rabbinic prohibitions even if there is not an endangered body part.

Once Rabbi Weinreb gives the Yachad member the status of a *choleh she'ain bo sakanah*, it becomes clear that it is permissible for a non-Jew to turn on or charge the electronic AAC device. However, Rabbi Weinreb goes a step farther in his *psak halakhah*. He rules that while it is preferable for a non-Jew to perform the actions, a Jew may do so if necessary.

How does Rabbi Weinreb justify permitting a Jew to turn on or charge an AAC device? One possible justification is that Rabbi Weinreb classifies an inability to communicate as equivalent to an endangered body part. This logic would have wide-

⁸ Shulchan Arukh, Orach Chayim 328:17 sefaria.org.

reaching implications on the participation of those with disabilities. Prioritizing the ability to communicate has the potential to also allow hearing aid use⁹, real-time captioning technology, etc. As technology evolve, these questions will become even more crucial for creating accessible Jewish spaces.

Alternatively, there is a *mahloket* regarding whether the prohibition of using electricity on Shabbat is Toraitic or rabbinic in origin.¹⁰ Thus, if Rabbi Weinreb is of the opinion that the prohibition is Rabbinic, it is clear that a Jew should be allowed to turn on or charge an AAC device because the *Shulchan Aruch* allows for Rabbinic prohibitions to be broken regardless of if there is an endangered body part.

Regardless of the exact logic used by Rabbi Weinreb, inclusion is clearly considered and valued in his interpretation of the text. While the specifics of the situation in the *psak halakhah* are unknown, there is a possibility that a non-electronic AAC device could be used by the individual on Shabbat. Instead of suggesting this solution, he allows the individual to continue using the method that the individual typically uses and, presumably, is most comfortable using. Rabbi Weinreb interprets the *halakhah* in such a way that he maintains

⁹ There is already *halakhic* discussion surrounding the issue of hearing aids on Shabbat. While most poskim allow hearing aids to be worn on Shabbat, there is *mahloket* regarding the permissibility of turning on a hearing aid, adjusting the volume or changing the battery. There are a variety of *shiurim* on the subject. Including: Rabbi Yosef Melamed, "Hearing Aids on Shabbos," *Denver Kollel: Halacha Weekly* I, no. 13 (March 1, 2019): 1–2, <https://www.denverkollel.org/wp-content/uploads/2019/02/vayakhelrymhearingaidsonShabbos.pdf>.

¹⁰ For a detailed discussion about the prohibition of electronics or electricity on Shabbat see: Rabbi Daniel S. Nevins, "The Use of Electrical and Electronic Devices on Shabbat," *The Committee of Jewish Law and Standards of the Rabbinic Assembly*, May 31, 2012, 1–79, <https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/electrical-electronic-devices-shabbat.pdf>.

the integrity of the text, while also maintaining relevance to modern society and valuing inclusion.

Allowing Individuals Who are Blind to Participate in Torah Reading

In 2003, Rabbi Daniel Nevins, Pearl Resnick Dean of The Rabbinical School and dean of the Division of Religious Leadership of The Jewish Theological Seminary,¹¹ wrote a responsum regarding individuals who are blind participating in the Torah service. Throughout the responsum there is a recognition of the value of inclusion and the importance of being included in Jewish ritual life.

While the question posed focuses on the act of reading from the Torah Scroll, Rabbi Nevins ultimately expands the scope of the responsum to include both other aspects of the Torah service, such as reciting the Torah reading blessings, and other opportunities for participation in communal worship. Accordingly, he is able to clearly provide opportunities for individual who are blind to participate in the Torah Service, even if he is reticent to permit them to read from the Torah scroll.

The question was asked of Rabbi Nevins,

Can a person who is blind read Torah by memorizing the *parshah*, or by placing a scanner on top of the Torah text that would translate the text into braille?¹²

¹¹ "Daniel Nevins," accessed February 22, 2021, <http://www.jtsa.edu/daniel-nevins>.

¹² Rabbi Daniel S. Nevins, "The Participation Of Jews Who Are Blind In The Torah Service," *The Committee of Jewish Law and Standards of the Rabbinic Assembly*, January 15, 2003, 1, https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/nevins_blind.pdf.

Immediately in the first paragraph of the responsum, Rabbi Nevins clearly utilizes a rhetoric of inclusion. He writes,

In contrast to many ancient societies which scorned and persecuted people with disabilities, Judaism has taught us to see the infinite worth of human life and to preserve the safety and dignity of all people. One measure of a person's dignity is the extent to which he or she is included in the ritual expectations of his or her community.¹³

An explicit discussion of inclusion continues throughout the responsum. However, that is not the sole factor in this *halakhic* decision. Similar to the Talmudic rabbis, Rabbi Nevins must balance the demands of the *halakhah* with the needs of the individual. He does this by examining what inclusive methods of Torah reading would be acceptable to fulfill not only the *soma's* obligation to hear the Torah being read but also the obligation of the whole community. Rabbi Nevins cites Tosefta *Megillah* 3:11 to show that those who are usually exempt from fulfilling mitzvot are able to fulfill the obligation to read Torah on behalf of others. The question then becomes, are the methods which an individual who is blind could utilize to read from the Torah scroll sufficient to fulfil the obligation on behalf of the community.

Communal needs are not the only complicating factor when determining the *halakhah*. Even as Rabbi Nevins articulates the value of inclusion, he must also be true to the text. The *halakhic* tradition¹⁴, as he interprets it, is firm that one may not recite Torah from memory – it must be read from the scroll itself. That is, however, not the end of the responsum. Instead, Rabbi Nevins continues to analyze the text in order to offer other

¹³ Nevins, 1.

¹⁴ He discusses the topic by engaging multiple Talmudic and post-Talmudic texts. For a more detailed discussion of these sources see Nevins, 7.

avenues of participation for individuals who are blind. There is a *mahloket* among earlier sources regarding the permissibility of a *soma* reciting the blessings while having a sighted individual read from the Scroll. Rabbi Nevins examines both sides of the *mahloket* ¹⁵ before writing, “Yet again, the most vigorous defense of a blind Jew participating in the Torah service is an affirmation that he may have an *Aliyah*.”¹⁶

In the conclusion of the responsum, Rabbi Nevins makes clear the importance of accessibility and provides concrete ways individuals who are blind can participate in communal worship.¹⁷ He also recognizes that this question will need to be revisited as technology evolves. Rabbi Nevins writes,

Should new technology that allows blind people to read directly from the scroll become available, our options would expand. Meanwhile, these solutions all preserve our reverence for the sacred act of chanting Torah from a kosher scroll, while also allowing Jews who are blind to be included in the act of publicly accepting and revering the Torah¹⁸.

Just as was the case with the Talmudic rabbis, and with Rabbi Weinreb, Rabbi Nevins works to say “yes” when it is possible to do so within the bounds of the law, as he understands it. However, how one defines the boundaries of any particular law is subjective and may be interpreted differently depending on the scholar.

In fact, Rabbanit Aliza Sperling, ordained from Yeshivat Mahart in 2019,¹⁹ interprets the same texts in such a way as to allow for an individual who is blind to read from the Torah. Neither interpretation is more correct than the other. Rather, it is up to the

¹⁵ See Nevins, 9–15. for analysis of the Talmudic and post-Talmudic sources used.

¹⁶ Nevins, 12.

¹⁷ Such as leading prayers, reciting the Torah blessings, chanting haftarah, reading the maftir from a braille *chumash*, or serving as a verse-by-verse translator of the Torah

¹⁸ Nevins, “The Participation Of Jews Who Are Blind In The Torah Service,” 19.

¹⁹ “Rabbanit Aliza Sperling,” Yeshivat Maharat, accessed February 22, 2021, <https://www.yeshivatmaharat.org/scholar/sperling/aliza>.

community or individual reading the responsa to decide which reasoning best matches their understanding of the *halakhah* and fits their values.

Like earlier sages, Rabbanit Sperling recognizes the difference between the ideal practice, *l'hathilah*, and a sufficient method, *bedi'avad*, of fulfilling the mitzvot. In her introduction she writes,

It is always preferable to perform a mitzvah in the most ideal manner possible (לכתחילה), and from a *halakhic* perspective the best way to read the Torah is directly from a Sefer Torah. However, adherence to the ideal practice will lead to the exclusion of blind persons from *keriat haTorah*. This paper embarks upon a journey to discover which *halakhic* elements are crucial, which are "negotiable," and whether the circumstances of accommodating the inclusion of a blind bar mitzva justify departure from normative practice²⁰.

Rabbanit Sperling begins her reasoning by examining if, in fact, the prohibition of reciting Torah from memory is even applicable to those who are blind. Through an analysis of Talmudic texts²¹ and post-Talmudic commentaries,²² she concludes that there is room for a more lenient interpretation of the prohibition of reading Torah from memory. Rabbi Nevins interprets "from memory" to mean any method of reading not using the written letters on the scroll. Alternatively, Rabbanit Sperling argues²³ that "from memory" should be interpreted as a requirement to read from a written Torah.

Furthermore, she understands the original motivation of the prohibition as reducing mistakes and ensuring that people know the Torah reader is not just making things up, but

²⁰ Rabbanit Aliza Sperling, "Can a Blind Man Read the Torah for the Congregation?," *Matan - The Sadie Rennert Women's Institute for Torah Studies, Havineini: A Collection of Essays by the Women of the Morot L'Halakha Program 5777-5778* (blog), 2019, 1, <https://www.matan.org.il/en/online/can-a-blind-man-read-the-torah-for-the-congregation/>.

²¹ Gitin 60b

²² Specifically, she discusses commentary from the Ritva, the Rambam, Aruch Hashulchan and *Tosafot* on *Bava Kamma* 3b. See Sperling 2-3 for further analysis of these sources.

²³ By citing Rav Soloveitchik.

instead is reading from the sacred text accurately. Consequently, she states that these reasons are not relevant in the case of a blind individual²⁴ who is reading from a braille *chumash* because they are using the text the likelihood of mistakes is not increased. Additionally, the congregation could follow along in a printed text to ensure that the reading is accurate.²⁵

Rabbanit Sperling's response is as rooted in traditional rabbinic text as that of Rabbi Nevins, and yet it is clear they come to different conclusions. As discussed previously, inclusion is valued throughout Talmudic texts. Sometimes, one must re-examine the texts and their commentaries to find areas in which the law allows for leniency and inclusion for those with disabilities. Rabbanit Sperling writes, "Underlying the legal discussions, we have seen a striking theme pulsing throughout these sources: the drive to include blind people in Torah study and the Torah service."²⁶

For Rabbanit Sperling this is not merely a theoretical exercise. Her daughter is blind and became bat mitzvah in January of 2019. Like Rav Yosef, she has a personal stake in the outcome of this *halakhic* debate. In her writing, Rabbanit Sperling makes evident the consequences of *halakhic* rulings with exclude those with disabilities.

Today, Braille *chumashim* are readily available and a blind Bar Mitzvah can read his *parasha* from Braille print. We are called to respond to this new situation by permitting the blind Bar Mitzvah to read Torah for the congregation, following the path that we have discussed above, rather than ruling stringently and pushing them away. As a blind child becomes bar mitzvah, what message do we want to send him? We should avail ourselves of the many sources that permit a blind person to read the Torah for the congregation, communicating to the new adult member of our

²⁴ It should be noted that this reasoning could be equally applied to a sighted individual who reads from a printed *tikkun*.

²⁵ Sperling, "Can a Blind Man Read the Torah for the Congregation?," 3.

²⁶ Sperling, 6.

community that he has a place within the community of God and the Torah of eternal life – נחלת ה' ותורת אמת חיי עולם.²⁷

It is imperative that *halakhic* discourse is approached not just as a theoretical exercise but as an opportunity to create stronger, more accessible communities. Thus, it is the obligation of modern Jewish *poskim*, *halakhic* scholars, to create as many opportunities for those with disabilities as possible within the legal framework.

Allowing Individuals Who are Blind to Act as Witnesses

The proclivity to be lenient for the sake of inclusion which is present in the other *halakhic* discussions discussed in the chapter, is also evidenced in the Reform Movement's 1999 responsum, written by Rabbi Mark Washofsky, on the permissibility of a blind individual serving as a witness. The question was asked of the committee,

From a traditional and from a Reform perspective, may a blind person serve as a witness at a wedding?

Immediately, the tension of normative textual interpretations and the moral imperative to be inclusive are acknowledged by Rabbi Washofsky. The responsum begins by examining the Rambam's ruling that those who are blind are not permitted to serve as witnesses before the court²⁸ which is derived from a *midrash* on Leviticus 5:1²⁹. The Rambam's ruling is that because the Leviticus verses uses the word "to see" the witness' testimony is only valid if they have the ability to see.

²⁷ Sperling, 7.

²⁸ Yad, Edut 9:1. Rabbi Dr. Mark Washofsky, ed., "A Blind Person as a Witness," in *Reform Responsa for the 21st Century*, 1999, <https://www.ccarnet.org/ccar-responsa/rr21-no-5759-8/>.

²⁹ "If a person incurs guilt— When he has heard a public imprecation and—although able to testify as one who has either seen or learned of the matter—he does not give information, so that he is subject to punishment;" Jewish Publication Society, תנ"ך.

Rabbi Washofsky outlines the three components which ultimately lead the responsum to conclude, diverging from the Rambam, that it is permissible for an individual who is blind to be a witness at a wedding. The first component is an analysis of the *halakhic* exceptions to the requirement that a wedding has two witnesses. According to some sages,³⁰ a wedding can be valid *bedi'avad*, after the fact, even if there were not two halakhically permissible witnesses present. As previously discussed, encouraging individuals to perform the mitzvot, even if it is not done in the ideal way, opens up additionally opportunities for inclusion in the *halakhah*. In this case, a lenient ruling, *bedi'avad*, means a blind individual can be a witness to the wedding without compromising the *halakhic* validity of the wedding.

The second component outlined by Rabbi Washofsky is an examination of the textual basis for disqualifying blind witnesses to determine if there are alternative interpretations. While the majority opinion follows the Rambam's argument (as discussed above), there is a minority opinion which interprets *Gitin* 23a such that the disqualification of blind witnesses is only relevant in specific cases, such as a get, which require them to have seen the event. Rabbi Washofsky writes,

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.

This responsum, like that of Rabbanit Sperling, encourages scholars to return to the foundations of a legal question. Doing so provides an opportunity to see the primary text

³⁰ Sources cite by Rabbi Washofsky include: Resp. Chatam Sofer, EHE 100, Teshuvot Ibra, no. 76; Lev Ibra, pp. 14-15; and Perushei Ibra, ch. 2., and Avnei Milu'im 31, no. 4.

anew and one may come to understand the text differently than if one were relying on commentators to be the sole source of textual understanding.

Interpreting the prohibition of blind witnesses narrowly, opens the door for increased participation in life cycle rituals, such as weddings and conversions, and in civil or criminal matters as governed by Jewish law.

The third and final component outlined by Rabbi Washofsky, is an assertion that inclusion is a priority for the Reform movement and must be weighted accordingly in the movement's *halakhic* discourse. The responsum concludes,

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. 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. 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.³¹

The responsum recognizes that inclusion is not merely an abstract principle for the Reform movement. Rather, it is a positive obligation and as such requires intentionality and a concerted effort to ensure individuals with disabilities have access to all aspects of Reform Jewish practice. To ignore the ramifications of exclusionary *halakhic* discourse, is to willfully accept those with disabilities be excluded from Jewish life.

³¹ Washofsky, "A Blind Person as a Witness."

Conclusion

Many modern rabbis, across denominations and observance levels, have embraced a rhetoric of inclusion in their *halakhic* discourse. In the responsa analyzed throughout this chapter, the Rabbis and Rabbanit Sperling successfully advocate for inclusive interpretations of *halakhah*, without compromising the integrity of the textual tradition.

The questions asked of these modern Rabbis make clear the impact *halakhic* decisions can have on an individual's connection to the Jewish community and Jewish ritual and spiritual practice. Just as the questions are rooted in the current context Jews live in today, the answers must fit within the contemporary Jewish value systems as defined by each community. There is no single correct interpretation of the text. Thus, it is the obligation of the Rabbis to use the diversity in opinions to be lenient such that all Jews are able to participate fully in Jewish ritual life.

Creating inclusive communities and practices is an ongoing process which requires constant re-examination. It is imperative that all Rabbis accept upon themselves the *halakhic* and moral obligation to ensure the inclusion of those with disabilities in Jewish life.

Conclusion

In the Rabbinic mindset, mitzvah and *hova*, obligation, are viewed as essential components of the relationship between the Jewish people and the Divine. If you are *halakhically* obligated, then it is presumed that you have the capability to fulfill the mitzvot. Thus, the Rabbinic texts seemed to view exempting an individual with disabilities from their *halakhic* obligations as realistic, and perhaps even as compassionate.

Yet, as we learn from Rav Yosef in *Bava Kamma* and *Kidushin*, being exempted can affect a person's status in the community, their sense of dignity, and their ability to fulfill the mitzvot voluntarily. While on one hand the Talmudic Rabbis saw exemption as compassionate, they also seem hesitant to exempt individuals with disabilities from the mitzvot. In many cases, the Rabbis attempted to rule leniently in *halakhic* matters, in order to allow as much access as possible within the demands of the *halakha*.

Including individuals with disabilities in the *halakhic* discourse and obligating them to the mitzvot which they are capable of fulfilling, allows them to engage fully with Jewish rituals and be equal members of the community. Thus, modern *halakha* literature must consider inclusion when making legal rulings. There is no single correct interpretation of the text. Thus, just like the Sages, contemporary Rabbis must, when possible, interpret *halakha* as to be inclusive instead of exclusive.

Contemporary Rabbis have shown in through responsa literature that inclusion is possible within the *halakhic* framework. The Rabbinic mindset provides the tools for interpreting texts and commentaries; it is the duty of modern Jews to use these tools to embrace individuals with disabilities in the Jewish community instead of excluding them.

Given that *halakha* is not merely theoretical, but rather can have real-world consequences for individuals and communities, and that inclusion is not only a moral obligation but an undeniably Jewish obligation, it is imperative to live out this value in all future *halakhic* discourse. As technology and our understanding of disability evolve, our *halakha* must follow suit. For example, technology has reduced the communication barriers between those who are hearing and those who are deaf; is there still a *halakhic* justification for not counting those who are deaf in a minyan? Similarly, how can deaf individuals be included within the Torah service? Can they chant Torah in Sign Language? These are the types of *halakhic* questions rabbis must be prepared to answer in such a way that maintains the integrity of the text and the integrity of those with disabilities.

Traditional does not have to mean exclusionary. Rabbis from Talmudic times to today have used an inclusive rhetoric to create stronger, more diverse, and accessible Jewish communities. Inclusion is a mitzvah which we are all obligated to fulfill.

Works Cited

- “Ableism.” In *Encyclopedia Britannica*, December 13, 2013.
<https://www.britannica.com/topic/ableism>.
- Abrams, Judith Z. *Judaism and Disability: Portrayals in Ancient Texts from the Tanach through the Bavli*. Washington, D.C.: Gallaudet University Press, 2014.
- Belser, Julia Watts. “Brides and Blemishes: Queering Women’s Disability in Rabbinic Marriage Law.” *Journal of the American Academy of Religion* 84, no. 2 (June 1, 2016): 401–29. <https://doi.org/10.1093/jaarel/lfv070>.
- “Daniel Nevins.” Accessed February 22, 2021. <http://www.jtsa.edu/daniel-nevins>.
- Jewish Publication Society. 7777. Philadelphia: Jewish Publication Society, 1985.
- Jones, Melinda. “Judaism, Theology and the Human Rights of People with Disabilities.” *Journal of Religion, Disability & Health* 10, no. 3–4 (January 2, 2007): 101–45.
https://doi.org/10.1300/J095v10n03_08.
- Kandel, Isack, Katherine Bergwerk, and Joav Merrick. “Marriage and Parenthood Among Persons with Intellectual Disability in Jewish Law.” *Journal of Religion, Disability & Health* 10, no. 3–4 (January 2, 2007): 207–16.
https://doi.org/10.1300/J095v10n03_12.
- Maimonides, Moses, and Abraham ben David Rabd. *Book of Misnah Torah Yod Ha-Hazakah*. Translated by Simon Glazer. As digitized on sefaria.org. New York: Maimonides Publishing Co., 1927.
- Marx, Tzvi C. *Disability in Jewish Law*. London: Routledge, 2002.
- Melamed, Rabbi Yosef. “Hearing Aids on Shabbos.” *Denver Kollel: Halacha Weekly* I, no. 13 (March 1, 2019): 1–2. <https://www.denverkollel.org/wp-content/uploads/2019/02/vayakhelrymhearingaidsonShabbos.pdf>.
- Nevins, Rabbi Daniel S. “The Participation Of Jews Who Are Blind In The Torah Service.” *The Committee of Jewish Law and Standards of the Rabbinic Assembly*, January 15, 2003, 1–19.
https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/nevins_blind.pdf.
- . “The Use of Electrical and Electronic Devices on Shabbat.” *The Committee of Jewish Law and Standards of the Rabbinic Assembly*, May 31, 2012, 1–79.
<https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/electrical-electronic-devices-shabbat.pdf>.
- Yeshivat Maharat. “Rabbanit Aliza Sperling.” Accessed February 22, 2021.
<https://www.yeshivatmaharat.org/scholar/sperling/aliza>.
- Yachad. “Rabbi Tzvi Hersh Weinreb.” Accessed February 21, 2021.
<http://www.yachad.org/rabbi-tzvi-hersh-weinreb/>.
- Union for Reform Judaism. “Resolution in Support of Access to Lifelong Jewish Learning for Jews with Disabilities,” 2011. <https://urj.org/what-we-believe/resolutions/resolution-support-access-lifelong-jewish-learning-jews-disabilities>.
- Roth, Joel. “On the Ordination of Women as Rabbis.” *The Committee of Jewish Law and Standards of the Rabbinic Assembly*, November 7, 1984, 736–86.
<https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19861990/ordinationofwomen2.pdf>.

- Satlow, Michael. “‘According to the Law of Moses and Israel’: Marriage from Social Institution to Legal Fact.” *AJS Perspectives*, 2013, 16–17.
<https://search.ebscohost.com/login.aspx?direct=true&AuthType=sso&db=jph&AN=JP0000260854&site=ehost-live&authtype=sso&custid=s9003419>.
- sefaria.org. “Shulchan Arukh, Orach Chayim 328:17.” Sefaria: a Living Library of Jewish Texts Online. Accessed February 22, 2021. <https://www.sefaria.org/new-home>.
- Sperling, Rabbanit Aliza. “Can a Blind Man Read the Torah for the Congregation?” Matan - The Sadie Rennert Women’s Institute for Torah Studies. *Havineini: A Collection of Essays by the Women of the Morot L’Halakha Program 5777-5778* (blog), 2019.
<https://www.matan.org.il/en/online/can-a-blind-man-read-the-torah-for-the-congregation/>.
- Steinsaltz, Adin, Tzvi Hersch Weinreb, Joshua Schreier, and Hotsa’at Koren (Jerusalem). *Koren Talmud Bavli, The Noé edition*. 2014 . תלמוד בבלי.
- Washofsky, Rabbi Dr. Mark, ed. “A Blind Person as a Witness.” In *Reform Responsa for the 21st Century*, 1999. <https://www.ccarnet.org/ccar-responsa/rr21-no-5759-8/>.
- Weinreb, Rabbi Tzvi Hersch. “Ask Rabbi Weinreb...” *Belong: Supplement to Jewish Action* 2013, 2013, 29–29.