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Responsum



# Marriage in Sign Language

January 2014

Rabbi Dr. Benjamin Lau

*Marriage in Sign Language*

Rabbi Dr. Benjamin Lau

Translated by Lenn Schramm

**David Lau**  
Chief Rabbi Of Israel  
President of The Chief Rabbinic Council



**דוד לאו**  
הרב הראשי לישראל  
נשיא מועצת הרבנות הראשית

בס"ד, כ"א טבת, תשע"ד  
24 דצמבר, 2013  
שנה- 285 עד

לכבוד  
הרב ד"ר **בניימין לאו** שליט"א  
רב קהילת "רמב"ן"  
**ירושלים**

השלום והברכה

**הנדון : שפט הסימנים**

ראיתי את מאמרך בעניינים של הח:rightshim בימיינו. מאמר המקיים באופן מיוחד סוגיא זו על כל היבטיה והשלכותיה. השכלה להביא את הדברים מנקודת ההיסטוריה תוך ניתוח הלכתי ובוקר ברגישות מיוחדת. אכן אין ספק בכך, שבימיינו דיינו של הח:rightsh שונה مما היה בעבר.

כיוון, לאור השינויים שהחלו ביכולת התקשרות עם הח:rightsh, ולאחר האמצעים החדשניים והאפשרויות שלהם לבטא את עצםם באופןם השונים, יש להתייחס אליהם ככל פקחים לכל דבר.

ואכן השינויים הגדולים ביחס לעניינים של הח:rightsh מופיע בשווית "שבט סופר" (אהעיז סי' כא). ואין ספק שגם עד היום, חלו שינויים גדולים יותר ורבים מהփוסקים האחרונים, בימיינו כבר הגיעו שיש להתייחס אל הח:rightsh, המתקשר באופן מלא עיי שפט הסימנים, ככל פיקח לכל מעשיו.

בימים אלו אני שוקד על עדכון ההוראות לרישום נישואין, ונקודת מבט זו תבוא לידי ביתוי בהנחות אלו.

בכבוד רב בברכת התורה

**דוד לאו**  
רב הראשי לישראל



**David Lau**

Chief Rabbi of Israel

President of the Chief Rabbinic Council

With the Help of Heaven, 21 Tevet 5774  
December 24, 2013

Attn:

**Rabbi Dr. Benjamin Lau**

Rabbi of the Ramban Congregation

**Jerusalem**

Peace and blessings!

**Re: Sign Language**

I have perused your article on deaf persons in our day. The article covers the issue extensively, in all its aspects and ramifications. You have sagely presented the issues in their historical perspective, accompanied by a halakhic analysis and with outstanding sensitivity. Indeed, there is no doubt that the status of deaf persons is different now than it was in the past.

Today, in light of the changes in our ability to communicate with the deaf, and with the availability of new means and possibilities for them to express themselves in various ways, they should be treated as intelligent individuals for all purposes.

The major shift in the attitude towards the status of the deaf appears in Responsa *Shevet Sofer* (EH 21). There is no doubt that many even greater changes have taken place since then. Many contemporary decisors have ruled that deaf persons who communicate fully in sign language should be deemed intelligent individuals who are responsible for all their actions.

I am currently working to update the instructions for marriage registration and this outlook will be manifested in these guidelines.

Sincerely,

**David Lau**

**Chief Rabbi of Israel**

On the cover: *Sign Language*, Antonio Oquias, www.Dreamstime.com

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## Background: The Problem of Sign language: The Public Domain and the Halakhic Domain

Deaf men and women who cannot express themselves in audible speech and go the Israeli rabbinate to register for marriage find themselves in an outrageous position of inferiority. Even though they function as equals among equals everywhere else, here—where it is the Jewish Law that reigns—they do not receive the same *ketubah* (marriage contract) as hearing people do. As deaf-mutes, they have a lower status than everyone else. At their wedding, the officiant will mumble the blessings and swallow up God's name, because theirs is not a wedding like all other weddings. This is the situation as of the summer of 2013.

On the other hand, Israel is a signatory to the December 2006 United Nations Convention on the Rights of Persons with Disabilities, which stipulates, *inter alia* (Article 21):

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion [...]

(b) accepting and facilitating the use of sign languages, Braille, [...]

(e) Recognizing and promoting the use of sign languages [...]<sup>1</sup>

In the public domain, although sign language had an inferior status in society until roughly fifty years ago, it no longer does today.<sup>2</sup> Back then it was considered to be limited to the expression of tangible actions and objects and unable to represent abstract concepts or complex ideas in various spheres of knowledge. Many thought that it lacked a grammar or that its syntax could not be complex. This perception prevailed all over the world, and not only in Israel. Dr. Avraham Chelyuk, for example,

1 See Convention on the Rights of Persons with Disabilities, *Enable: Development and Human Rights for All*, United Nations.

2 The information about the development of sign language and its social status comes from Irit Meir and Wendy Sandler, *A Language in Space: The Story of Israeli Sign Language* (New York: Lawrence Erlbaum Associates, 2008).

was a physician who founded the school for the deaf in Haifa in 1949. In the entry on “Deaf-Muteness” that he contributed to the *Encyclopaedia Hebraica* (1966), he wrote: “Today none disagrees that the oral method is the only one that, in the final analysis, has the ability to develop a natural language of communication, to the extent possible, for the social rehabilitation of the deaf-mute.”<sup>3</sup> Following the progress in linguistic research (in the 1960s), though, sign language, in all its varieties and forms, has come to be accepted as a full language like all others. When I asked sitting Israeli judges about the status of witnesses or defendants who employ sign language, their response was that they didn’t understand why that should be a problem. For them, a person who communicates in sign language is just as rational or intelligent as everyone else. And, as the halakhic principle has it, “the burden of proof rests on the claimant” who would deprive his fellow of some possession or right. Just as we do not check whether “normal” persons are “rational or intelligent,” neither do we question the competence of individuals who communicate via sign language, unless their behavior indicates otherwise.<sup>4</sup>

Despite the change in the status of sign language all over the world, halakhic decisors still have problems defining those who communicate exclusively via that channel as fully “intelligent.” Recently, I began a serious study of this issue in the wake of a complaint by a couple who communicate with each other and with the surrounding world only by sign language. When they went to the Rabbinate to register for marriage, they discovered that they could only have a “second-class” wedding (their term). What they meant was that their ketubah was not the standard ketubah and that God’s name was omitted from the benedictions recited under the wedding canopy. As we shall see below, the rabbis who gave them the special ketubah and officiated at the wedding without pronouncing God’s name were adhering to the Rabbinate’s standard halakhic procedure with regard to deaf-mutes.

3 “Deaf-Mutism,” *Encyclopaedia Hebraica*, 1966, 18:144 (Hebrew).

4 In the rabbinic courts, too, the judges do not investigate whether an ordinary person is “intelligent.” Rabbi Moshe Feinstein explains in a responsum (*Iggerot Moshe, Yoreh De’ah* 1:47) that there is no reason for such an inquiry, because knowledge of an individual’s condition is equivalent to an inquiry of the judge himself; if all around him relate to a person as “normal,” the court will do so as well.

The present essay is intended to help policymakers in the Ministry of Religious Affairs and the Chief Rabbinate equalize the status of the deaf, even those who employ sign language exclusively, with that of all other couples and rule that the standard ceremony be conducted for the deaf, as it is for everyone else. The discussion will address all cases where one of the partners is deaf, and a fortiori where both are.

The discussion will proceed chronologically, because I want to show how the condition of the deaf has evolved over the generations and how halakhic decisors have reacted to this development. This method will help contemporary decisors continue the line of rulings that can be traced back some two hundred years. The essay proceeds through three stages: (1) the recognition of the status of deaf persons who learn how to speak aloud as “intelligent”; (2) the recognition of the status of deaf persons who communicate by moving their lips as “intelligent”; and (3) the recognition of sign language as a language just like all other languages.

## **Stage 1: From the Talmudic Sages to the Modern Era and the Establishment of Schools for the Deaf**

### **Deaf Persons in the Talmudic Era: Devoid of Intelligence or “Feeble-Minded”**

The talmudic texts that deal with the deaf actually refer to deaf-mutes. This is stated explicitly in the Mishnah (tractate *Terumot*):

The deaf person of whom the Sages spoke is always one who neither hears nor speaks (M *Terumot* 1:2).

In general, deaf-mutes are lumped together with imbeciles<sup>5</sup> as lacking the capacity for rational thought. This definition is found in the Talmud

<sup>5</sup> In this article, “imbecile” is used to render the Hebrew *shoteh*. The Tosefta (*Terumot* 1:3, repeated with a variation at B *Hagigah* 3a–4b) defines a *shoteh* as someone who goes out alone at night, spends the night in a cemetery, tears his clothes, or destroys everything he is given. It might be worthy of note that T *Terumot* 1:2 disagrees with

(B *Hagigah* 2b) in its exposition of the Mishnah that states that the deaf, imbeciles, and minors are exempt from the precept of the festival pilgrimage to the Temple. With regard to the inclusion of the deaf in this list, the Talmud states:

The Mishnah speaks of the deaf as comparable to imbeciles and minors: just as imbeciles and minors lack understanding, so the deaf lack understanding.

Although this definition is found in many places in Rabbinic literature, closer study reveals that the classification of the deaf is actually a matter of dispute. Some of the mishnaic sages (the *tanna'im*) expressed reservations about the above definition, recognizing that deaf-mutes do have the capacity to act rationally like everybody else. For example, with regard to the separation of the priestly share of produce (*terumah*) by a deaf person (T *Terumot* 1:1), R. Judah states:

If a deaf person sets aside the priestly share, his donation is valid.

R. Judah said: “There was the case of the sons of R. Johanan b. Gudgada, who were deaf[-mutes], and they were responsible for all of the ritually pure foodstuffs in Jerusalem.”

They said to him: “That is no proof! The handling of ritually pure foodstuffs does not require rational thought and can be performed by a deaf person, an imbecile, or a minor; but the priestly share and tithes require rational thought.”

R. Isaac said in the name of R. Eleazar: “The priestly share separated by a deaf person cannot be deconsecrated because of the uncertainty as to whether he or not he has understanding. What does one do? The court appoints a trustee for him to separate the priestly share and they do it for him.”

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the corresponding Mishnah and holds that the mute who can hear and the deaf who can speak are fully intelligent; i.e., that “deaf” does not necessarily mean “deaf-mute” (and this is quoted by the Talmud, *Gittin* 71a). But in cases of disagreement between the Mishnah and Tosefta, the former is always deemed authoritative.

R. Simeon ben Gamaliel says: “Who is a deaf person? Anyone who is deaf from birth; but if someone was hearing and became deaf, he can write [instructions] and others carry them out for him.”

In this passage we see three opinions about the status of the deaf:

1. The view of the Mishnah: A deaf person has no understanding whatsoever.
2. R. Judah’s view: A deaf person is intelligent and can perform actions that require understanding. This opinion is rejected by the other sages, who explain the difference between the story of R. Johanan ben Gudgada’s deaf sons, whose actions do not require rational thought, and the separation of the priestly portion and tithes, which does.
3. R. Eleazar’s view: An in-between stance—it is possible to communicate with the deaf but they are not fully rational.

Elsewhere, the Talmud explains R. Eleazar’s opinion (*B Yevamot* 113a):

R. Ashi asked: What is R. Eleazar’s reason? Is he positive that a deaf person is feeble-minded but in doubt as whether his mind is lucid? [...]

This places the deaf person in some intermediate position between “rational” and “not rational.” Because they are feeble-minded, deaf persons cannot accept responsibility, but they can be included in various social settings.

R. Simeon b. Gamaliel restricts the discussion to a deaf person who was never able to communicate with his surroundings (“deaf from birth”). But if he could hear and subsequently went deaf, he can write down his intentions and is accordingly considered to be rational.

This disagreement among the tanna’im surfaces in another talmudic locus that relates to the laws of the Sabbath. Sabbath observance is incumbent only on those who are rational—a limitation deduced by homiletic exegesis. According to a midrash (*Mekhilta d’Rabbi Ishmael, De-shabbetah* 1), deaf persons, imbeciles, and minors are not commanded to observe the Sabbath, because the Torah defines the purpose of Sabbath observance as “that you may know that I am the Lord who sanctifies you” (*Exod. 31:13*):

“That you may know that I am the Lord who sanctifies you”:

Why is this stated? Because the Torah says, “the people of Israel shall keep the Sabbath” (Exod. 31:16). I might understand this to include the deaf, imbeciles, and minors. So we are taught something by “that you may know that I am the Lord”: I have stated this only for those who are rational.

The Mishnah (*Shabbat* 24) states that a person who is caught traveling on the road at sunset on Friday afternoon should give his purse to a non-Jew. If no non-Jew is available, he should place it on his donkey. The Talmud expounds this Mishnah (B *Shabbat* 153a):

If a donkey, deaf-mute, imbecile, or minor [is present], he should place it on the donkey and not give it to the deaf-mute, imbecile, or minor. Why? Because the latter are human beings, whereas the former is not.

In the case of a deaf-mute and an imbecile, [he should give it] to the imbecile;

In the case of an imbecile and a minor—to the imbecile.

The scholars were asked: What is the case of a deaf-mute and a minor?

In R. Eleazar’s view there is no question, for it was taught: R. Isaac said in the name of R. Eleazar: “The priestly share separated by a deaf person cannot be deconsecrated because of the uncertainty [as to whether he is or is not intelligent].” [...] Should he give it to the deaf-mute, seeing that the minor will someday arrive at understanding; or should he give it to the minor, because a deaf-mute may be confused with a hearing adult? Some rule: He should give it to the deaf-mute; others maintain, he should give it to the minor.

This talmudic passage defines the social status of the deaf. The basic definition that he is “not rational” is not absolute. The Talmud’s test case relates to what a person who is still on the road when the Sabbath begins should do with his purse. As we have seen, the Mishnah suggests two solutions: giving the purse a non-Jew or placing it on his donkey. The Talmud then wonders about the order of priority in other cases:

In the first case, where a donkey, deaf person, imbecile, and minor are all available, it is obvious to the Talmud that the purse should be placed on the donkey, because “the latter are human beings.” Even though they lack understanding, they are human beings and should not be used to desecrate the Sabbath.

In the second case, where the options are a deaf person and an imbecile, the purse should be given to the imbecile rather than the deaf person, because the deaf person is at a higher level than the imbecile.

In the third case, imbecile or minor, we should give the purse to the imbecile, because the minor is on a higher cognitive level than the imbecile.

There are no doubts in any of these situations. The dubious case is when the option is between giving the purse to a deaf adult or to a minor.

According to the Talmud, the decision here depends on a disagreement among the tanna'im regarding the status of deaf persons in the separation of the priestly share—the same dispute among R. Eleazar, R. Judah, and the Sages that we adduced above. The Talmud concludes that for R. Eleazar, for whom the deaf are of dubious rationality, it is clearly preferable to give the purse to a minor, who is certainly not required to observe the Sabbath. The Talmud does not even bother to cite the opinion of R. Judah, who holds that a deaf person is fully rational, so that there is no doubt that the purse should be given to a minor. The discussion deals only with the view of the other Sages, who hold that a deaf person is totally lacking in understanding. In this case, it is not certain whether the purse should be given to a minor or a deaf person, and the Talmud leaves the question open.

The Tosafists (*B Shabbat ad loc.*) hold that the question remains undecided only according to the view of the Sages; but the halakhah is in accordance with Rabbi Eleazar, as noted above: the deaf are feeble-minded—which means they do have some measure of rational intelligence—and consequently cannot be used to violate the Sabbath.

## The Rabbinic Ordinance that Allows the Deaf to Marry: “He Communicates by Gestures”

The Sages understood that deaf people cannot be totally ostracized from the human family. Despite the categorical assertion that they lack understanding or are feeble-minded, the Sages made efforts to maintain them within a limited social framework. For example, they instituted an ordinance that makes it possible for the deaf to marry.

The Mishnah (*Yevamot* 14:1) describes situations in which a deaf person marries a hearing person:

If a deaf man married a hearing woman, or a hearing man married a deaf woman, if he wishes to divorce her, he may divorce her, and if wishes to continue in the marriage, he may do so; just as marries her by gestures, so he divorces her by gestures.

The Talmud expands on this passage (B *Yevamot* 112b):

Rami b. Hama stated: What is the difference between a deaf man or a deaf woman, for whom the rabbis instituted marriage, and a male imbecile or female imbecile, for whom the rabbis did not institute marriage?

For it was taught: If an imbecile or a minor married and then died, their wives are exempt from *halizah* [the procedure that exempts the widow from levirate marriage] and from levirate marriage.

In the case of a deaf man or a deaf woman, where a rabbinically ordained marriage can last, the rabbis instituted [a form of] marriage for them; in the case of a male or female imbecile, where a rabbinically ordained marriage cannot last, because no one can live with a serpent, the rabbis did not institute [a form of] marriage.

What is the difference between a minor, for whom the rabbis did not institute marriage, and a deaf person, for whom the rabbis did institute marriage?

For a deaf person, who cannot contract a marriage [under Torah law], the Rabbis instituted marriage; for a minor, who will be able to contract a marriage, they did not institute marriage.

Let us take a closer look at this passage, which provides a key to the status of the deaf in the talmudic era. The logical sequence runs as follows: (1) In what way are the deaf, “for whom the Sages instituted a form of marriage,” different from imbeciles, for whom they did not do so? (2) In what way are the deaf, “for whom the sages instituted a form of marriage,” different from

minors, for whom they did not do so? The answer to the first question casts light on a leniency towards the deaf; the answer to the second clarifies a stringency towards them.

The talmudic discussion is based on a rabbinic ordinance that allows the deaf to marry even though they lack understanding and, and in any event, cannot be party to an act of acquisition (Hebrew *qinyan*), which is a necessary element of the legal process of taking a wife. This issue (*qinyan*) is central to marriage and poses a major obstacle to the marriage of persons with intellectual disabilities. A key stage in the wedding ceremony is the betrothal (*qiddushin*), when the man consecrates the woman by giving her a ring and declares, “behold you are consecrated to me.” This is considered to be an act of acquisition and requires that the person executing be endowed with full rational powers. The possibility that a deaf person may not have full rational understanding casts doubt on whether he can be allowed to betroth (“consecrate”) a woman. According to Torah law, as understood by the Sages, a deaf man cannot marry; but the Sages endeavored to rectify this situation and permitted him to marry by means of a “gesture.” The term “gesture” is equivalent to “basic nonverbal communication.” The Mishnah (*Gittin* 5:7) states that communication with the deaf is possible through gestures—they can express themselves through gestures and understand our gestures. The language of gestures is fundamentally similar to sign language. Elsewhere we find that Rashi believed that the language of gestures is “Greek wisdom” (on *B Menahot* 64b). Rabbi Isaac bar Sheshet (Spain, fourteenth century) explains why Rashi linked sign language and Greek wisdom:

His intention seems to be that they did not speak aloud, but only gestured with their hands or fingers or other limbs: As the Sages wrote: “The deaf can communicate and be communicated with through gestures.” And also: “Just as [he] marries by gestures, so he divorces by gestures.” They did this with monarchs, as we find in Tractate *Hagigah* (5b): “R. Joshua b. Hanania was visiting the court of the Emperor. A certain heretic gestured to him: ‘A people whose Lord has turned His face from them.’ He gestured back: ‘His hand is stretched over us.’ The Emperor asked R. Joshua: ‘What did he say to you?’ ‘A people whose Lord has turned His face

from them. And I signed to him: “His hand is stretched over us.””

“Then they asked the sectarian: ‘What did you say to him?’ ‘A people whose Lord has turned His face from them.’ ‘And what did he sign to you?’ ‘I don’t know.’”

“They said: ‘A man who doesn’t understand the gestures made to him dares converse in signs before the king!’ They led him out and executed him.”

We say that it is called Greek wisdom because the Greeks used it as a matter of course, or because there was a book about it whose author was Greek (*Responsa of the Rivash* 45).

This is an interesting observation that describes how persons who have no capacity for verbal communication can communicate by means of signs. In any case, the Sages recognized that the deaf might have a basic capacity to communicate with their surroundings and consequently instituted a way for them to marry. But the marriage is not valid under Torah law, because (despite their gestures), the deaf are defined as lacking understanding. Unlike the deaf, imbeciles cannot communicate by means of gestures and are totally incommunicative; consequently they were not included in the rabbinic dispensation permitting marriage.

The other side of this talmudic passage is that the situation of the deaf is absolute and permanent. Unlike minors, who will grow up and be eligible to marry under Torah law then (that is, they will have a capacity for acquisition), the deaf will always remain subject to the rabbinic dispensation, because their situation will never change and they will always be considered devoid of understanding.

To summarize what we have seen so far, in the talmudic era the Sages took it as self-evident that deaf-mutes are feeble-minded but able to engage in some level of interpersonal communication. They had no doubt that the deaf were human beings who could certainly be included in normal society.

## The Status of the Deaf-Mute in the Talmudic Era

Another passage in the Talmud (B *Gittin* 71a) reflects the Sages’ misgivings about deaf persons who can communicate with their surroundings in some manner other than audible speech.

R. Kahana said in the name of Rav: If a deaf-mute can “speak” in writing, we can write a *get* [bill of divorce] and give it to his wife.

R. Joseph said: What does this tell us? We have learned [in a Mishnah]: “If a man was struck dumb and they asked him, ‘shall we write a bill of divorce for your wife?’ and he nods his head, they test him three times. If for ‘no’ he says ‘no’ and for ‘yes’ ‘yes,’ they can write [the *get*] and give it [to her].”

R. Zeira said to him: You have quoted a statement about a mute. A mute is different, as it has been taught: One who can speak but not hear is called deaf (*heresh*), and one who can hear but not speak is called mute (*illem*), and both are considered to be intelligent for all purposes.

[...]

R. Zeira said: If I have a problem [with R. Kahana’s remark], it is this: It has been taught: “If he does not utter [...]” (Lev. 5:1). This excludes a mute, who cannot speak. Why should this be, seeing that [according to R. Kahana] he can “speak” in writing?

Abbaye replied to him: You are referring [in that biblical verse] to testimony. Testimony is different, because God said: that it must be from their mouths [paraphrasing Deut. 19:15] and not from their writing.

This exchange reflects two different rabbinic attitudes about deaf persons who can read and write: According to tradition passed down by R. Kahana in the name of Rav (the tradition of the yeshiva of Sura), the ability to write suffices as the basis for issuing a divorce. R. Joseph questions this law on the basis of a different halakhic tradition to the effect that if a mute nods when asked, “shall we write a bill of divorce for your wife?” we test his understanding and, if he demonstrates that he understands what is going on, the *get* can be written. This means that nonverbal language is valid. If so, what is Rav’s innovation? There already was a halakhic tradition to this effect (and it is a basic principle of the Talmud that the Sages do not make idle statements or repeat a law that has already been stated by an earlier Sage).

R. Zeira undercuts R. Joseph’s question by noting the distinction between the gestures of someone who can hear but no longer speak, and is

considered to be rational for all purposes, and of a deaf person, who must prove that his reading a written text is an act of intelligence. It follows that the school of Rav would recognize a written text produced by a deaf person as a type of rational “speech.” But the Talmud proceeds to reject this stance, quoting an ancient source that rules that an audible statement is a prerequisite for the issuance of a *get* (*B Gittin* 72a):

If the scribe wrote [the *get*] specifically for her and the witnesses signed specifically for her, even though they wrote it and signed it and gave it to him and he had gave it to her, the *get* is invalid unless they heard him tell the scribe, in his own voice, “write” and tell the witnesses “sign.”  
 [...] “His voice” excludes the statement by R. Kahana in the name of Rav.

That is, only audible speech is valid, and not a written statement, as R. Kahana taught in the name of Rav.

This source holds that the scribe and witnesses must hear the voice of the man giving the divorce; a written directive is not enough. The Talmud understands that this tradition is incompatible with R. Kahana’s novella that a written instruction is sufficient.

## The Halakhic Ruling by the Rishonim (the Late Medieval Rabbis)

In the age of the Rishonim (eleventh to mid-sixteenth centuries), the status of the deaf was exactly as it had been in the mishnaic and talmudic eras. There were individuals who could neither hear nor speak but nevertheless mastered alternative means of communication. Their legal status was that of an imbecile, as Maimonides baldly states in a number of places, “because they are not rational.” He interprets the rabbinic institution of marriage for the deaf in the same way: it is not a fully valid marriage but only “a rabbinic innovation” (*Laws of Marital Relations* 4):

If a deaf[-mute] man married a hearing woman or a deaf[-mute] woman married a hearing man, their union is not a full betrothal under the Torah, but only as a matter of rabbinic law.

Consequently, should a hearing man wed the hearing wife of a deaf man, she is deemed to be fully married to the latter. But if he gives her a *get* she is permitted to her deaf husband.

The case described here is that of a hearing man who weds a woman who is already married to a deaf-mute. Because the second marriage is valid under Torah law, the second husband must give her a divorce so that she can return to her deaf husband. Had the first marriage been valid, the second marriage would not be recognized at all. The decisors of that period did not deal with the special case of deaf persons who do display rational intelligence and left the halakhic definition that they are devoid of intelligence unchanged.

## The Status of the Deaf at the End of the Middle Ages

When we look closely at the Middle Ages and inquire about the status of the deaf in human society at large, we encounter a sorry picture of a person who has been exiled to the margins of society and is totally unable to communicate with his or her surroundings. Because there was no method for overcoming the deaf's inability to hear, they became mute as well, which effectively froze their inferior status irrevocably. Society as a whole was unanimous that the deaf lacked full intellectual powers. This is the background of two responsa written around the same time on different continents. Both do a good job of expressing the conflict about the status of a deaf person.

### 1. Rabbi Jacob Hagiz: Saving the Life of a Deaf Person on the Sabbath

In his volume of responsa, *Halakhot Qetannot*, Rabbi Jacob Hagiz<sup>6</sup> addresses the halakhic status of the deaf. In one responsum he wrestles with the question of whether one is allowed to desecrate the Sabbath in order to save the life of a deaf person (*ibid.*, 2:38). The question is motivated by the fact that the permission to desecrate the Sabbath for a sick person derives

6 Hagiz was born in Morocco in 1620 to a family that originated in Spain. From Morocco he moved to Italy and then to Eretz Israel, where he established the Beit Yaakov yeshiva in Jerusalem. He died ca. 1674.

from the talmudic dictum that it is permitted to desecrate one Sabbath so that the patient may observe many Sabbaths thereafter. Because a person who is defined as devoid of rational understanding will never be able to observe the Sabbath (in fact, he is not bound to do so, as explained above), the question is whether it is permitted to desecrate the Sabbath on his behalf.

In the first part of his answer, Hagiz looks for an answer in the kabbalistic literature, in which he was an adept. He directs his questioner to consider the significance of life according to the doctrine of metempsychosis and, on that basis, to penetrate to the deep sense of the talmudic rule “so that he can observe many Sabbaths”—not in this world, but in the World to Come. Hagiz clearly felt uncomfortable with the kabbalistic homily, though, and concludes the responsum as follows:

We do not do something as a matter of law because we apply various homilies. Rather, we must say that one should pray that such a person not fall ill on the Sabbath, because everyone will turn away, given that it is not like every other case of saving life, when the [sick] person is obligated by the precepts. But this man is not included in that category.

Rabbi Hagiz’s answer is hard to accept.<sup>7</sup> He wants to save the deaf person who has fallen ill but knows that that “everyone will turn away,” meaning that an ordinary person who sees a deaf man does not think of him as a full human being on whose behalf one may certainly desecrate the Sabbath. From the passage about the purse, which we quoted above from tractate *Shabbat*, he learns that a deaf person does not have the status of a normal person. The only reason for placing one’s purse on a donkey and not giving it to a deaf person is to avoid confusing onlookers, who might be misled into thinking that it permissible to give it to any person:

<sup>7</sup> Rabbi Hayyim Joseph David Azulai (1724–1806) noted that Rabbi Hagiz’s responsa were intended to make students exercise their minds: “He wrote them with great concision in order to make the pupils think.” See his bibliographical work, *Shem ha-gedolim*, s.v. “Responsa of Rabbi Jacob Hagiz.” I would like to thank my friend Shimshon Levinger, the librarian at Yad Harav Nissim in Jerusalem, for bringing this source to my attention.

The implication is they are not considered to be human beings; [we do not give them the purse] because one might confuse them, because they have a human form, like a monkey. For this reason one does not desecrate the Sabbath on their behalf.

This definition sounds strange to contemporary readers. But considering the status of the deaf-mute in those times, the statement is not all that astonishing. Nevertheless, Hagiz does know that deaf persons may be rational, even if they cannot communicate the way other people do:

As is known, a deaf person has no deficit except for the sense of hearing; and because he cannot hear he does not learn from other people. We have even encountered deaf people who are extremely intelligent. There was a deaf man here, A. Cohen, who was a leading tailor in the city. He used to pick up a prayerbook during services and people would gesture to him. He was knowledgeable and well-versed in the text and stood up during the Amidah and went up to deliver the priestly benediction. It was very easy to teach him this, for instance by writing down the alphabet for him and then bringing him bread and showing him the letters *lamed*, *het*, and *mem* [Hebrew *LeHeM* “bread”] and so on in this fashion. It is difficult to consider him to be a beast who, because he is feeble-minded, cannot be considered to be a man.

Hagiz is fully aware that a deaf person’s deficiency is not a defect, but only a hearing problem that makes him unable to learn from other people. His description of the tailor in his town, who was a *kohen*, is very important for us. The community found other ways to communicate with him and to teach him to express himself without audible speech. According to Hagiz, this deaf tailor even went up to deliver the priestly benediction to the congregation.<sup>8</sup> This problem stirred Rabbi Hagiz to look for an alternative

<sup>8</sup> This testimony is fascinating, given the well-known halakhah that a priest must speak the words of the blessing out loud, as stated explicitly in a *baraita* in tractate *Sotah* (38b) and codified as the legal norm by Maimonides (Laws of Prayer and Priestly Blessings 14:11). The *Mishnah Berurah*, the comprehensive commentary on the first part of the *Shulhan Arukh*, written at the turn of the twentieth century

definition of the status of the deaf, such as putting him on a similar footing with the blind and including them among those who are bound by the precepts. But none of this was of any help in the attempt to effect a real change in the talmudic stipulation that a deaf-mute person is devoid of understanding. Rabbi Hagiz remains doubtful about the permissibility of desecrating the Sabbath for the sake of a deaf person and prays that nothing like this ever arise on the Sabbath.

In the early twentieth century, the author of the halakhic compendium the *Mishnah Berurah*, Rabbi Israel Meir Hakohen of Radun (known as the Hafetz Hayyim), expressed his astonishment at Rabbi Hagiz's statement (*Biur Halakhah* on *Shulhan Arukh Orah Hayyim* 329, incipit "but"):

A deaf person and an imbecile, even though they are not bound by the precepts, nevertheless one desecrates the Sabbath for their sake because the reason they do not observe the precepts is that they are under compulsion. [...] In addition, with regard to a deaf person and an imbecile it is obvious that one may desecrate the Sabbath for their sake, because one is even allowed to be killed for their sake, since they too fall into the category of "If someone kills any man" [Lev. 24:17]—*any man*, including a minor, and they too fall into the category of "do not stand idly by the blood of your fellow" [Lev. 19:16], just like all other Jews, and the Torah states explicitly, "do not curse the deaf" [Lev. 19:14] and one is liable to stripes for doing so. [...] *I do not know how the author of Halakhot Qetannot could have had any doubt* as to whether one can desecrate the Sabbath for him and his words are most astonishing. Study the matter closely.

The author of the *Mishnah Berurah* demonstrates that it is quite unthinkable even to raise the question of whether it is permitted to save the life of a deaf person or imbecile on the Sabbath, given that their nonparticipation

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(128, §53) is astonished that, despite this ruling, it was customary to allow deaf priests to bless the congregation publicly. Rabbi Eliezer Waldenberg (1915–2006) responded to this (*Responsa Tzitz Eliezer* 15:21), but overlooked the evidence provided by Rabbi Hagiz.

in the precepts is not a matter of choice but is forced on them by their condition. In general, minors and imbeciles are included in all laws related to human life; how, then, can one exclude the deaf? The answer to the Hafetz Hayyim's astonishment is simple. What seemed obvious to him in the twentieth century was not obvious to a rabbi of the seventeenth century. In the intervening generations, schools for the deaf had been established, which totally altered the perception and status of the deaf. Rabbi Hagiz's responsum, written against the background of the murky Middle Ages, exemplifies the distress of the halakhic decisor who feels that the attitude towards the deaf must change but is probing in the dark to find an authoritative sources that will allow him do so.

## 2. Rabbi Menahem Mendel Krochmal: Conducting a Wedding for a Deaf Person

In his responsa, *Zemah Zedek ha-Qadmon* (§77), Rabbi Krochmal<sup>9</sup> responds to a question about an intelligent tailor who, though he can neither hear nor speak, understands what is going on around him and is engaged to marry the questioner's sister. The questioner (evidently himself a rabbi) asks Rabbi Krochmal to modify the tailor's status to that of "mute" rather than "deaf" (i.e., deaf-mute).

It seems to the honorable rabbi that this man is not deaf but mute, because he knows the order of the prayers and can point out in the siddur which are the prayers for weekdays and which are those for the Sabbath and festivals, and what is added according for the festivals, and is able to interact with everyone. He knows how to sign his name. And it seems to the honorable rabbi that he could contract a marriage by gestures in the following fashion, that is, they write down on a piece of paper, "You are hereby consecrated to me etc.," and the officiating rabbi shows him this paper and gestures to

<sup>9</sup> Menachem Mendel son of Abraham Krochmal was born in Cracow in 1600. He endeavored to find solutions to allow women whose husbands vanished during the Chmielnicki pogroms of 1648/1649 to remarry. He also was active in community affairs and enacted many ordinances on behalf of the poor. He died in Mikulov (Nikolsburg) in Moravia in 1661.

convey the meaning of the words and the mute nod his assent.

The householders say that he understands what is written and can read. This is the crux of the honorable rabbi's question.

What is the questioner (the prospective bride's brother) asking? He cannot eradicate the talmudic stipulation that a deaf person (i.e., a deaf-mute) is not rational and that his marriage is valid only under rabbinic law but not according to the Torah. Nor is he asking to discard the halakhah. He merely asks that the groom's status be altered from that of deaf(-mute) to mute (someone who hears but cannot speak). This category will include the groom in the family of rational human beings and make it possible for him to contract a marriage under the Law of Moses and Israel, just like everyone else. The questioner proposes to solve the practical problem that the groom must recite "You are hereby consecrated to me" under the marriage canopy by writing the words a piece of paper and showing it to the groom, who will nod his assent to the text.

Rabbi Krochmal rejects this idea out of hand:

Answer: This tailor who lives in the honorable rabbi's place—I am acquainted with him. He is not defined as "mute" but as "deaf," because he neither hears nor speaks; but a mute is someone who can hear but cannot speak, as is found in the seventh chapter of tractate *Gittin*, page 71a, "one who can hear but not speak is called *mute*, [...] as it is written, 'I am like a deaf man, I do not hear, like a dumb man who does not open his mouth' [Ps. 38:14]."

This is the ruling of all the decisors and is fully explained in the *Tur Even Ha'ezer*, §§120 and 121. The *Beit Joseph* [R. Joseph Caro] went on at length about the legal differences between a deaf person and a mute, and so too in the *Tur Hoshen Mishpat* §231. But someone like this man who lives in the honorable rabbi's town, who cannot hear and does not speak, is considered to be deaf, not mute. And even though he is highly intelligent, no distinction must be made among the deaf.

Rabbi Krochmal himself knows the tailor (who was clearly quite unusual), but nevertheless rejects the idea of changing his halakhic status, because the talmudic definition of a deaf person is one who neither hears nor speaks, whereas a mute is one who hears but does not speak. After he has shut the door on the technical solution proposed by the questioner, Rabbi Krochmal recounts what was customary in his town for the marriage of the deaf:

And I have seen that my teachers were in the custom of having the deaf man accompanied to the wedding canopy by someone who is frequently with him, such as one of his brothers or some other relative who grew up with him in his house and knows his gestures; and this person uses gestures to make him aware of the meaning of consecrating a woman in marriage and the deaf man gives the ring to the woman and consecrates her. I have seen this done in Cracow for a certain deaf person. He too was a tailor and extremely intelligent<sup>10</sup> and had a business selling the garments he made. I saw that he frequently took other people to court and sometimes was sued himself. Many members of the community understood his gestures because he was extremely intelligent and of quick understanding. But even so, he married only with the assistance of one of his brothers, who stood under the wedding canopy with him, as stated above.

Not only was the tailor from Cracow able to communicate with people about his tailoring work, he also engaged in lively and sharp business

<sup>10</sup> The great translation crux of the present article is the Hebrew word פִּקְעָה *piqqe'ah*. The root meaning of the word is “open.” In the Bible it generally refers to the eyes; in Exodus 4:11 it is used as a synonym for “seeing.” Only in Isaiah 42:20 does it refer to opening the ears, and contrasted to the verb *shama*, which means not only “hear” but also, significantly, “understand.” The difficulty arises from the fact that, in the halakhic literature, from the Mishnah on, the concepts of “hearing” and “intelligent” are confounded (otherwise there would be no need for this article!). Frequently there is no doubt that “hearing” is the appropriate rendering into English. In other places, as here, “intelligent” is clearly appropriate. In all cases I have used the apt term without further indication.

dealings. Krochmal attests that the tailor often appeared in the rabbinic court, as plaintiff or defendant. Nevertheless, even though there was no question that he could interact intelligently with other people, when he married he did so in the form reserved for the deaf, with a special ketubah and the assistance of one of his brothers who understood his gestures. In other words, despite his almost-normal behavior, he remained in the category of the deaf person as defined in talmudic times. Rabbi Krochmal is not willing to accept the idea of writing down the formula “You are hereby consecrated to me” and allowing the deaf groom to point to it and nod his acquiescence. The reason for his opposition is that one “needs to be wary about the possibility of a mishap.”

Onlookers might think that this marriage is a full marriage according to Torah law, because he does not consecrate the bride the way other deaf people do, and in particular because he is held to be extremely intelligent. [...] The truth, however, is that the marriage of a deaf person is not a full marriage according to Torah law. [...] Consequently, one must not depart from what has been customary for all deaf persons, which is that one of his relatives who spends much time with him accompanies him under the wedding canopy, where he gestures to him the meaning of the consecration, after which the deaf groom places the ring on the woman’s finger and consecrates her.

Here Rabbi Krochmal rules on the status of a deaf person, even one who is just as intelligent as anyone else. We must not create a distinction between one deaf person and another; all of them must remain in the category of marriage by rabbinic dispensation and not marriage under Torah law. Rabbi Krochmal of Cracow expresses the perplexity of the decisors of that period, who knew deaf people who were quite intelligent and used sign-language to interact with society, but also knew that Halakhah does not recognize their intelligence and relegates them to the status of non compos mentis or feeble-minded.

## The Innovation by Rabbi Hayyim Halberstam of Sandz: “This is not the Deaf Person Spoken of by the Torah”

### Historical Background of the Establishment of Schools for the Deaf

Nothing in the Jewish attitude to the deaf we have seen thus far diverges from the ideas held by all societies in those years. In antiquity, the deaf were always held to be witless. They were banished from society and exempt from its obligations. Until the eighteenth century, the deaf were never provided any education and were not expected to produce any benefit to the world. Since then, however, with the establishment of the first schools for the deaf and the development of sign language, which permits full intelligent communication between deaf persons and their surroundings, the world has taken giant strides forward in this regard.

The pioneer in the teaching the deaf, according to the nineteenth-century French historian Joseph-Marie de Gérando, was a Spanish Benedictine monk, Pedro Ponce de Leon (1520–1584). Ponce de Leon founded a school for the deaf in his monastery of San Salvador. His pupils, all of whom came from noble families, were taught “to speak, read, write, do sums, and pray.” They began by learning to write words when the corresponding object was placed in front of them; later they drilled speaking the words aloud. We have no evidence of lipreading or a conventional set of signs.

Deaf education became a specialty in the middle of the eighteenth century. The Abbé Charles-Michel de l’Épée (1712–1789) developed a system of sign language and ran a school for the deaf, which he originally funded out of his own pocket. The number of students increased and de l’Épée’s name became known throughout the world. Rulers, educators, and authors came to see his work with their own eyes. Louis XVI supported the school. Catherine the Great of Russia sent him gifts. His response was that if she really wanted to thank him, she should send him a deaf child or teacher to be trained in his methods. After the Holy Roman Emperor Joseph II visited the school, he sent the priest Johann Friedrich Stork to study there. When Stork returned home, in 1779, Stork established the first school for the deaf in Austria. During the nineteenth century, leading European rabbis visited the Vienna institution; their encounter with it triggered the first change in the halakhic attitude to the status of deaf persons who, although they cannot speak aloud, can communicate in sign language.

## Rabbi Brach's Visit to the School for the Deaf in Vienna and the Halakhic Debate that Ensued

One of the first documents on this issue is a pamphlet by Rabbi Judah Leibush Brach of Lwow, entitled *The Work of the Deaf* (Vienna, 1864; the title puns on Exod. 35:35, because the consonants of the Hebrew word for carver or craftsman, שְׁרַח [harash], are the same as those of *heresh* "deaf").<sup>11</sup> He writes that he visited the School for the Deaf in Vienna, where its director, Rabbi Joel Deitsch, introduced him to the pupils and their accomplishments: "They are almost like hearing persons in every respect." In his preface, he declares that the purpose of his pamphlet is

to show that this bold and enterprising man is accomplishing great things for them, so that they can be intelligent and bound by the precepts and included in every matter that requires a quorum of ten men.

He adds there that he investigated the halakhah in detail "until my colleague, too, the true sage who is well known for his piety, the head of the rabbinic court of Sandz, agreed with me and said 'bravo.'" In his introduction, the Brach writes of the doubts that beset him after the establishment of schools for the deaf. He came across a scholarly review, entitled *Ben-Chananya*, in which

a certain rabbi who sits in the acropolis and whose name is well known, raised a question based on what the Sages said in many places in the Talmud—that, with regard to an ordinary deaf person, the Sages held that such a person is not considered to be *compos mentis* for the purposes of giving testimony and praying and ritual slaughter and divorce and marriage and exempting his sister-in-law from levirate marriage and engaging in commerce and the like. Now he is inquiring as to what the Law may be for those deaf people who were educated at the *Toybshtumshule* [school for the

<sup>11</sup> Rabbi Judah Leibush Brach was the rabbi of Tályá and other communities in northern Hungary. His teachers were Rabbi Baruch Fraenkel-Teomim of Leipnik and the Hatam Sofer.

deaf]—whether they are to be distinguished from the deaf persons of whom the talmudic Sages spoke. But this rabbi did not expand on his words or make his view and reasons explicit as to why he had this doubt; nor does he argue the matter in either direction, but leaves the question without an answer. One can say, see this is something new, that they leave [the school] educated. This is why the rabbi who asked the question came to inquire of the sages of our time and asked them to expound their opinion about this matter. And one of the sages of our own time, a rabbi in Moravia (whose words appear in *Ben-Chananja*), relying on his knowledge and expertise, decided the case and ruled that these deaf people who are educated at the school have the same status as everyone else in all matters.

*Ben-Chananja* was a periodical written and edited by Rabbi Leopold Loew, a leading Hungarian rabbi of the mid-nineteenth century who later became known as the founder of the Neologist Movement. During the years when he wrote and edited the periodical, however, those who corresponded with him from other countries were not yet aware of his reformist tendencies.<sup>12</sup>

Rabbi Loew's article left Rabbi Brach, the author of *The Work of the Deaf*, with an uncomfortable feeling. He describes his reservations as follows:

He writes there and says (and I quote), “in our own days, all rabbinical judges know that we are not required nor do we have the competence to arrive at verdicts on matters of personal status in accordance with the *Shulhan Arukh Even Ha'ezers*.” As proof of this he notes that “there are many things we do today that are contrary to the opinion of the *Shulhan Arukh*; for example, we hold weddings inside the

12 On Rabbi Leopold Loew, see the 1906 *Jewish Encyclopedia*. *Ben Chananja* was so called because of the editor's identification with the worldview of the tanna R. Joshua ben Hananiah and his famous motto, “The Torah is not in Heaven.” The German-language periodical circulated throughout the Austrian Empire in 1858–1867. This was before the rise of the Neologist Movement. In any case Rabbi Loew was never totally “beyond the pale” in terms of religious observance.

synagogue and not under the sky, as Rabbi Moses Isserles holds, and many other things.”

Begging the rabbi-author’s pardon, the analogy is not valid. *Heaven forfend that we rebel against the sages of the land and the scholars of our time, by whose word we live.* No rabbi and teacher has ever contemplated saying that the law has been uprooted and that some stringency instituted by the *Shulhan Arukh* is now permitted. And the things we do today, empowered by the present circumstances, that seem to contradict the words of the *Shulhan Arukh*, involve only matters where there is absolutely no suspicion or thought of some prohibition, but has always been only a general custom, in which regard we can rely on the verse, “of the Issacharites, men who understand the times” [1 Chron. 12:33]: that is, when it is appropriate and fitting, in keeping with the time and season, it is incumbent upon us to know what should be done in Israel and to dismantle a mere custom that has no spirit or stringency of a prohibition and no suspicion whatsoever; that is, as we may perceive the times, that is the time and season require it.

But in any matter when there is a suspicion of a prohibition, Heaven forbid that those who are moved by the spirit of the age and by the spirit of the fear of the Lord should rule leniently without some reason or clear proof based on the earlier sages, by whose words we live. As for those who rule leniently concerning serious matters of personal status, too, saying that it is appropriate to do so, on account of the power of the season and the need of the times—in my humble opinion they are not to be called either instructors or teachers, nor do they have any Torah nor do they comply with the laws and statutes of the King, as has been stated and reiterated.

When he wrote this, Rabbi Brach was not yet aware of Rabbi Loew’s role in the birth of the Neologist movement, but the general bent of *Ben-Chananya*’s author made it plain to him that his was not the appropriate way to clarify the status of the deaf. Rabbi Loew wanted to prove that changing circumstances had resulted in a general movement away from the rulings of the *Shulhan Arukh*, so one need not heed them on halakhic matters, either

(such as the halakhah that equates the legal status of the deaf with that of imbeciles). The author's response is "heaven forbend!" For him, the issues where one may innovate, as opposed to those that are fixed and immutable, involve customs that did not originate in the rabbinic literature but were instituted in various places at various times; consequently there need be no reticence about discussing them and introducing changes. By contrast, anything that has some innovation that would touch on a prohibition, "Heaven forbid that those who are moved by the spirit of the age and by the spirit of the fear of the Lord should rule leniently without some reason or clear proof based on the earlier sages, by whose words we live."

In addition to attacking the impetuousness with which the author of *Ben-Chananya* makes such ruling, Rabbi Brach also quotes those who rule stringently and holds that they, too, have no reason or argument to back them up:

Those who concluded they should teach and instruct that educated deaf people have the status of deaf people [i.e., talmudic deaf-mutes] reason that because they represent something novel we have no power to make a new Torah, but "what has been done is what will be done and what has been is what will be" [after Eccles. 1:9]. In my humble opinion, however, this is not the way of the Lord's Torah, our holy Torah, all of whose paths are paths of pleasantness. Heaven forbid that we issue a ruling without a reason and support from the words of our holy Torah. And if their knowledge and reasoning is wondrous, with the Creator's help it will not be beyond us, with the Lord's benevolent assistance, to investigate and scrutinize and find a source, in the early and later rabbinic authorities, so that we can rule on such matters.

The argument advanced by those who oppose any modification in the status of graduates of the school for the deaf is "what has been is what will be." The world of Halakhah cannot tolerate innovations. Rabbi Brach cannot accept their statement, which "is not the way of the Lord's Torah," and consequently pursues his quest for an eminent halakhic arbiter who will deal with the question in a serious fashion. He proceeds to recount how he committed his thoughts to paper and presented them to the great Rabbi Hayyim of Sandz, "and from his mouth we live to verify our words."

## Rabbi Hayyim of Sandz's Responsum

Now we can compare Rabbi Hayyim Halberstam's responsum, printed in his collected responsa, *Divrei Hayyim*, with the passage in *The Art of the Deaf*. Rabbi Hayyim's responsum is addressed to Rabbi Brach, the author of *The Art of the Deaf*, and is clearly part of the same exchange of correspondence. A long interval passed between the pupil's submission of his question and the rabbi's answer. When he wrote it, Rabbi Brach was the rabbi of Lwow, but the answer is addressed to the Rabbi of Topolya (now Bačka Topola in northern Serbia). In his question, Rabbi Brach describes the pupils at the Vienna school as follows:

They learn to read Hebrew and German there. When they leave the place they know how to pray and have a good command of German. They are also taught about religion and understand what people say to them almost perfectly. They themselves speak in a distorted way that is extremely hard to understand. Nevertheless, they do have the ability to speak in this way, so that listeners can know and understand what they are saying.

Rabbi Brach wishes to clarify whether their education removes them from the halakhic status of the deaf-mute. He begins with a remark by the late fifteenth-century commentator on the Mishnah, R. Obadiah of Bertinoro, cited in the *Pri Megadim* on the *Shulhan Arukh Yoreh De'ah* (§1), that the reason for the rule that the deaf are not intelligent is that they are incapable of learning anything. If so, the fact these people have acquired knowledge demonstrates that they are intelligent.

It was not about them that the Sages said that “our rabbis knew that deaf persons who neither hear nor speak are not intelligent,” because this refers specifically to those who neither hear nor speak and have not studied in a school to acquire knowledge.

Rabbi Brach rejects this construction, because the author of *Pri Megadim* (Rabbi Joseph ben Meir Teomim, ca. 1727–1792) had already challenged Bertinoro with the case of a deaf person who was obviously intelligent. He also goes back and reexamines what Bertinoro wrote

and determines that this was not his intention in the first place. Instead, Bertinoro is to be understood in the light of Maimonides' commentary on the Mishnah, tractate *Terumot*, that mutism is caused by deafness—the afflicted person cannot hear what people are saying to him. Starting from this, Rabbi Brach proceeds to consider the matter of the school for the deaf:

These deaf people do speak. Although it may be only a distorted speech, [...] they are nevertheless just like hearing persons in every respect.

The bulk of his discussion focuses on the various approaches found among the early medieval rabbis. After that he returns to the school for the deaf in Vienna.

And thus, with regard to ritual slaughter, if they are experts and have trained their hands to conduct ritual slaughter and we can examine whether they are skilled, since they certainly speak, then, even according to the opinion of Maimonides it is permitted to eat what they have slaughtered, even if there is no one watching them, because their action is a complete action. [...]

Hence the law about the deaf people in our case, regarding prayers and a prayer quorum and ritual slaughter, is that they are considered to be like hearing people. With regard to giving testimony, if it is not an obviously false claim and there is no need for detailed questioning of the witnesses or testimony about prohibited matters, they are the same as hearing persons. With regard to marriage, today, when the groom consecrates [i.e., betroths] and consummates the marriage [immediately thereafter], the marriage [of a deaf man] is valid under Torah law, and his divorce, if he writes the bill of divorce himself, is valid under Torah law. But there is a doubt with regard to exempting his sister-in-law from levirate marriage.

He sent this text to the rabbi of Sandz, but the response was long in coming. The responsum was finally sent with the date of the weekly portion of

Terumah (Feb. 10–16) 1861. At the outset, Rabbi Halberstam rejects the possibility of any modification in the status of the deaf from the talmudic rule:

Finally, not all the winds in the world can alter the ruling of the Gemara, which has been affirmed by all the decisors. [...] But [in our case] if they speak a little [even unclearly] they are considered to speak. [...] And in such a situation, my humble opinion is that they are considered to be like hearing persons. And if [one would disqualify them] because they do not hear, then [we rely on] what Maimonides wrote [in his commentary on the Mishnah, *Terumot* 1:1, s.v. “a deaf person”], that it is physically impossible to speak without hearing; so if they can speak they must obviously hear to some extent. In any case this is enough for them to be considered to hear and speak.

In his responsum, Rabbi Halberstam walks the fine line between the desire to include the students of the school for the deaf in the community of rational human beings and his desire to preserve the traditional talmudic definition that a deaf person is non compos mentis. His solution is simple: if a person can speak even a little bit, even in a way that is unclear to most people, he is no longer the deaf person spoken of by the Mishnah and deemed to lack intelligence. The definition of a deaf person must be absolute; that is, it means a person who is totally unable to communicate, whether in words or in speech.

Rabbi Halberstam’s responsum became the foundation for all subsequent discussions of the subject. If a deaf person speaks, even inarticulately, he is not the deaf person spoken of by the Torah. This means that we have not uprooted a single letter of the Torah if we allow that he is intelligent and are not forced to banish the deaf person from the family of rational human beings.

### Rabbi Hildesheimer’s Fight with the Rabbis of Germany

Rabbi Halberstam’s responsum was put to the test some twenty years later, in the dispute between Rabbi Azriel Hildesheimer and the rabbis of Germany.

Rabbi Hildesheimer<sup>13</sup> devoted a long responsum to the status of the deaf. In it, he surveys the history of the debate, up to his own time (*Responsa* of Rabbi Azriel Hildesheimer, Part 2, *Even Ha'ezер* and *Hoshen Mishpat*, supplement, §58).

In the case of a deaf person who has been taught to speak in a school for the deaf (using the new system recently developed), to the point that he is no longer any different than other people except in his inability to hear and his unclear speech, but his intelligence and understanding of negotiating are the same as those of all hearing persons, the leading rabbinic authorities of the generation disagree. Some say that he is considered to be like a hearing person in every respect, following the rule of those who can speak but cannot hear. Some say he is like an imbecile, in the category of those who can neither hear nor speak. And some remain undecided about the matter and rule stringently because of their doubt.

Those who hold that he is like a hearing person in every respect include Rabbi Hayyim of Sandz of blessed memory, in his responsum (*Divrei Hayyim* II, *Even Ha'ezer* §72) addressed to Rabbi Judah Leibush of Lwow (and previously printed by the latter in his treatise *The Work of the Deaf*, Vienna 1864), to demonstrate that he is deemed to be like a hearing person—like a person who can speak but cannot hear.

Those who have not reached a decision include the Maharam Schick [Rabbi Moses ben Joseph Schick (1807–1879)], who investigated the question in his responsa (*Even Ha'ezer* §79). This is clear to me from the fact that, after going on at length about the law for various categories of deaf persons, he concluded as follows: “And in any case it seems that a deaf person who has been taught to speak at a school remains in

<sup>13</sup> Rabbi Azriel Hildesheimer (1820–1899) was one of the most prominent rabbis in Germany in the second half of the nineteenth century and the founder of the Rabbinical Seminary in Berlin.

doubtful category. At the very least he is not fully compositus and must not be counted for a prayer quorum, nor may one fulfill some precept through the agency of such a deaf person, and one may not eat the meat of an animal slaughtered by him. This is my humble opinion.”

The doubt addressed by the halakhic decisors in those days concerned a deaf person’s mental capacity—is he defective or normal? In the 1830s, Prof. Victor Jäger pioneered an international revolution in this matter when he wrote a guide for educating deaf-mute children. Jenner demonstrated that the deaf possess all the skills required to acquire spoken language, including “a mind that can learn a language, and the organs required for this, the senses that make it possible to take in the forms of the language, and, in addition to all this, the means to communicate with others.”<sup>14</sup> This study and its conclusions came to be generally accepted. The attitude towards the deaf has advanced greatly in Western Europe and America since the middle of the nineteenth century. Late in that century, Rabbi Hildesheimer read the research studies and also took note of the educational achievements of the schools for the deaf. Building on this, he reached the following conclusion:

The facts run counter to what Rabbi Schick wrote, namely, that the actions of a deaf person who has been educated are no better than those of a monkey and are merely what was fixed and imprinted on him by habit and study, and he has no choice or free will.

Rabbi Hildesheimer’s responsum shows that, in the mid-nineteenth century, German rabbis continued to debate the issue and were not willing to alter the status of the deaf. But Hildesheimer himself, a generation later, realized the significance of the great scientific and educational changes relating to the deaf. In reaction to rabbis who still treated the deaf as totally devoid of rational intelligence, he wrote:

14 Victor A. Jäger, *Über die Behandlung, welche blinden und taubstummen Kindern, Hauptsächl*, 1831.

This was the general attitude towards the deaf in their time (*Sha'ar Hazekenim* [by Rabbi Abraham Benjamin Hamburg] was printed in 1830, although no date of composition is mentioned in the responsum itself; nor is the date stated in the responsum by Rabbi I. D. [Seligmann Baer] Bamberger). The same position is stated in medical texts of that age. Only later did physicians change their mind and conclude that the deaf do have intellectual potential (although it is difficult to realize this potential)—as has been clearly demonstrated in our own time. There is nothing in this that contradicts the talmudic Sages, who spoke only of the deaf who had no opportunity to make use of their mental powers. In my humble opinion, one must not decide unambiguously, like the aforementioned sages, that the education of the deaf has no significance. With regard to post factum validity, further study is certainly required before we depend on their words.

Hidden behind the debate about the status of the deaf is a more profound disagreement about whether society and scientific progress can alter fundamental positions in the world of Torah. Rabbi Hildesheimer, well aware that many are suspicious of this notion, tried to soothe them:

There is no doubt that scientific research has no power to undercut the tradition of the Sages. But our inquiry here is into the meaning of what the Sages said; that is, whether our rabbis made no distinction among different categories of deaf persons or intended only a deaf person who has not been educated.

Rabbi Hildesheimer did not go beyond Rabbi Halberstam's ruling. He sought only to challenge his colleagues in Germany who refused to recognize the new status of the deaf and would treat all deaf persons equally, ignoring their capacity to study and acquire knowledge.

## Stage 2: Lipreading without Audible Sounds

### The Responsum by Rabbi Shlomo Zalman Auerbach

Rabbi Halberstam's new approach was the halakhic norm for the next 150 years, although it did not go unchallenged. The crux of his innovation is that many deaf persons can speak, even if not clearly. The debate erupted again with regard to the status of a deaf person who communicates only by means of sign language and does not employ audible speech. For the purposes of the present discussion, we will examine a responsum by Rabbi Shlomo Zalman Auerbach (*Minhat Shlomo* 1.34).<sup>15</sup>

In this responsum, Rabbi Auerbach distinguishes a deaf person who can speak—about whom “one may assess that if he is in command of his intellectual faculties he is like a hearing person in every respect” (as per Rabbi Halberstam’s responsum)—from a deaf person who does not verbalize aloud but demonstrates a good understanding of negotiating, the halakhically permitted and forbidden, and so on. Rabbi Auerbach begins by proposing the possibility of assigning such a deaf person the status of a Noahide, meaning that he is obligated to perform precepts that require a certain measure of responsibility for his actions:

And because with regard to a deaf person one must not diverge from what the decisors have written, that even “if he is extremely intelligent and understands what is moral and knows the prayers and can negotiate with everyone and knows to how sign his name,” even so his status is that of a fully deaf person [i.e., a deaf-mute]; and, as the *Zemah Zedek* [Rabbi Krochmal] wrote (§77) about a deaf tailor whom he knew and who was “extremely intelligent,” nevertheless he is accounted an imbecile. It would seem that this would also apply [if we assigned him] the status of a Noahide,

<sup>15</sup> The Jerusalem-born Rabbi Shlomo Zalman Auerbach (1910–1995) served as the dean of the Kol Torah yeshiva; many of his students currently serve as rabbis and teachers. Torah scholars of every stream recognized him as a leading decisor. Although his collected responsa, *Minhat Shlomo*, was published in 1986, most of the entries are taken from its author’s works written decades earlier.

because such a deaf person has the status of a minor who lacks understanding. And even though the only reason for the ruling that a deaf person's actions have no validity is that he is considered to be an imbecile and devoid of understanding, although as a matter of common sense it is certainly difficult to say that a deaf person who is fully intelligent and quick-witted is feeble-minded, and it is hard for us to understand where the talmudic sages learned that he should be exempted from the precepts and denied the status of a person, without some proof text from the Bible or Halakhah—still, because this is indeed the situation we must say that the talmudic sages in their great wisdom knew that a deaf person who neither hears nor speaks is a person who cannot be held responsible for his actions, and consequently we do not account his actions as valid, even if, as we see it, he is rapid and clever and does everything with full intelligence and reason.

Rabbi Auerbach's distress comes through clearly. Common sense pulls strongly in the direction of the idea that "it is certainly difficult to say that a deaf person who is fully intelligent and quick-witted is feeble-minded." On what basis did the Sages exempt the deaf from the precepts, without any proof from Scripture? But despite this logic, "we must say that the talmudic sages in their great wisdom knew" that this was the case. Human conjectures and moral logic cannot stand against the eternal truth of the words of the talmudic sages, even when they are not based on Scripture and therefore cannot be said to be Torah-based. This is one of those moments when the decisor must restrict his own mind and intelligence and subordinate his entire being to faith in the Sages and the preservation of their teachings.

But as the responsum continues it becomes clear that there is a gap between these fiery words of staunch belief and how Rabbi Auerbach actually copes with the challenges of contemporary life. After writing that a deaf person who speaks (even unclearly) is not considered to be deaf, while, on the other hand, a deaf person who does not speak audibly remains in the halakhic category of the deaf-mute, he moves on to a third case:

Accordingly, in my humble opinion it seems that in our case we need consider only one matter, which is whether a

person who has learned to speak by moving his lips is thereby considered to be a speaker or not. This is what Maharam Schick had in mind in §79 and so too the *Keren le-David* [Eliezer David Gruenwald (Hungary, 1867–1927)] in §27, seeking to prove from the statement by R. Kahana that although writing is like speech, even so it is of no avail for one who is born deaf and his writing is the same as a wink or a gesture. The same applies to this kind of speech, and the person is not considered to be a speaker. But what Maharam Schick wrote, that such a deaf person can be compared to [a child who has] an adult standing at his back, because it is only the mental power of his teacher that is active in him, and not his own mind, is most astonishing and totally irrelevant in our time, and particularly in the present case. And I have seen in the book *Shulhan Ha'ezer* 8.4.1 [by Isaac Zevi Lebovics of Chop in Transcarpathia (Hungary/Czechoslovakia, now Ukraine), 1875–1944], that the author wrote the same thing, namely, that in our day it is certainly his own mind and not his teacher's. And consequently in my humble opinion is that even though they have quoted from *Neot Deshe*, by the author of *Levushai Serad* [R. Solomon David Eybeschitz, Galicia, 1754/5–1813/4], who wrote (§132) that with regard to a deaf person who moves his lips and makes sounds, and in this way communicates with people who are used to him, it is obvious that he is considered to be an imbecile and [the sounds he makes] are considered to be only an echo and not speech—nevertheless, in the present case it would seem that if he speaks in such a fashion that people in general can understand his intention, even though his lip movements are different from those of other people, he should be considered to be a speaker who does not hear, who falls into the category of intelligent in every respect; but if only people who are accustomed to speak with him know and understand his meaning, and not others, I am unable to decide whether he is considered to be a speaker or not.

Here, with regard to “moving the lips” (sign language accompanied by movements of the mouth but not by audible speech), Rabbi Auerbach

challenges the position of Maharam Schick, who wanted to buttress his opposition to the new take on the halakhic status of the deaf with the idea that “it is not his own mind, but his teacher’s mind.” Rabbi Auerbach replies that this notion “is most astonishing and totally irrelevant in our time. [...] It is certainly his own mind and not his teacher’s.” Rabbi Auerbach holds that changes over time are significant for the status of a deaf person: what seemed reasonable to Maharam Schick is no longer reasonable to Rabbi Auerbach, because it is clear to him that an educated deaf person has a mind of his own. Rabbi Auerbach expands on this point at the end of his responsum:

As for what Maharam Schick wrote, that a deaf person does not have his own mind but only his teacher’s mind—today our eyes see that this is not the case, and they have their own intelligence and mind, and sometimes are even better educated than their teachers. Hence it seems to make more sense to agree with the *Beit Shmuel* [commentary on the *Shulhan Arukh Even Ha’ezel* by R. Samuel b. Uri Shraga-Feybush, Poland/Germany, second half of the seventeenth century], quoted by his Torah eminence, that it is appropriate to consider them to be bound by the precepts. Even though his Torah eminence also quoted *Divrei Malkiel* (by R. Malkiel Zevi Tannenbaum, Poland [1847–1910], that, Heaven forbid, “this was received as a principle going back to Moses on Sinai” because it is impossible to say that the talmudic sages erred (heaven forfend) with respect to the status of the deaf because they did not know that it was possible to educate them, in my humble opinion it seems that perhaps before people knew to teach them and develop their minds, as we know how to do today, they really were considered to be imbeciles, which is no longer true in our time; just as a child born in the eighth month of pregnancy, who Heaven forbid that we should say in our time, too, is like a stone<sup>16</sup> (I am unsure with regard to someone

16 According to the talmudic halakhah, children born in the eighth month of pregnancy are not viable. Consequently they are considered to be already dead and it is forbidden to desecrate the Sabbath for them. Modern science knows that such children can indeed survive, and many decisors have accordingly ruled that one is obligated to violate the Sabbath to treat them.

today who lives in a country where there are no incubators, as to whether it is permitted to desecrate the Sabbath for the brief survival of a child born in the eighth month of pregnancy, because in our time they can survive, and this requires further study), the bottom line with regard to a deaf person is that in practice it seems to be very difficult to decide on a matter that was discussed at length by the Torah sages whose waters we drink, but it is also very difficult to exclude them, Heaven forbid, from observing the precepts.

Rabbi Auerbach's responsum is evidence of the immense weight of historical developments for the definition of the status of the deaf. He was the first decisor to consider the question of whether sign language can be considered speech, so as to remove those who employ it from the category of the deaf-mute.<sup>17</sup>

## Stage 3: Recognizing Those who Employ Sign Language as Intelligent

### The Position of Rabbi Ovadia Yossef

Rabbi Ovadia Yossef<sup>18</sup> wrestled with the ruling by the Ben Ish Hai (R. Yosef Hayyim of Baghdad, 1834–1909) who wrote: “A deaf person who neither hears nor speaks may not be included in a prayer quorum and falls into the category of an imbecile and minor” (*Ben Ish Hai*, weekly portion of *Vayehi*, §6). According to Rabbi Yossef:

Today, when there is a special school for deaf-mutes [note that R. Yossef is careful always to refer explicitly to “deaf-mutes” rather than employing the talmudic term *heresh* “deaf” which, as defined by the Mishnah (see above), always means “deaf-mute”], run by professionals and teachers who

<sup>17</sup> On this question, see further Elisha Anchelovich, “The Status of the Deaf in the Contemporary Reality,” *Tehumin* 21 (5761/2001): 141–151 (Hebrew).

<sup>18</sup> See his *Halikhot Olam* (Jerusalem: Maor Yisrael Institute, 5758–62 [1998–2002]), Part 1, pp. 85–86.

convey knowledge to their pupils and educate them to behave rationally so that they leave the place as intelligent human beings able to work and support themselves and their families and also able to speak to some extent, although they do not express themselves clearly, many recent decisors have ruled that they are intelligent and can be counted for a minyan, while others disagree and say that even these fall into the category of the imbecile and minor. See Responsa *Shevet Sofer* (by R. Simhah Bunem Sofer [Hungary, 1842–1906]), *Even Ha’ezер* 21, which quotes what Rabbi Mordechai Horowitz [Frankfurt, 1844–1910] wrote to him, to the effect that if a deaf-mute studied in the special school for deaf-mutes and learned how to understand and speak by means of gestures and signs, so that he could communicate with other people, he is certainly bound by the precepts like every hearing Jew. But the author [Rabbi Sofer] replied that, based on the ruling by the *Zemah Zedek* (§73), such a person still seems to fall into the category of the deaf of whom the Sages spoke, who is like an imbecile in every respect. He concluded: “But I have heard from my father and teacher (the author of the *Ketav Sofer* [R. Abraham Samuel Sofer, 1815–1871]) that the directors of the school for the deaf-mute in Vienna once invited him to visit their school. When he did so and saw their classes and instruction up close he was favorably impressed by the development of the pupils there, in all their studies and instruction, to the point that he began to wonder that perhaps their status was that of totally rational human beings who are obligated by the precepts, and asked the educators at the school to purchase tefillin for the boys studying there so that they could put them on every day when they recited the Shema and the Amida.

It is clear from this that Rabbi Yossef relies on decisors of earlier centuries and does not address the question of the new status of the deaf in the present age. Faithful to the Sephardi halakhic tradition, Rabbi Yossef attaches major weight to the opinion of the authorities who hold that those who speak in sign language are bound by the precepts only by rabbinic ordinance, “because we still find ourselves embroiled in a controversy.”

## Guidebooks for Marriage Registrars and Wedding Officiants

In Israel today, manuals for rabbis who officiate at weddings include instructions for the ketubah and ceremony for the deaf. For example, Rabbi Bar Shalom writes in his book, *Mishpat HaKetubah*:<sup>19</sup>

A deaf-mute man or woman falls into the category of an imbecile and cannot marry under Torah law. However, the Sages instituted a form of marriage for them. [...] The custom is to write a *ketubah* for such marriages, too, in order to align their situation as closely as possible with that of ordinary people.

According to Rabbi Binyamin Adler (*HaNissuin Kehilkhatam*, p. 515 [17:17]), “a deaf man and woman, who neither hear nor speak, cannot be parties to a consecrated union under Torah law, but the Sages instituted a form of betrothal and marriage for them.” Later in the same book (§29), he writes: “With regard to deaf-mutes who have been educated and can vocalize a few words, the decisors have considered whether their marriages can be consecrated under Torah law” (in a note he cites Rabbi Halberstam and the Responsa of Maharam Schick). He too rules that their status is “doubtful.”

Sample ketubah texts for the deaf are found in a book specifically on this topic, published by Rabbi Ezekiel Chafetz of Vilna in 1875.<sup>20</sup> He said that all of the decisors who discussed the question of marriage by the deaf wrote that the officiant should not recite the betrothal blessing; instead, “he should recite the blessing over the wine and taste it, and after that the betrothal blessing, but without invoking God’s name and kingship.”<sup>21</sup>

When I contacted the marriage bureaus of the rabbinate in several towns, I discovered that there is no set procedure about the status of the

19 Eliyahu Hayyim Bar Shalom, *Mishpat ha-ketubah* [Law of the Ketubah] (Bene Beraq, self-published, 5755 [1995]), Part 7, Chapter 72, p. 609.

20 For sample texts for the ketubah of a deaf groom and/or bride, see Ezekiel Chafetz, *Melekheth Heresh* (Vilna, 5635 [1875]); on line at [www.hebrewbooks.org/pagefeed/hebrewbooks\\_org\\_32786\\_66.pdf](http://www.hebrewbooks.org/pagefeed/hebrewbooks_org_32786_66.pdf).

21 Bar Shalom, *Mishpat ha-ketubah*.

deaf. Most deaf people who come to register for marriage can speak in some fashion or another that other people can understand, but are considered to be deaf because they themselves depend on reading lips. I found that the most common practice is to treat them as “doubtful deaf people,” to provide them with the special ketubah for the deaf, and to omit the divine name in the betrothal blessing at their wedding. Some towns follow a different procedure and distinguish deaf persons who can express themselves aloud (even if unclearly) from those who speak only in sign language. Persons in the former category are treated like everyone else. But persons in the latter category, who cannot speak aloud and communicate only via sign language, are not deemed to be fully intelligent.

We can say that this is the most common stance among rabbis and marriage registrars in Israel today. Many of them derive their positions one from another, leading to the tradition accepted by the Israeli rabbinate that deaf persons are “of dubious intelligence”; hence they receive a different ketubah and God’s name is omitted from the betrothal benediction.

## A Ruling by Israeli Rabbis Today (2013) on the Status of Sign Language

Now we move on to the status of sign language today, and thus return to the need to recognize it as a language in every respect, such that those who employ it can be defined as “speaking” and consequently as “intelligent.”

As we have seen, in every generation leading rabbis have issued rulings about the status of the deaf in their time. The most conspicuous example is the Hafetz Hayyim’s reaction to Rabbi Hagiz’s ruling. He does not understand why the latter even found it necessary to ask whether one is allowed to desecrate the Sabbath for a deaf person. Similarly, Rabbi Hildesheimer challenged his colleagues in Germany, who held fast to the teachings of earlier generations and ignored the fact that a revolution had occurred since then, with the opening of schools for the deaf. Rabbi Auerbach rebutted Maharam Schick and insisted that we cannot say today say that a deaf person is like “a talking parrot.” The status of the deaf has changed completely: it is clear that deaf persons who have been educated speak with their own power and not that of their teachers.

I asked several halakhic arbiters in Israel to continue this process further, in light of the contemporary status of deaf persons who employ sign language.

Until the 1960s, sign language was an inferior mode of communication all over the world. Even schools for the deaf encouraged their students to verbalize aloud, because of the general view that only those who did so could be considered to be cultured and intelligent. As we saw in the introduction, even as late as 1966, in the entry on deaf-mutism in the *Encyclopaedia Hebraica*, one of the pioneers of deaf education in Israel wrote that sign language is inferior.

In the nearly half-century that has passed since then, the status of sign language has changed utterly. Many studies have demonstrated that it is processed by the same part of the brain used for oral language. It has been demonstrated that sign language has a grammar and syntax like “normal” speech and is much more sophisticated than was thought in the past. Had Rabbi Auerbach seen modern research on the brain and the place of sign language in the family of human languages, it is plausible that he would have ruled that a person who employs this language is not the deaf person—a deaf-mute—spoken of by the Talmud.

To my delight, some of the rabbis whom I contacted looked deeply into the issue. The first to do so was Rabbi Asher Weiss, the head of the Darkei Torah institutions and rabbi of Shaarei Zedek Hospital in Jerusalem.<sup>22</sup> Rabbi Weiss’s inquiries led him to divide the issue into two parts. The first considers whether, today, the deaf can be deemed intelligent:

If the matter depends on me, it seems that all the aforementioned decisors were speaking with regard to their own age, when most deaf people were indeed like imbeciles and only a few—one in a city or two in a family—were able to overcome their disability and achieve full cognitive powers. In our time, however, when the overwhelming majority do achieve full cognitive powers and function like everyone

22 I asked Rabbi Yitzhak Ralbag of the Jerusalem Religious Council to help me circulate my question to halakhic decisors who are accepted by all sectors in Israel. Rabbi Weiss replied to him in a responsum that was published as part of his weekly lecture sheets (Minhat Asher Institute, 2013, weekly portion of *Ki Teze*). Before he wrote his responsum I met with him, accompanied by Rabbi Baruch Gigi, the head of the Har Etzion Yeshiva, and we urged him to study the issue with the scientific research in mind. To our joy, Rabbi Weiss looked into the matter thoroughly.

else, whether through sign language or by reading lips, their status is that of the hearing.

In the holy city of Jerusalem we have a kollel of Talmud students, all of whom are deaf-mutes, but who study the Talmud in depth and with understanding. It is out of the question to say that they fall in the category of imbeciles.

This statement is clear and needs no deep study. The question about the marriage benedictions engaged Rabbi Weiss from a different direction. There is an extensive discussion among the halakhic decisors about whether the betrothal benediction is one of praise or a benediction over the fulfillment of a precept. If the latter, it is the groom who is obligated by the precept and the officiating rabbi is reciting it on his behalf. Rabbi Weiss prefers the opinion that it is a benediction over the precept; consequently, in his view, the betrothal benediction must not be recited with God's name at the wedding of a deaf groom. This has nothing to do with his supposed status as an "imbecile" but with his speech disability. On this point, too, however, Rabbi Weiss agrees that if the bride and groom so request, there is no reason for the officiant not to recite the benediction:

It seems that those who wish to recite the betrothal benediction at the wedding of the deaf have support for their view. In *Tiv Kiddushin*, by the great sage Rabbi Arye Leib Zunz (§34.2), he states that it is obvious to him that the betrothal blessing should be recited at the wedding of a deaf groom, and added that we have never heard that the benediction should not be recited at the wedding of a deaf groom (see there).

As explained there, the reason is that he held it to be a benediction of praise, following the view of the Rosh [Rabbenu Asher ben Jehiel], cited above, and of the Taz [R. David Halevi Segal] on *Yoreh De'ah* 1:17, and of the Tevuot Shor [R. Alexander Sender Schor], ad loc., §59, that this benediction was never meant to be recited by the groom and bride but by the bystanders (see there).

The matter is also discussed at length in *Responsa Beit Shlomo (Even Ha'ezer* 81) [by R. Shlomo Zalman Ehrenreich, 1863–1944]. He wrote that because so many of the early medieval rabbis and decisors held that the betrothal benediction is a

benediction of praise and is not incumbent on the groom and bride; and given that it seems logical that even according to Maimonides' view that it is a benediction over a precept, it would be incumbent on the bride as well: hence when the bride is hearing the officiant can recite the betrothal benediction with no hesitation or doubt (see there).

And even though the rabbi did not explicitly raise the concept of a double doubt here, it seems that he meant that this is a sort of double doubt, inasmuch as it is doubtful whether or not it is a benediction over a precept and it is also doubtful whether it is incumbent also upon the bride or only on the groom.

In any case, these two great sages ruled that one may recite the benediction at the wedding of the deaf and certainly in the case of a deaf groom and hearing bride. Hence those who rely on their view have a solid foundation.

And after this I saw in *Responsa Shevet HaLevy* (8:277) [by Rabbi Shmuel Wosner, b. 1913] that he too rules leniently about the benediction at the marriage of the deaf because it is like an urgent situation.

This summarizes our quest. Rabbi Wosner holds that we should be lenient about the betrothal blessing for a deaf bride or groom because it is deemed to be an urgent situation (and certainly for the marriage of a deaf groom and hearing bride). This statement derives precisely from the feeling of deaf persons that they are treated like second-class citizens. Relying on this, Rabbi Weiss rules that if there is a desire and need, there is no reason not to recite the full betrothal benediction at the wedding of deaf partners.

Rabbi Yaakov Ariel, the rabbi of Ramat Gan, also looked deeply into the matter and wrote a long and serious responsum. He goes on at length about the status of those who speak in sign language as compared to "language" in general. Rabbi Ariel provides a philosophical treatment of the status of normal (audible) language vis-à-vis written language or sign language. It is obvious to him that those who employ sign language are intelligent, but he does not believe it possible to consider their speech to be "normal":

One must say that although there is no doubt that he is intelligent, he is nevertheless different from other people. All human beings communicate among themselves using audible speech, whereas the deaf do not communicate the way we do. Consequently the usual term “speaker” does not apply to them. That is, their “speech” is not natural but artificial. This disqualification is formal. For Halakhah defines its categories only in accordance with the conventional natural standards. Whatever is not natural is not included in the halakhic definitions.

However, this stipulation of their difference does not banish deaf persons from the category of those obligated by the precepts. For Rabbi Ariel, the status of the deaf in our day is no different than that of the blind, about whom the ruling, going back to mishnaic times, is that they are obligated by the precepts under rabbinic ordinance (the view of Rabbi Judah).<sup>23</sup>

A deaf person is no way inferior to Rabbi Judah’s classification of a blind person. He recognizes himself as a Jew in every respect and it is only because of a technical defect that he is in a different category, formally speaking. But in fact he is a fully legitimate Jew who stood at Mount Sinai with the rest of us and received the Torah as we did (and even if he did not hear, the verse states that “they saw the voices”; and even if he could not have said “we will hear,” he accepted “we will do” along with the rest of the congregation). Yes, he is different, but only from our perspective, because he does not communicate the way we do. From his own perspective, however, he can see himself as bound by the precepts.

After stating that a deaf person is a Jew who is bound by the precepts, Rabbi Ariel explains that, accordingly, the betrothal benediction should be recited at the marriage of deaf partners:

23 Thus according to the Tosafists, *B Baba Qama* 87, incipit “and Rabbi Judah” (second on the page).

And also as a matter of human dignity, the officiant should not act differently at his wedding than he does for other grooms and the standard benediction should be recited.

It is true that this conclusion holds only for those who believe that a benediction in vain is forbidden only by rabbinic law. But according to the view of Maimonides that such a benediction is forbidden by Torah law, it is not permitted to perform such an active transgression in order to protect human dignity. As stated, however, because the rabbis instituted marriage for him, one should recite the betrothal benediction.

With regard to the ketubah, Rabbi Ariel rules that one should use the standard ketubah and not a different text:

On the contrary, it is preferable to write a normal ketubah and not one that is only a judicial writ, because a deaf person's individual commitment is more binding than a judicial writ; and also on account of human dignity, to keep from wounding the deaf person by treating him like an imbecile or minor. It should be enough for us that his category is different for marriage itself, but it is preferable that the ketubah, which is a financial obligation, be like all other ketubot.

The bottom line is we are fortunate to have found halakhic decisors of the first rank who define the status of the deaf in our time as that of intelligent human beings on the same footing as everyone else. This ruling shows the way for marriage registrars and should end their perplexity. It holds that deaf couples should be accepted as intelligent, like every other couple, with a wedding ceremony like all other couples, and the same status as all other human beings.

# Responsum



The Israel Democracy Institute (IDI) is a non-partisan think-and-do tank dedicated to strengthening the foundations of Israeli democracy. A 2009 Israel Prize recipient, IDI promotes political reform, democratic values, social cohesion, and solutions in the field of religion and state.

This booklet was produced under the auspices of IDI's Human Rights and Judaism in Action project, which focuses especially on the rights of people with disabilities. It is part of a series of responsa that address halakhic issues that people with disabilities face in practical, everyday situations.

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