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Center for Modern Torah Leadership



חרות ואחריות

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"Taking Responsibility for Torah"

WEEK ONE SUMMARY OF SBM 2017

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The topic of the 2017 Summer Beit Midrash is "Mental Disability in Halakhah". We will approach this topic through the *halakhic* category of שוטה (*shoteh*). The psukim in the Torah make no mention of שוטה as a legal status, and the Tannaitic material may not define the condition formally. We will therefore attempt to build a framework for this category via its legal implications, having started this week with the *Midrash Tanaim* and the *Mishnah*, and continuing next week with the *Tosefta*, the *Yerushalmi* and the *Bavli*.

Can we find rationales for the *mitzvoth* the שוטה is excluded from? Maybe all *mitzvoth* which require דעת (*da'at*, knowledge or understanding)? Or perhaps *mitzvoth* which have a certain communal aspect? Are there specific *halakhic* realms they don't participate in, or participate in only partially (for example testimony, marriage and divorce, or perhaps נזיקין, damages)? What are the differences between the statuses of the חרש (*cheireish*, deaf-mute) and שוטה as recorded in pre-Helen Keller *halakhic* literature, and to what extent does the traditional grouping of the קטן (*katan*, minor) with them have legal significance? These are some of the overarching questions we explored this week.

The *Mekhilta d'Rabbi Yishmael* (מכילתא דרבי ישמעאל כי) 31:14 (תשא - מסכתא דשבתא פרשה א, א) discusses the חרש שוטה, and קטן's obligation regarding at least some aspects of *shabbat*:

"To know that I, the L-rd, sanctify you" (*Sh'mot* 16): What is the intent of this? From "And the children of Israel shall keep the Sabbath" (*Ibid.*) I might think, even a חרש (deaf-mute), a שוטה (imbecile), and a קטן (minor) [are obligated]? It is, therefore, written "to know that I, the L-rd, etc." I spoke only of one who has דעת.

The presumption of the *Mekhilta* seems to be that we would think that the שוטה, חרש and קטן are exempt from (at least some) obligations of *Shabbat*. This idea in mind, one could think that the words "And the children of Israel shall keep the Sabbath" come to state that in fact all B'nei Israel, שוטה, חרש and קטן included, are obligated in these. The *Mekhilta* states that the function of the words "to know (לדעת) that I, the L-rd, sanctify you" are to show that שוטה, חרש and קטן are, in fact, excluded from the obligation since they lack the appropriate דעת.

It is interesting, and perhaps even crucial to note that there is absolutely no presumption that the people belonging to the categories שוטה, חרש or קטן might be excluded from the category בני ישראל (*B'nei Israel*). In other words, the Jewishness of the שוטה, חרש and קטן, their belonging to the Jewish people is never put into question by the *Mekhilta*, nor by any other source from the *Midrash Halakha* and the *Mishna*.

What is put into question, though, is their intellectual capability, their דעת. However, the concept of דעת is quite obscure and further questions need to be addressed: what exactly does דעת entail? Are there different kinds of דעת (i.e. knowledges of different concepts) and from which *mitzvoth* does this criteria exempt the שוטה, חרש and קטן?

The *Midrash Halakha* excludes the שוטה, חרש and קטן on several occasions on the grounds that they are lacking דעת; this rationale appears, for example, in the *Sifrei Bemidbar* (*Parashat Chukat*, *piska* 124), which deals with the placing of the red heifer's ashes in a *tabot* place. The שוטה, חרש and קטן are declared *pasul* for this task, since they lack the דעת להניח, the knowledge to

place these ashes appropriately. It is unclear from this text whether the *Sifrei* deems their דעת insufficient for placing, for handling precious objects, or for placing in a *tabot* location. In any case, this type of דעת is radically different from the type of דעת required in the *Mekhilta*, which is an understanding that G-d sanctifies us and a rather abstract, spiritual notion.

Furthermore, in the *Tosefta* (*Shvu'ot*, ch. 3) the word דע (*knew*, *Vayikra* 5:1) is taken to prove that a שוטה is unfit to testify. This type of דעת, a basic knowledge of the circumstances and content of events necessary to provide testimony, constitutes yet another type of דעת.

What seems to emerge from studying Rabbinic legal interpretations of *Torah* is that the שוטה is excluded from specific *mitzvoth* because of their lack of the דעת necessary to perform those *mitzvoth*.

Let us now move to mishnaic texts, and consider a *mishnah* central to the rulings about חרש and שוטה: the *mishnah* (*Rosh Hashanah* ch. 2) rules that a חרש, a שוטה, and a קטן cannot fulfill the masses' obligation to hear the *shofar* by blowing it for them, citing a general precept that "All that have no obligation in a matter cannot fulfill the masses' obligation [in that matter]." This statement, as it seems to assume that the חרש, שוטה, and קטן have no obligation to hear *shofar*, provides a theoretically far-reaching curb to the שוטה's involvement in mass obligations and implies a significantly handicapped obligatory framework; the קטן is already "exempt from all commandments" (*Sanhedrin* ch. 8) and the חרש is presumably exempt from *shofar* as he is from other obligations that explicitly require hearing — "testifying" (*Tosefta* ch.3) and "appearing [in Jerusalem at festivals]" (*Mekhilta* ch. 20) — but the שוטה lacks a rationale for exemption unless he, too, is generally exempt from a category, maybe all-encompassing, of commandments into which this falls. This thesis is further supported by other *mishnayot*, which state that the שוטה, חרש, and קטן cannot "read the *megillah* [to the masses]," (*Megillah* ch. 2) that they cannot "sanctify [the red heifer]," (*Parah* ch. 5) and that they cannot "lean [on sacrifices];" (*Menachot* ch. 9) presumably this is because they have no obligation to hear the *megillah*, or purify via the red

heifer, or bring sacrifices, and why but because they have preceptually limited obligations. Additionally, the שוטה is listed without rationale as exempt from appearing in Jerusalem at festivals in the *mishnah*, (*Chagigah* ch. 1) as well as in the *Mekhilta* (ch. 20) which outlines the specific exemptions of other categories from the commandment.

We will continue by exploring the *tosefta* and talmudic sources, tracking the evolution of the definitions and legal ramifications of the cases חרש and שוטה. We will delve into philosophical and technical discussions as we move towards a comprehensive framework for dealing with contemporary חרש and שוטה cases. As the חרש and שוטה — which were often distinct in early sources — converge in the *mishnah*, will they change again? Wherein lie the originators and resolvers of the modern conundrums confounding all and driving this summer's SBM?