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## 2018 MATT EISENFELD MEMORIAL ESSAY: COMMANDEDNESS AND MENTAL DISABILITY

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Orthodoxy is justly proud of its efforts toward including people with mental disabilities in synagogue communities. These efforts, in my hometown spearheaded by Yachad and often supported generously by the Ruderman Foundation, deserve enormous recognition and support. Like any social change, they also generate new halakhic and hashkafic questions and tensions.

One such tension relates to bar and bat mitzvah ceremonies. The value of inclusion pushes toward having children with mental disabilities the same public recognition, and participation in halakhic ritual, as all their peers. This can play out in terms of aliyot, or making kiddush or other berakhot for the community, etc.

Why does this create tension? On a hashkafic level, Orthodox rhetoric about bar and bat mitzvahs is properly all about the substance of adult religious responsibility, of arriving at the age of commandedness, of being obligated in mitzvot. Yet children with mental disabilities won't be treated as religiously accountable adults after their bar or bat mitzvah, and no one thinks they should be. On a halakhic level, a meaningful bar or bat mitzvah ceremony should involve taking actions that cause other people to acknowledge your religious adulthood, as for example fulfilling their obligations via your blessing. Such actions generally require you to be genuinely obligated religiously. But can there be obligation without accountability?

Rav Chaim Pinchos Scheinberg z"l (*Moriyah*, Elul 5742) argued that any physical and temporal adult who has the mental ability of *p'utot* (somewhere between 6 and 9) is fully obligated in mitzvot. This is the standard the Talmud uses for allowing children to acquire and transfer moveable property. Rav Shlomo Zalman Auerbach z"l responded to Rav Scheinberg as follows:

... דעתי מסכמת לכך דכל שהוא מבין ויש לו דעת כמו פּעוּטוֹת ויודע שהקב"ה נתן לנו תורה ואנחנו מקיימים מצוותיו דשפיר חשיב כבר דעת לענין קיום מצוות, ובהגיעו לגיל י"ג שנה הרי הוא חשיב כגדול... ומיהו לענין עונשין שפיר נראה דכמו דחס רחמנא על קטן כך גם מפגר כקטן הוא דחשיב לענין זה

אע"ג שהוא גדול, דלא מסתבר לומר דלאחר שהגדיל דינו רק כשוגג ואם ישתפה יתחייב בחטאת, ולכן נראה שרק לענין קיום מצוות שמבין בהם כפּעוּטוֹת דינו כגדול...

*I agree that any male who understands and has a mind like that of p'utot, and knows that the Holy Blessed One gave us Torah and that we fulfill His commands is properly considered to be mentally sufficient with regard to fulfilling mitzvot, so that when he reaches 13 years old he is considered adult... but regarding punishments, it seems proper that just as the Torah has mercy on a minor, so too one with a mental disability is considered like a minor in this regard even though he is adult, as it doesn't seem reasonable that after he reaches adulthood he is considered to be an accidental sinner, so that if he improves he would be obligated to bring a sacrifice. Therefore, It seems that it is only with regard to the fulfillment of those mitzvot that he understands as well as p'utot that he has the legal status of adult...*

It is hard to make out exactly what Rav Shlomo Zalman is saying. Why would someone be considered only an accidental sinner, rather than a deliberate sinner, if they are legally an adult? Can a person be an adult for some mitzvot but not others? But what does seem clear is that Rav Shlomo Zalman is willing to sever the connection between legal obligation and accountability.

Rav Asher Weiss (*Minchat Asher* 2:48) takes strong issue with Rav Shlomo Zalman's position.

מש"כ בענין מפגר דאם יש לו דעת כפּעוּטוֹת חייב בכל המצוות ומ"מ אינו בר עונשין דחס רחמנא עליה כמו על קטן, לענ"ד תמוה לחלק בין חיוב מצוות מה"ת לחיוב עונשים ולא מצינו גדר זה בשום מקום לומר שאדם חייב במצוות מה"ת ומ"מ רחמנא חס עליה ופטור מן העונש ואיך נחדש זה מדעתנו, אתמהא.

*That which he wrote regarding someone with a mental disability, that if they have a mind like that of p'utot they are obligated in all the mitzvot, but nonetheless are not subject to punishments, because the Torah has pity on them as it does on minors – it seems astonishing to my impoverished intellect to separate obligation in mitzvot from liability for punishment, and we have not found this categorization anywhere of a person Biblically obligated in mitzvot whom the Torah*

*nonetheless has pity on and exempts from punishment, and how can we originate this out of our own minds!?*

But while Rav Weiss finds Rav Auerbach's reasoning implausible, he seems to find the practical conclusion intuitively congenial, and he uses an ingenious method of his own to reach it.

וכבר כתבתי את הנלע"ד דיש להחמיר כשיטת רוב הפוסקים דפתי חייב במצוות ומפגר דינו כפתי,

אך מ"מ עד שיבנה ביהמ"ק נחמיר שלא להענישם ונחוש לשיטת האחרונים דדינם כשוטה עד שיוכרע הדבר ע"י משה רבינו ובית דינו. *I have already written that according to my impoverished intellect one should be stringent in accordance with the position of most poskim that the peti (simpleton) is obligated in mitzvot, and someone with a mental disability is legally considered a peti, but nonetheless, until the Holy Temple is rebuilt, we should be stringent (the other way) and not punish them, and take into account the positions of the acharonim who say they are legally considered like a shotah (mentally incompetent person) until the matter is settled by Moshav Rabbeinu and his court.*

The difference between Rav Auerbach and Rav Weiss is that the former is willing to establish a metaphysical status of obligation without accountability, whereas Rav Weiss is only willing to establish this as a practical condition – metaphysically he believes that one must have both or neither.

Is Rav Weiss' practical solution sufficient, or is it an evasion of the issue? I suggest that Rav Weiss sees it as sufficient because he holds of an even more radical separation, namely that one can be religiously obligated while being halakhically exempt. Here are his words in Minchat Asher 2:47:

הנה במק"א כתבתי את הנלע"ד דאף חרש שוטה וקטן דפטורין מן המצוות, אין זה אלא לענין דינים המסורים לנו, דאין אנו מצווין לכפותו לקיים מצוות ואין מענישין אותו ואין מצווין להפרישו וכך אינו מוציא אחרים ידי חובתו, אבל בדין שמים עתיד הקב"ה א-ל דעות בוחן כליות ולב לשפוט כל אדם לפי דרגת שכלו והבנתו האם דבק בתורה ובמצוב כדבעי. ודבר זה פשוט לענ"ד דאטו הלן בבית הקברות ומהלך יחידי בלילה ומאבד כליו שמבין דברים אחרים מותר לו לעבוד עבו"ז ולבא על הערעה וכו' וכי יבא לשאול מה נענה לו? ואטו נאמר לו לית דין ולית דיין ומותר לו לחרף ולגדף מערכות אלקים חיים וכדו', אלא ברור דכל בני ישראל עבדי ה' הם וכולם בניו של אלוקינו, וכל אחד חייב לעבדו לפי דרגתו ושכלו, אלא שלענין הלכה עלינו לנקוט שהם פטורים מן המצוות, ודו"ק בזה כי הוא ברור ונכון לענ"ד אף שנראה מחודש.

הנה כ"ז פשוט בעיני זמן רב, ושמחתי מאד כשראיתי בנוב"י (תנינא יו"ד קסד) שכתב דמה שאמרו דליכא עונש ביד"ש עד שנת הכי אינו אלא עונש שמים בעוה"ז אבל כל אדם יענש על מעשיו בעולם העליון, ואף קטן כל שיש בו מעט דעת, ושמחתי שכיוונתי לדעתו הגדולה.

*I have written elsewhere that according to my impoverished intellect even though deafmutes, shotahs, and minors are exempt from all mitzvot, this is only with regard to human legal authority, meaning that we are not obligated to coerce them to keep mitzvot and we don't punish them and we are not commanded to separate them from sin, and so too they cannot fulfill another's obligation, but in terms of Heavenly law – eventually the Holy Blessed One Who know minds and distinguishes emotions and thoughts will judge all human beings in accordance with the level of their intellect and understanding whether they cleaved to Torah and mitzvot as they needed to. This is obvious to me – do we think that someone who sleeps in graveyards, or walks alone a night, and destroys his clothes (the three classic behaviors of a shoteh), but who understands other things, is permitted to worship avodah zarah or commit adultery and incest etc.? If he comes to ask about this, how will we answer him? Will we tell him that there is no judgment and no judge, and he is permitted to blaspheme and curse the ranks of the living G-d and the like?! Rather it is clear that all the Children of Israel are servants of Hashem and all children of our G-d, and each individual is obligated to serve Him in accordance with their level and intellect, just that with regard to Halakhah we must take the position that they are exempt from mitzvot. Dwell on this, because it is clear and correct to my impoverished intellect even though it appears to be new.*

*Now all this was obvious to me for a long time, but I greatly rejoiced when I found in Noda b'Yehudah (2:YD:164) that when they say that there is no punishment at the hands of Heaven until age 20, that refers only to punishment at the hands of Heaven in this world, but every human being will be punished for their misdeed in the Ultimate World, even a minor who has some little mind, and I rejoiced that I had reached the same conclusion as his great mind.*

In my essay on the religious life of the mentally ill, based on the 2017 Summer Beit Midrash, I argued for a distinction between the external objective categorization that Halakhah must place on mentally ill people, for example shotah/not obligated, or not-shotah/obligated, and their internal religious self-perception. Rav Weiss' position does not entail mine, any more than Noda b'Yehuda's position entailed Rav Weiss'. But I too was very glad to see that my intuitions paralleled those of a scholar of such stature.