



# The Concept of Consent in the Talmud

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This piece presents two Talmudic texts that explore the idea of consent in the context of two very different kinds of relationships: the relationship between God and the Jewish People, and the relationship between a married couple. Though the language of “consent” is not part of the discussion of sexual relationships in rabbinic texts, the idea that sacred relationships are founded on mutual consent is foundational. We will begin with a key Midrash about the nature of revelation, which is often read and re-read around Purim and Shavuot. We will then move from a broad theological claim to a text about appropriate (and inappropriate) physical relationships within marriage.

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Certain foundational rabbinic texts and images take on a new, and sometimes alarming, meaning when read with twenty-first century eyes. The classic rabbinic reading of the Song of Songs, for instance, presents the relationship between God and the Jewish People as lover and beloved. Similar imagery is laced through the Midrash and the liturgy. On one level, there is something beautiful, moving and inspirational about that metaphor. On the other hand, thinking about this relationship in sexual terms can be disconcerting as well.

Over time, we have become increasingly aware that sexuality and power are connected to one another in problematic ways. We now understand that consent can only be truly granted when there is no power imbalance. An ideal relationship of intimacy is one of equality, in which both partners can express their emotional and physical needs. It is for this reason that CEOs may not date their employees and professors may not be in relationships with their students.<sup>1</sup>

My basic claim is that the rabbis understood that imbalanced relationships could be coercive. In this understanding, they even included the revelatory power of the voice of God at Sinai. It's possible, according to some rabbinic texts, to read the covenant between God and the Jewish People as fundamentally coercive, given that the Israelites were given a "choice" that may not fully have been a choice. Such an interpretation could represent a deep problem for subsequent generations left to live with that coerced decision. In an interesting and often overlooked parallel, the rabbis express concern that a marital relationship can include one member dominating the other. Comparing these two potential approaches to coercion and consent, we can appreciate the deep wisdom that these ancient texts bring to us in the twenty-first century.

## TEXT STUDY 1: BAVLI SHABBAT 88A; REVELATION AS COERCION

The Talmud identifies and explores an awkward formulation of a biblical verse describing the encampment of the Jewish People at Sinai. The verse says:

וַיִּתְּצוּ בְּתַחְתִּית הָהָר: (שמות יט:יז)

And they camped at the underneath of the mountain (Exodus 19:17).<sup>2</sup>

What does it mean to say that we were camped “בְּתַחְתִּית” (underneath of) the mountain? The Rabbis teach us:

וַיִּתְּצוּ בְּתַחְתִּית הָהָר, אָמַר רַב אֲבָדִימִי בַר חָמָא בַר חָסָא: מְלִמַּד  
שֶׁכֶּפֶה הַקָּדוֹשׁ בְּרוּךְ הוּא עָלֵיהֶם אֶת הָהָר כְּגִיגִית, וְאָמַר לָהֶם: אִם  
אַתֶּם מְקַבְּלִים הַתּוֹרָה מוֹטָב, וְאִם לֹא — שָׁם תִּהְיֶה קְבוּרַתְכֶם.

Rav Avdimi bar Chama bar Chasa said, “This teaches that the Holy Blessed One hung the mountain over them like a barrel and said to them, ‘If you accept the Torah, Good! If not, there will be your burial place.’”

In this text, the great revelation at Mt. Sinai is imagined not as a moment of freely made national commitment to God but rather as a deeply coercive incident. There is a certain kind

of psychological truth to this description even if the threat to their lives was metaphorical. The Jewish People, having just witnessed the miracles of the plagues, the crossing of the sea and the manna, could not possibly have said no to the gift of Torah that God was offering. This newly freed slave-nation, standing at the foot of the mountain, really had no choice but to say yes.

It is interesting to note that at the end of the Book of Joshua (chapter 24), there appears to be an attempt to remedy this problem of an apparently forced acceptance of Torah. Joshua gathers the people in Shechem and enacts a re-covenanting ceremony. In this awesome scene, Joshua gives them a choice. He says:

וְאִם רַע בְּעֵינֵיכֶם לַעֲבֹד אֶת־יְהוָה בְּחַרוּ לָכֶם הַיּוֹם אֶת־מִי תַעֲבֹדוּן אִם  
אֶת־אֱלֹהִים אֲשֶׁר־עָבְדוּ אֲבוֹתֵיכֶם אֲשֶׁר (בַּעֲבֹר) [מֵעַבֵּר] הִנָּהוּ וְאִם  
אֶת־אֱלֹהֵי הָאֲמֹרִי אֲשֶׁר אַתֶּם יֹשְׁבִים בְּאֶרֶצָם וְאֲנֹכִי וּבֵיתִי נַעֲבֹד  
אֶת־יְהוָה: {פ}

וַיַּעַן הָעָם וַיֹּאמְרוּ חֲלִילָה לָנוּ מֵעֹזב אֶת־יְהוָה לַעֲבֹד אֱלֹהִים אֲחֵרִים:  
(יְהוֹשֻׁעַ פֶּרֶק כֹּד טו)

(15) But if serving the Lord seems undesirable to you, then choose for yourselves this day whom you will serve, whether the gods your ancestors served beyond the Euphrates, or the gods of the Amorites, in whose land you are living. But as for me and my household, we will serve the Lord" (16). Then the people answered, "Far be it from us to forsake the Lord to serve other gods!" (Joshua 24).

Joshua here invites the Jewish People to make an active choice to be a part of the covenant without the threats of the previous covenantal experience. In trying to bring the People close to God of their own free will, Joshua mitigates the coercive reality of Sinai.

As the Talmudic discussion in Shabbat 88a continues, Rav Acha bar Yaakov reflects on the gravity of Rav Avdimi bar Chama bar Chasa's claim that the covenant at Mt. Sinai contained an element of coercion.

רַב אַחָא בַר יַעֲקֹב: מְכָאן מוֹדָעָא רַבָּה לְאוֹרִייתָא.

Rav Acha bar Yaakov said, "This is a great challenge [to the authority *moda'a* ] of the Torah."

The term “**מודעא**” (ally: announcement) is a technical term referring to the ability of someone who perceives themselves as being forced to sell something to claim that the sale is null and void. Any contract entered under duress is not enforceable. If the Jewish People entered into our covenant with God under duress, then the entire relationship is suspect. Here the Rabbis understand that the commitment required in order to live a life of Torah cannot be forced. For a commitment to be sincere, it must be rooted in free will. In the final stage of this Talmudic discussion, the Rabbis seek a biblical narrative in which to anchor a freely elected entry into the covenant. Instead of going to Chapter 24 of Joshua, they turn all the way to chapter 9 of the Book of Esther:

אָמַר רַבָּא: אֵף עַל פִּי כֵן הָדוּר קִבְּלוּהָ בִּימֵי אַחַשְׁוֵרוּשׁ, דְּכָתִיב:  
 “קִיְמוּ וְקִבְּלוּ הַיְּהוּדִים” — קִיְמוּ מַה שֶּׁקִּיְבְּלוּ כְּבָר.

Rava said, “Even so, they re-received her (Torah) in the time of Achashverosh. As it is written, *The Jews fulfilled and accepted* (Esther 9:27) They fulfilled [of their own free will] that which they had already received [against their will].”

Here, Rava goes to the end of the Book of Esther to find a narrative through which he can definitively claim that the Jewish People opted into the covenant of their own choice. Why not look to Joshua instead of turning all the way to Esther, one of the last books of the Bible? One of the main features of the Book of Esther is God's apparent silence. While the careful reader can sense the divine hand behind the scenes, God's name and active presence are absent from the Book of Esther.

Rava intuited something very deep. The presence of God's miracles limits the freedom humans have to make their own choices; the more that the laws of nature bend to the divine will, the less we can make real decisions. Sinai is perhaps the most powerful instance of God breaking into nature, which is why human beings experience that moment as though a “barrel is held over our heads.” Rava does not look to Joshua, or to any normative prophetic work for that matter, because in the time of the prophets, there were still public miracles shaping human choices.

One biblical book that can serve as a remedy to this potentially coercive nature of God at Sinai is the book in which God is hidden — the book of Esther. The Rabbis in this Midrash struggle with the psychological reality of the revelation at Sinai. Rava reminds us that, in the book of Esther, God's silence allows us to show our commitment through the fulfillment of God's words in the Torah, a stark contrast with the revelation at Sinai.



## DISCUSSION QUESTIONS

1. What do you think Rava means when he says that the presence of miracles limits human choice? Why or why not?
2. Does the people's collective agreement to accept the Torah, for them and for future generations, feel to you like an act of coercion as it does for some readers of this text? Why or why not?

### TEXT STUDY 2: *BAVLI NEDARIM 20B*; COERCION IN THE MARITAL

Turning to a very different form of potential coercion, we now consider a different discussion within the Babylonian Talmud, Bavli Nedarim 20b. The passage we will focus on is excerpted from the Talmud's most extended treatment of the laws of sex. A few introductory comments are in order.

First, rabbinic laws of sexuality are always framed within a specific understanding of marriage. The rabbis' discussions of sex focus on relations between a husband and wife. All other sexual encounters were forbidden. Jews today are embedded in a dominant culture with far more expansive views of sexuality and relationships, so we must keep in mind that our cultural context differs from that of the rabbis in this text.

While the Talmud's assumptions about sex are troubling in some ways, we likely recognize that contemporary attitudes about sex may feel troubling for other reasons. The availability of pornography, for instance, has deleterious effects on individuals' understanding of what sex is supposed to look and feel like, and debates exist about whether even consensual pornography is exploitive in some way. Clearly, non-consensual material, which we know is widespread, is wholly exploitive. At the same time we recognize that the range of sexual and gender expression available to people today is much wider than the Rabbis could have imagined. These facts and complex tensions in the modern world do not relieve us, however, from critically confronting our rabbinic tradition and its expectations and assumptions. Doing so can help us better understand our world while deepening our conversation with rabbinic texts.

Second, the text below follows a statement from Rabbi Yochanan that emphasizes a kind of playfulness within the marital bedroom:

כָּל מֶה שְׂאָדָם רוֹצֶה לַעֲשׂוֹת בְּאִשְׁתּוֹ עוֹשֶׂה

Anything that a man wants to do with his wife, he may do.

On the one hand, we get a sense that Rabbi Yochanan is inviting a kind of sexual exploration and passion between husband and wife. On the other hand, there is a clear directionality built into this phrase, with its focus on the man. The man is permitted to do what he pleases. The statement concludes with an analogy that may feel very troubling to contemporary readers, something entirely removed from our thinking about human interactions and loving relationships:

מִשָּׁל לְבָשָׂר הַבָּא מִבֵּית הַטֹּבֵחַ רָצָה לֶאֱכֹלוֹ בְּמֶלַח אוֹכְלוֹ צָלִי אוֹכְלוֹ  
מְבוּשָׁל אוֹכְלוֹ שְׁלֹק אוֹכְלוֹ

**An allegory to meat that comes from the butcher - If he wants to eat it with salt, he may eat it that way. If he wants to eat it roasted, he may eat it. If he wants to eat it cooked, he may eat it cooked. If he wants to eat it boiled, he may eat it boiled.**

This part of the discussion is deeply troubling, and it is followed by statements from both Rabbi Yehuda ha-Nasi and from Rav in a similar vein, privileging the husband's wishes over the wife's. These Talmudic statements fail to acknowledge consent as a moral imperative. As we read these statements, we must confront — as the rabbis themselves did — the troubling implications of this passage and roundly reject the assumption that husbands may dominate their wives or that any partner ought to be in total control of a sexual relationship.

If we read only these passages, we might assume that the Talmud teaches this kind of male domination in marital relationships. But, thankfully, this is not the end of the Talmudic discussion. Let us now move on to a teaching that tempers this perspective on human sexuality and the importance of consent. As is often the case in the Talmud, passages must be read in light of one another, and we cannot simply take one out of context from the other; therefore, what Rabbi Yochanan says cannot be taken as the definitive and final word on these matters. The passage below is attributed to Rabbi Levi, who grounds his teaching in a verse from Ezekiel:

וּבְרוֹתֵי מִקְדָּם הַמְרָדִים וְהַפּוֹשְׁעִים בִּי

**And I will purge out from among you the rebels, and those that transgress against Me (Ezekiel 20:38)**

Rabbi Levi lists nine different kinds of sexual union that lead to the production of rebellious offspring.<sup>3</sup> These nine relationships are clearly understood to be problematic. From this list, we can work backward and understand the ideal kind of relationship that the rabbis wanted to see within a marriage. Here is the complete list:

בְּנֵי אֵימָה בְּנֵי אָנוּסָה בְּנֵי שְׁנוּאָה בְּנֵי נִידוּי בְּנֵי תְמוּרָה בְּנֵי מְרִיבָה  
בְּנֵי שְׁכָרוֹת בְּנֵי גְרוּשַׁת הַלֵּב בְּנֵי עֲרֻבוּבָיָא בְּנֵי חֲצוּפָה

[1] Children of fear [*eima*] [2] children of a woman who was raped [*anusa*] [3] children of a hated woman [*senua*] [4] children of ostracism [*niddui*] [5] children of substitution [*temura*] [6] children of strife [*meriva*] [7] children of drunkenness [*shikhrut*] [8] children of a woman who was divorced in the heart [*gerushat halev*] [9] children of mixture [*irbuveya*] [10] children of a shameless woman [*hatzufa*].

When taken as a group, this list of negative dynamics paints a very specific picture of how a marital relationship is supposed to look. In fact, any type of coercion is clearly rejected. Sexual unions characterized by fear, strife, and rape are repudiated. It is especially significant that Rabbi Levi recognizes not only physical mistreatment, like rape, but forms of emotional mistreatment, like fear and ostracism. This is an important precedent to the contemporary understanding of consent. Within the context of sexual relationships, coercion is not always a matter of physical force. For example, the inclusion of drunkenness on Rabbi Levi's list emphasizes that it is not possible to offer sexual consent when one is drunk or otherwise mentally compromised. Rabbi Levi here anticipates contemporary insights about consent. While his argument emphasizes the children of such a relationship, we can clearly infer from this list that he recognizes the dangers inherent in these problematic relationships.

Rabbi Levi's far-reaching approach concludes a lengthy discussion about appropriate sexual interactions between husband and wife. Over the course of the extended Talmudic debate, there is a clear progression away from dominance and coercion and towards equality and consent, as we see in this thoughtful list from Rabbi Levi. The Talmud is moving us in a very clear direction.

## DISCUSSION QUESTIONS

A large body of research has been dedicated in the last decades to studying Adverse Childhood Experiences (ACE). Studies have shown that experiencing, or merely being exposed to, abusive or otherwise unhealthy behaviors can cause profound lifelong effects on children's mental and physical health.

1. How does Rabbi Levi's connection of parental behavior to the rebellious child parallel our current understanding of childhood adversity and emotional safety?
2. The idea that a child can be labeled "rebellious" because of relationships over which they had no control is problematic. Do you find this text challenging or helpful in considering the long-term consequences of intimate partner violence?

## CONCLUSION

In different ways, our two texts highlight the importance of consent in any holy relationship. The midrash on Shabbat 88a focuses on the relationship between God and Israel in exploring the theological problem of coercive revelation. The discussion in Nedarim 20b focuses on human sexual relationships, outlining a move from dominance to consent within the marital bedroom. In both cases, the rabbis discussing the situations raise questions about the nature of consent and encourage us to think more deeply about it. Both Talmudic texts highlight the tension between power imbalances and sacred relationships.

As these texts indicate, consent is a foundational feature of the Jewish People's commitment to God and also of the Rabbinic concept of marriage. As Rava demonstrates through his reading of the book of Esther, the Jewish People could not be coerced to receive the Torah, and any such coercion would have meant that the Jewish people didn't full-heartedly accept the Torah. Seeing the rabbis grapple with this topic reminds us how deep the roots of coercion and consent are in our tradition. These ethical questions are not relevant merely in our own time but throughout time.

Similarly, the rabbis point out that a wife may not be coerced to engage in sexual behaviors to which she does not grant her own assent. Connecting these two sets of texts helps us identify parallels between the Jewish people's actions as an entire community and the consent of each individual spouse in a marriage. Both of these — the communal and the individual — are necessary to the healthy functioning of a society. Through all of these texts, therefore, we see the rabbis as spiritually and emotionally in sync with many of the claims of the 21st century. Their insight that the ideal relationship with God, as with a spouse, is characterized by mutuality, freedom, and trust conveys profound wisdom about the qualities that make intimate relationships sacred.

## Endnotes

[1] While this kind of relationship is legal in America, individual institutions forbid it. However, in other countries, including Israel, such relationships violate national law.

[2] Translations are by the author based off of Sefaria.

[3] A longer discussion about the rebellious child is beyond the scope of this article. Each of the categories delineated on this list merits its own conversation. This list is being presented here for the limited purpose of demonstrating the importance of consent.

## Appendix

The two appendixes simply contain the complete text and translation without commentary so that they can be studied as a unit.

## Appendix I:

### Bavli, Shabbat 88a

*And they camped underneath the mountain*  
(Exodus 19) Rav Avdimi bar Chama bar Chasa said, "This teaches that the Holy Blessed one hung the mountain over them like a barrel and said to them, 'If you accept the Torah — Good! If not — that will be your burial place.'"

Rav Acha bar Yaakov said, "This is a great challenge [to the authority] of the Torah."

Rava said, "Even so, they re-received her (Torah) in the time of Achashverosh. As it is written *The Jews fulfilled and accepted* (Esther 9) They fulfilled [of their own free will] that which they had already received [against their will].

"וַיִּתְּצוּהָ בְּתַחֲתֵית הָהָר", אָמַר רַב אַבְדִּימִי בַר חָמָא בַר חָסָא: מְלֻמָּד שֶׁכָּפָה הַקָּדוֹשׁ בְּרוּךְ הוּא עֲלֵיהֶם אֶת הָהָר כְּגִיגִית, וְאָמַר לָהֶם: אִם אַתֶּם מְקַבְּלִים הַתּוֹרָה מוּטָב, וְאִם לֹא — שֵׁם תִּהְיֶה קְבוּרַתְכֶם. אָמַר רַב אַחָא בַר יַעֲקֹב: מִכָּאן מוֹדָעָא רַבָּה לְאוֹרֵייתָא. אָמַר רַבָּא: אִף עַל פִּי כֹן הָדוֹר קִבְּלוּהָ בִּימֵי אַחַשְׁוֶרוֹשׁ, דְּכָתִיב: "קִיְּמוּ וְקִבְּלוּ הַיְּהוּדִים" — קִיְּמוּ מֵה שֶׁקִּיְּבְּלוּ כְּבָר.

## Appendix II:

### Bavli, Nedarim 20b

The verse states: "And I will purge out from among you the rebels, and those that transgress against Me"(Ezekiel 20:38). Rabbi Levisaid: These are children of those who have nine traits, who are defective from their conception and from whom rebels and transgressors emerge. The mnemonic for these nine traits is children of the acronym *aleph, samekh, nun, tav, mem, shin, gimmel, ayin, het*

The children of nine traits are as follows: Children of fear [*leima*], i.e., where the wife was afraid of her husband and engaged in sexual intercourse with him out of fear; children of a woman who was raped [*anusa*]; children of a hated woman [*senua*], i.e., a woman who was hated by her husband; children of ostracism [*niddui*], i.e., one of the parents was ostracized by the court; children of substitution [*temura*], i.e., while engaging in intercourse with the woman, the man thought that she was another woman; children of strife [*meriva*], i.e., the parents engaged in intercourse while they were quarreling; children of drunkenness [*shikhrut*], i.e., the parents engaged in intercourse while they were drunk; children of a woman who was divorced in the heart [*gerushat halev*], i.e., the husband had already decided to divorce her when they engaged in intercourse; children of mixture [*irbuveya*], i.e., the man did not know with which woman he was engaging in intercourse; children of a shameless woman [*hatzufa*] who demands of her husband that he engage in intercourse with her.

וּבְרוֹתֵי מִכָּם הַמְרָדִים  
וְהַפּוֹשְׁעִים בִּי אָמַר רַבִּי לִוִּי  
אֵלּוּ בְנֵי תִשְׁעַ מִדּוֹת

בְּנֵי אֵימָה בְּנֵי אָנוּסָה בְּנֵי  
שְׁנוּאָה בְּנֵי נִידוּי בְּנֵי תְמוּרָה  
בְּנֵי מְרִיבָה בְּנֵי שְׂכָרוֹת בְּנֵי  
גְרוּשַׁת הַלֵּב בְּנֵי עֲרֻבוּבָא  
בְּנֵי חֲצוּפָה