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Women and Mitzvot

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שאלה

Are Jewish women responsible for observing the mitzvot from which they have traditionally been exempted?

תשובה

This teshuvah is both retrospective and prospective. It is breathtaking to see the vast advances in the participation of women in the Conservative movement in the past century, especially accelerated in recent decades. Who would have imagined the developments that have occurred since the first declarations and decisions of the Committee on Jewish Law and Standards on the role of women in 1955? At the same time, we must take a prospective view toward the future: how do we envision the spiritual life of the communities we are aspiring to build and nurture? Egalitarianism, the equality of women in the observance of mitzvot, is not just about the participation of women: it is about fostering the fulfillment of mitzvot by all Jews.

I. Reflections on Mitzvot, Spirituality, and Women

רבי חנניה בן עקשיא אומר רצה הקדוש ברוך הוא לזכות את ישראל לפיכך הרבה להם תורה ומצוות שנאמר (ישעיה מ"ב) ה' חפץ למען צדקו יגדיל תורה ויאדיר

Rabbi Hananyah ben Aqashya said: The Holy One, blessed is he, wanted to grant merit to Israel. Therefore, he gave them Torah and mitzvot in abundance, as it is written, "It pleased the Lord for the sake of (Israel's) righteousness to magnify the Torah and make it glorious".(Isaiah 42:21)

m. Makkot 3:16

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

The halakhah develops. In regard to the status of women, the development of halakhah has shown phenomenal creativity and urgency in the adaptation of its sources and principles to the needs of time and place.

Justice Menachem Elon¹

Observing mitzvot is the primary way Jews live a religious life. We express our search for God and our quest to live in holiness through the observance of mitzvot. The mitzvot inspire us by focusing our thoughts and elevating our feelings: they guide us toward behavior imbued with certain values and goals. The observance of mitzvot shapes our actions and sanctifies our behavior. We make ourselves open to the spirit through the act of fulfilling mitzvot.

Women have always been responsible to observe mitzvot, but women were exempted from many ritual mitzvot that men were required to observe. In many (and perhaps most) cases, the exemption of women from a specific mitzvah was extended erroneously to mean that women were forbidden from observing it. Most significantly, women were exempted from the study of Torah and, thereby, played a greatly limited role in the process of transmitting and interpreting Torah.

Throughout the ages, a small number of women sought to fulfill the mitzvot from which women were exempted, and women were educated mostly in domestic matters. However, in the past century, accelerated in recent decades, women have sought to suffuse their lives with greater Torah and more mitzvot. By integrating more mitzvot to their lives, women have enriched themselves by the daily routines of Torah and of seeking God both in public and private. At the same time, cultural attitudes have shifted dramatically in society in general, and doors into business and the professions formerly closed to women are now open. Women participate in public life in ways unimaginable a century or two ago, or even a few decades ago. This is not just a change in external behavior but an intellectual and psychological transformation in how women perceive themselves and are perceived by others. Women are now seen as equal to men, in social status, in political and legal rights, and in intellectual ability by both men and women. A new world-view has resulted in new roles for women.

For many Jewish women, the pathway of observance that Judaism has traditionally assigned to women is no longer sufficient. They want to observe more mitzvot and participate equally in the public life of Jewish liturgy and community. They want to study Torah in the same depth and breadth that Jewish men have enjoyed. Jewish women are seeking to grow in their religious lives, in seeking God, in integrating the daily routines of Torah into everyday living, and in availing themselves of a public role in Jewish communal life.

This development has happened in most, if not all, Jewish communities, and the Conservative movement has been at the forefront of this development. Conservative Jews, both lay-people and rabbis, educators and hazzanim, have demonstrated leadership in increasing access to Torah for women. Indeed, they have championed equality in Jewish life. The Conservative movement started educating women, often on an equal or near equal basis with men. In Conservative synagogues, schools, and camps, opening mitzvot to women has led to the implicit assumption that women are equally obligated to observe the mitzvot as men have been and that mitzvot from which women have traditionally been exempted are not only open to them but are

¹ Menachem Elon, *מעמד האישה: משפט ושיפוט, מסורת ותמורה, ערכיה של מדינה יהודית ודמוקרטית* (Tel Aviv: Ha-kibbutz ha-me'uhad, 2005), 17.

required of them.² The Conservative movement has for almost a century moved toward egalitarianism, the equality of women in the observance of mitzvot, but this principle has not yet been articulated clearly by the Committee on Jewish Law and Standards.

An essential concept in Jewish thought is the link between responsibility for the mitzvot and how an individual is esteemed, for being responsible for the mitzvot expresses the high esteem in which those who were responsible for mitzvot were held. While the exemption of women from specific mitzvot never meant that women were forbidden from them, merely allowing women to perform those mitzvot relegates women to a lower status. Those who are not obligated are considered as lesser, even when they observe the same mitzvot as those who are. A rabbinic statement expresses the importance of being obligated:

גדול מצווה ועושה ממי שאינו מצווה ועושה

Greater is the one who is commanded (to observe a mitzvah) and does (it) than the one who is not commanded yet does.

(b. Kiddushin 31a)

Being permitted to perform a mitzvah is not the same as being required to perform a mitzvah, and women want to express their commitment to their lives as Jews by performing mitzvot on an equal basis with men. From a profoundly Jewish perspective, the highest rank and esteem is for those who are required to fulfill mitzvot. By requiring women to observe mitzvot in the same way men are required to, we are putting into effect the principle that women are created in equal status with men.

Egalitarianism, the equality of women in the observance of mitzvot, reflects how our view of Judaism is distinct. We are both traditional and innovative. We adhere to preserving halakhah, and we are creative in the process of preserving it. Women observing more mitzvot is at once both deeply conservative and profoundly innovative. While extending women's observance to include the mitzvot from which they have traditionally been exempted (and often excluded) may seem radical to some, it demonstrates our profound love for tradition: we want more Jews to observe more mitzvot.

We are aware that our tradition has developed historically, and at times there have been dramatic transformations.³ We find ourselves in a period of the reinvention of tradition, and we are seeking to preserve tradition by modifying it. We must apply existing categories to suit new social arrangements and implement principles that have guided Jewish behavior to new circumstances. Establishing the equality of women in the observance of mitzvot expresses our love for Jewish tradition, and it exemplifies how our knowledge of the historical development of our tradition inspires us. We are on a spiritual quest with a modern heart and mind.

² See my essay "Conservative Judaism in the Twenty-first Century," *Judaism* 215/216 (2005): 136-140 and the teshuvah by Rabbi David Fine on women and the minyan, cited in note 76.

³ See Rabbi Elliot N. Dorff, *The Unfolding Tradition: Jewish Law After Sinai* (New York: Aviv Press, 2005); Rabbi Mordecai Waxman, ed., *Tradition and Change: The Development of Conservative Judaism* (New York: The Rabbinical Assembly and the United Synagogue of Conservative Judaism, 1958); Rabbi Daniel Sperber, "Paralysis in Contemporary Halakha?" *Tradition* 36, 3 (2002): 1-13; Rabbi Daniel Schiff, *Abortion in Judaism* (Cambridge: Cambridge University Press, 2002).

II. Principles Informing Why Women Were Not Deemed Responsible For All the Mitzvot

The Category of Time-Bound Positive Mitzvot

The rabbinic text that often serves as the initial entry into the issue of women and mitzvot is m. Kiddushin 1:7:

מצות עשה שהזמן גרמה אנשים חייבין ונשים פטורות וכל מצות עשה שלא הזמן גרמה אחד אנשים ואחד נשים חייבין וכל מצות לא תעשה בין שהזמן גרמה בין שלא הזמן גרמה אחד אנשים ואחד נשים חייבין חוץ מבל תשחית ובל תקיף ובל תטמא למתים:

The observance of all time-bound positive mitzvot is obligatory for men but not for women, and the observance of all positive mitzvot that are not time-bound is obligatory for men and women. The observance of all the negative mitzvot, whether they are time-bound or not,⁴ is incumbent on both men and women, with the exception of “You will not mar (the corners of your beard),” (Lev 19:27) “You shall not round off (the corners of your hair),” (Lev 19:27) and “You shall not become defiled through contact with the dead.” (Lev 21:1)

This mishnah presents the category of being time-bound and positive as the principle that determines whether women are to be exempted from particular mitzvot. These mitzvot are deeds to be actively performed, hence they are termed “positive”, in contrast to mitzvot of refraining from an action, usually termed “negative mitzvot”. These mitzvot are “time-bound” in that they are performed at a certain time of the day, week or year. The characterization of a mitzvah as positive and time-bound is generally considered to be the principle that determines whether women were exempted from that particular mitzvah.

The **time-bound positive mitzvot from which women were exempted** are: reciting the Shema (m. Berachot 3:3; b. Berachot 20a-b), wearing tzitzit and donning tefillin (m. Berachot

⁴ The meaning of the term מצוה שהזמן גרמה, literally “a mitzvah caused by time,” may be a bit puzzling. See Elizabeth Shanks Alexander, “From Whence the Phrase ‘Timebound, Positive Commandments’?”, *Jewish Quarterly Review* 97 (2007), 317 n. 2. Alexander rightly points out that the adjective “positive” should be placed adjacent to the noun “mitzvah” because it is the major qualifier of the noun. (*Gender and Timebound Commandments in Judaism* [New York: Cambridge University Press, 2013], 21) Rabbi Judith Hauptman and Sacha Stern suggest that the usual translation as “positive time-bound mitzvot” is to be understood as mitzvot that will come in the course of a Jew’s life, regardless of the circumstances, because they are determined by the time of day, week or year: they become obligatory by the onset of the proper time for their observance, while the mitzvot that are not “time-bound” are those that a Jew might perform only under special circumstances, if ever. (Rabbi Judith Hauptman, *Rereading the Rabbis: A Woman’s Voice* [Boulder, Colorado: Westview Press, 1998], 226, and Sacha Stern, *Time and Process in Ancient Judaism* [Portland, Oregon: The Littman Library of Jewish Civilization, 2004], 28). Moshe Benovitz offers the translation “time-triggered positive” mitzvot, a more insightful and clear rendering than “time-bound” (“Time-Triggered Positive Mitzvot as Conversation Pieces,” *Hebrew Union College Annual* 78 [2007], 45 n.1), but I will use the more usual English term of “time-bound” since it is more familiar.

3:3; b. Eruvin 85b; b. Kiddushin 33b-34b), residing in a sukkah (m. Sukkah 2:18; b. Sukkah 53a)⁵, taking up the lulav (b. Sukkah 42a), hearing the shofar (b. Rosh ha-Shanah 30a and 33a; b. Eruvin 96b), and counting the omer (Maimonides, M.T., Temidin umusafim, 7:24; Rabbi Avraham Gumbiner, Magen Avraham, O.H. 489:1).⁶ However, there are **time-bound positive mitzvot that were considered incumbent on women**: eating matzah on Passover (b. Pesahim 43b and 91b), drinking the four cups of wine on Passover (b. Pesahim 108a-b), rejoicing on festivals (t. Hagigah 1:4; b. Kiddushin 34a), appearing at the Seventh-Year Assembly (b. Kiddushin 34a), lighting the Hanukkah candles (b. Shabbat 23a), reading the megillah on Purim (b. Megillah 4a; b. Arakhin 3a), reciting kiddush (b. Berakhot 20b),⁷ lighting Shabbat candles (b. Berakhot 20b), reciting the Shemoneh Esreh (b. Menahot 43a)⁸, observing niddah (menstrual

⁵ See Marjorie Lehman's analysis of the puzzle of why women were obligated to eat matzah but not to reside in a sukkah when the former mitzvah was proven by the same proof-text that could have been applied to the latter mitzvah, "The Gendered Rhetoric of Sukkah Observance," *Jewish Quarterly Review* 96 (2006), 309-335.

⁶ It is to be noted that the exemption from the first six mitzvot listed is of tannaitic origin. Women may also have been exempted from the Passover sacrifice and the eating of maror (bitter herbs) on Passover. (t. Pisha 2:22; 8:10; b. Pesahim 91b; y. Pesahim 8:1, 35d) Nahmanides argues that counting the omer is not a time-bound mitzvah because it is triggered by the bringing of the omer, which in turn sets the time for Passover. (Hiddushin on b. Kiddushin 33b)

⁷ Both men and women were obligated to recite kiddush and light Shabbat candles, but social customs have developed in such a way that traditionally in family settings where both genders are present, the male head of the household recites kiddush on behalf of the family and the female head of the household kindles Shabbat candles. This may be so because women generally remained at home on erev Shabbat (and, therefore, were home at the time that the house was prepared for the Sabbath and the candles lit) while men went out to attend the synagogue.

⁸ Halakhic sources disagree over whether the mitzvah of prayer is time-bound or not, and what the requirement for women to pray entails is hotly debated. Mishnah Berakhot 3:3 enjoins women to pray using the word תפלה, usually understood to mean the Shemoneh Esreh. That is clear enough, but it is disputed whether this refers to once a day, twice a day (shaharit and minhah), or three times a day (as well as the extra Shemoneh Esreh for Shabbat and holy days). However, the mitzvah of prayer for women is for private, individual prayer, not communal prayer, that is, prayer as part of a minyan. (It should be noted that praying as part of a minyan for men is strongly recommended, rather than required, by O.H. 90:9, which also states in 106:2 that prayer for women is not a time-bound mitzvah). For a clear presentation of the issues and sources, see Benovitz, "Time-Triggered Positive Commandments as Conversation Pieces," 53 n. 22; Rabbi David Golinkin, *The Status of Women in Jewish Law: Responsa* (Jerusalem: Schechter Institute of Jewish Studies, 2012), 91-123; Blu Greenberg, *On Women and Tradition: A View from Tradition* (Philadelphia: The Jewish Publication Society, 1981), 79-82, 85; Rabbi Judith Hauptman, "Women and Prayer: An Attempt to Dispel Some Fallacies," *Judaism* 42 (1993): 94-103; Hauptman, "Some Thoughts on the Nature of Halakhic Adjudication: Women and Minyan," *Judaism* 42 (1993), 396-413.

separation) (m. Shabbat 2:6), fasting on Yom Kippur⁹, and reciting birkat ha-mazon (m. Berakhot 3:3)¹⁰. Furthermore, rabbinic tradition specifically **exempts women from the obligation to perform specific positive mitzvot that are not time-bound**: women are not obligated to procreate (m. Yevamot 6:6), to study Torah (b. Kiddushin 33b-34b), to circumcise their sons (t. Kiddushin 1:11; b. Kiddushin 29a)¹¹, to redeem their first-born children (b. Kiddushin 33b-34b), to tear their clothing and ruffle their hair if they are infected with scale disease (m. Sotah 3:8), and to present the first fruits offering (m. Bikkurim 1:5)¹². Rabbinic tradition also designated **communal ceremonies from which women were excluded from participation** (although they could view a ceremony). They could not be honored with an aliyah to the Torah.(b. Megillah 47b, 23a)¹³ They could not be counted in the minyan necessary for the recitation of barchu, the reader's repetition of the Shemoneh Esreh, the Kedushah and the Kaddish (m. Megillah 4:3; O.H. 55:1,4), and therefore they could not serve as shlihat tzibbur because only those who are of appropriate social standing and who are obligated could fulfill a mitzvah on behalf of others.¹⁴ They could not be included in a communal birkat ha-mazon.(b. Kiddushin 34a)¹⁵ They could not participate in *simhat beit ha-sho'evah* as well as almost all Temple rituals.(m. Sukkah 2:18; m. Kiddushin 1:8)¹⁶

The exemption of women based on whether a mitzvah is positive and time-bound is problematic:

- First, many mitzvot from which women were exempted do not have to be performed in a narrow window of time. There is, in fact, a very wide window of time in which they can be

⁹ It is debated as to whether fasting is a positive or negative commandment.(b. Yoma 81a; 28a-b; y. Yoma 8:1, 44d)

¹⁰ See b. Berakhot 20b for a discussion of whether this mitzvah is time-bound.

¹¹ The mitzvot of circumcision and redemption of the first-born is incumbent upon the father, unless he is deceased.

¹² Women were obligated to offer their first fruits but were not permitted to recite the first fruits declaration. The season for bringing the first fruits runs from Shavuot until autumn (m. Bikkurim 1.3, 6), and this time frame is not considered restrictive enough to make the presentation a time-bound positive mitzvah.(Tosafot Pesachim 38b s.v. נאכלים)

¹³ It appears that women were originally allowed to have an aliyah to the Torah but then were prohibited due to *kevod ha-tzibbur*, “respect for the congregation”. In a society where women were subordinate, it would infringe on the dignity of the congregation for a women to have such a position. See Golinkin, *The Status of Women in Jewish Law: Responsa*, 154-188; Hauptman, “Women and Prayer,” 99-101.

¹⁴ See m. Rosh Hashanah 3:8 and my discussion of social standing later in this teshuvah.

¹⁵ A woman was required to recite birkat ha-mazon after eating, yet her husband was strongly discouraged from allowing his wife to recite it on his behalf.(m. Berakhot 3:3; b. Berakhot 20b)

¹⁶ Women could serve as a shohet but only with permission of her community, which was rarely granted.(b. Hullin 2a)

fulfilled. Moreover, they can be performed at home, and a number of them require only a slight amount of time to fulfill. The mitzvah of lulav, for example, could be performed at any point in time during the day.¹⁷ Women were exempted as well from hearing the shofar, another mitzvah that could be completed at any point during the day, and were excluded for blowing it on behalf of others.¹⁸ Therefore, it cannot be claimed that the time-bound positive mitzvot from which women were exempted must be performed within a highly limited time frame. In fact, the very opposite is true.

- Second, there were many time-bound positive mitzvot that were incumbent on women, and the abundant exceptions suggest that the principle that women were exempted from mitzvot that are positive and time-bound may not be a prescriptive rule at all. Moreover, the fact that women were exempted from positive mitzvot that are not time-bound suggests that the principle does not even apply to activities that do correspond to its categorization.

- Lastly, it must be also noted that women were put into the same category as minors and slaves with an essential difference¹⁹: minors could grow up and slaves could be emancipated, but women always remained with limited capacity.(b. Bava Kamma 88a; b. Berakhot 47b)²⁰

In response to the problems with the category of time-bound positive mitzvot, a number of scholars have explored the possibility that this rule applies descriptively: it conformed to the social reality (or realities) that prevailed during the classical rabbinic period (the tannaitic and/or amoraic periods) by describing a number of the time-bound positive mitzvot that women were not performing. The principle was directly linked to social reality, formulated to reflect the ways women were behaving. Originally it did not describe all the mitzvot that women did or did not fulfill but only some of them. Only after it was articulated as a description of actual behavior did it become a prescription for behavior.

¹⁷ B. Kiddushin 33b-36a.

¹⁸ T. Rosh Hashanah 2:5; m. Rosh Hashanah 3:8.

¹⁹ See, for example, Catherine Heszer's analysis of the classification of women with minors and slaves in Passover ritual. ("Passover and Social Equality: Women, Slaves and Minors in *Bavli Pesahim*," in *A Feminist Commentary on the Babylonian Talmud: Introduction and Studies*, 91-107)

²⁰ Women also had disabilities in the realm of personal status. Women were not permitted to testify in court (m. Shevuot 4:1; however, it has been argued that since trials cannot be held at night, testifying would in fact be a time-bound positive mitzvah, see m. Sanhedrin 4:1; Tosafot Bava Batra 114a s.v. אבל). Women were not allowed to initiate a divorce. (The rabbis did provide limitations on the circumstances in which a man could divorce a wife [b. Gittin 90a] as well as condition under which a woman could appeal to a rabbinic court to initiate a divorce on her behalf [m. Ketubbot 5:6; b. Ketubbot 77a]. The ketubah issued at the time of marriage also safeguarded her from a hasty divorce because it put a lien against all the husband's property.[b. Ketuvot 82b]. However, women whose husbands refused to extend a get were in difficult circumstances. See Ben-Zion Schereschewsky and Menachem Elon, "Agunah," *Encyclopaedia Judaica* [second edition; Detroit: Macmillan Reference, 2007]). Women did not inherit, either from their father's or mother's estate. (Although there were a number of circumstances in which daughters could inherit, daughters in general did not inherit: see m. Ketubot 4:6; 13:3; m. Bava Batra 8:4; 9:1).

Further analysis of the texts in which this characterization appears reveals a puzzle. The distinction between time-bound and non-time-bound mitzvot is ascribed to the tanna Rabbi Simon:

ויאמר ה' אל משה לאמר דבר אל בני ישראל ואמרת אליהם ועשו להם ציצית, אף הנשים במשמע.
 רבי שמעון פוטר את הנשים מן הציצית מפני שמצות עשה שהזמן גרמה נשים פטורות שזה הכלל
 אמר ר' שמעון כל מצות עשה שהזמן גרמה נהגת באנשים ואינה נהגת בנשים

Speak unto the Israelites and tell them to make tzitzit for themselves. The Holy Scripture includes women. Rabbi Simon excuses women from tzitzit because as a time-bound positive mitzvah, women are exempted. For this was a general rule promulgated by Rabbi Simon: Every time-bound positive mitzvah applies to men and not to women.

(Sifre Numbers 115; cf. b. Men 43a and y. Berakhot 3:3, 6b)

It must be noted that in this passage, the sages rejected Rabbi Simon's principle. While Rabbi Simon used the category as a principle to determine from which mitzvot women were exempted, the classical rabbis used exegesis on verses associated with a particular mitzvah to decide whether women were exempt.²¹ The rabbis rejected Rabbi Simon's use of an abstract typological determinant in favor of case-by-case examination of Scripture.

The category of time-bound positive mitzvot was then associated with other mitzvot, such as sukkah and lulav, and it is to be questioned as to whether women were exempted from these mitzvot as a result of the category being applied as a generative principle or as a result of other means: only ex post facto was this category linked to these mitzvot. Rabbi Simon was the only one who used the characterization of positive and time-bound to determine whether women were exempt from tzitzit in tannaitic material, but in the subsequent history of the category, it became a determinative rule, maintaining and perpetuating specific roles for women. The category was reinterpreted as prescribing and proscribing. However, what is curious about the category of time-bound positive mitzvot is that it appears only in discussions on the exemption of women from mitzvot.²² It is not utilized with regard to mitzvot in general as a legal concept or category.

As a solution to this puzzle, Elizabeth Shanks Alexander argues that the category developed exegetically: the wording that later became the wording of the principle that women are to be exempted from time-bound positive mitzvot developed exegetically for one specific mitzvah.²³ She contends that it was articulated in the midrashic analysis of the biblical passages on tefillin: it was not a generative principle but a descriptive summary of an exegetical exercise, of which we have the traces in Mekhilta de Rabbi Ishmael Bo 17 and Mekhilta de Rabbi Shimon bar

²¹ Rabbi Louis Ginsberg, *Perushim ve-ḥiddushim birushalmi* (New York: The Jewish Theological Seminary, 1941), 2.159-162.

²² Hauptman, *Rereading the Rabbis: A Woman's Voice*, 226.

²³ Alexander, "From Whence the Phrase 'Timebound, Positive Commandments?'," 334-339, and *Gender and Timebound Commandments in Judaism*, 32-41.

Yohai.²⁴ Once tefillin was named as a time-bound positive mitzvah, that act of naming implied that there might be other mitzvot with that characteristic. The act of naming a characteristic suggested that it was a category. Subsequently, other mitzvot from which women had already been exempted were subsumed under that rubric, even though there were abundant exceptions.²⁵

Whether Alexander's proposed origin is correct or not, the Babylonian Talmud is well aware that the category is deeply problematic. The discussion in the Babylonian Talmud on m. Kiddushin 1:7 denies that the classification of a mitzvah being positive and time-bound would be the reason that women would not perform it:

כל מצות עשה שהזמן גרמא וכו'. ת"ר: איזוהי מצות עשה שהזמן גרמא? סוכה, ולולב, שופר, וציצית, ותפילין; ואיזוהי מצות עשה שלא הזמן גרמא? מזוזה, מעקה, אבידה, ושילוח הקן. וכללא הוא? הרי מצה, שמחה, הקהל, דמצות עשה שהזמן גרמא, ונשים חייבות! ותו, והרי תלמוד תורה, פריה ורביה, ופדיון הבן, דלאו מצות עשה שהזמן גרמא הוא, ונשים פטורות! אמר רבי יוחנן: אין למדין מן הכללות ואפילו במקום שנאמר בו חוץ

"All time-bound positive mitzvot..." Our rabbis taught: Which are the time-bound positive mitzvot? Sukkah, lulav, shofar, tzitzit, and tefillin. And what are affirmative precepts not limited to time? Mezuzah, installing a parapet on a flat roof, returning lost property, and the shoeing of a bird away from a nest. Now, is this a general principle? But matzah, rejoicing on Festivals, and the Seventh-Year Assembly, are time-bound positive mitzvot that are incumbent upon women. Furthermore, study of the Torah, procreation, and the redemption of the firstborn, are not time-bound positive mitzvot, and yet women are exempt. Rabbi Yohanan answered: We cannot learn from general principles, even where exceptions are stated....

(b. Kiddushin 33b-34a)

The Babylonian Talmud acknowledges that this category does not hold up well and that the distinction is not a determinative principle. Women are required to observe a number of time-

²⁴ Alexander argues that the fact that this rule is not cited in Mekhilta de Rabbi Ishmael but only in Mekhilta de Rabbi Shimon bar Yohai (J.N. Epstein and E.Z. Melamed [third edition; Jerusalem: Hillel Press, 1979], 41; W. David Nelson [Philadelphia: The Jewish Publication Society, 2006], 72-73) indicates that it was rejected by the rabbis because they resisted the generalization and that it was Rabbi Shimon who transformed the category of time-bound positive mitzvot from a description of a legal phenomenon to a determinative principle ("From Whence the Phrase," 339-342).

²⁵ Ironically, later amoraic sources sever the link between tefillin and the category of time-bound positive mitzvot: the Babylonian Talmud reverses the tradition that tefillin were time-bound mitzvot. (b. Kiddushin 34a-35a) In so doing, the category of time-bound positive mitzvot became independent of tefillin. See Alexander, "How *Tefillin* Became a *Non-Timebound*, Positive Commandment: The *Yerushalmi* and *Bavli* on m. *Eruvin* 10:1," in *A Feminist Commentary on the Babylonian Talmud: Introduction and Studies* (ed. Tal Ilan; Tamara Or; Dorothea M. Salzer; Christiane Steuer; Irina Wandrey; Tübingen: Mohr Siebeck, 2007), 61-89 (reprinted in *Gender and Timebound Commandments in Judaism*, 67-93).

bound positive mitzvot as well as being exempted from a number of non-time-bound positive mitzvot.

The recognition that the classification is not determinative is recognized in the later halakhic analysis as well. Rambam, for example, avers in his commentary on the mishnaic passage:

ומצות עשה שלא הזמן גרמה הן המצות שחובתן חלה בכל הזמנים כגון המזוזה והמעקה והצדקה, וכבר ידעת שכלל הוא אצלינו אין למדים מן הכללות, ואמרו כל רוצה לומר על הרוב, אבל מצות עשה שהנשים חייבות ומה שאינן חייבות בכל הקפן אין להן כלל אלא נמסרים על פה והם דברים מקובלים.

In truth, those positive commandments that are obligatory for women and those that are not is a matter determined not by any general rule but rather is (a matter) transmitted orally as one of those matters handed down by tradition.

(Commentary on m. Kiddushin 1:7)

The distinction was an after-the-fact rule, not a predictive principle. What, then, caused women to be exempted from certain mitzvot if the reason was not because they were time-bound positive mitzvot?

If the Category of Time-Bound Positive Mitzvot was Not a Generative Principle, Why were Women Exempted from Certain Mitzvot?

Rabbi Judith Hauptman argues that another reason lies behind the exemption of women from mitzvot.²⁶ The locus classicus of the text mentioning time-bound positive mitzvot, m. Kiddushin 1:7, begins with the articulation of another distinction:

כל מצות הבן על האב אנשים חייבין ונשים פטורות
וכל מצות האב על הבן אחד אנשים ואחד נשים חייבין

(With regard to) all the obligations of the son to the father, men are obligated but women are exempt.

(With regard to) all the obligations of the father to the son, both men and women are obligated.

The parallel passage in the Tosefta clarifies the telegraphic style of the Mishnah²⁷:

²⁶ Hauptman, *Rereading the Rabbis*, 222.

²⁷ The mishnah in the Palestinian Talmud and in a number of manuscripts of the Mishnah reads,
כל מצות האב על הבן אנשים חייבין ונשים פטורות
וכל מצות הבן על האב אחד אנשים ואחד נשים חייבין

This follows the Tosefta's understanding of the Mishnah, and despite the reversed terminology, both the Tosefta and the Babylonian Talmud understand it with the same meaning as in the Palestinian Talmud and the Tosefta. See Alexander, *Gender and Timebound Commandments in Judaism*, 27 nn. 6-7, and Hauptman, *Rereading the Rabbis*, 238 n. 2.

אי זו היא מצות הבן על האב מאכיל ומשקה מלביש ומכסה מוציא ומכניס ומרחיץ את פניו ידיו ורגליו אחד האיש ואחד האשה אלא שהאיש ספיקה בו לעשות והאשה אין ספק בידה לעשות מפני שיש רשות אחרים עליה אי זו היא מצות האב על הבן למול ולפדותו וללמדו תורה וללמדו אומנות ולהשיאו אשה ויש אומ' אף להשיטו בנהר

What is the obligation of the son to the father? He must feed him, give him drink, clothe him, help him out and in, and wash his face, hands and feet. (It should be that) the same obligation applies to both men and women, except that a man has the means at his disposal (to perform these tasks) but a woman does not because she is under the control of others (and therefore she is exempted).

What is the obligation of the father to the son? To circumcise him, redeem him (from a kohen if the son is the first born of his mother), teach him Torah, teach him a trade, and marry him off. And some say, to (teach him to) swim in the river.

The Tosefta explains that a woman is exempt from caring for a parent because she and her financial resources are under the jurisdiction of others (presumably her husband). By offering this rationale, the Tosefta links her exemption from the mitzvot to her subordinate status: her time, activity, and financial resources are not in her power. A woman does not control her own resources.

In the same vein, the Babylonian Talmud in its analysis of the Tosefta provides an amoraic opinion about the opposite case, one in which a woman is *not* exempted from her obligation to care for her parents:

אמר רב אידי בר אבין אמר רב: נתגרשה, שניהם שווים

Said Rav Iddi ben Abin, said Rav: If she gets divorced, the two of them (the son and the daughter) are equal.

(b. Kiddushin 30b)

A married woman is exempted from caring for her parents, but a divorcee, who is no longer under the control of a man, is obligated. A woman who has independent status and is not subordinate to a husband does have the obligation.

The Jerusalem Talmud affirms this analysis. In fact, rather than presenting this particular rule as the opinion of a single amora, the Jerusalem Talmud integrates it into the ruling as a whole:

אחד האיש ואחד האשה אלא שהאיש ספיקה בידו האשה אינה ספיקה בידה מפני שיש רשות לאחרים עליה נתאלמנה או נתגרשה כמי שהיא ספיקה בידה לעשות

The same goes for a man, the same goes for a woman. A man has financial resources at his disposal but a woman does not have means at her disposal because she is under the power of others. If she is widowed or divorced, she becomes like one who has means.

(y. Kiddushin 1:6, 61a)

The Jerusalem Talmud affirms what the other classical rabbinic sources hold: a woman who is not under the control of a man does have the obligation to fulfill the mitzvah of caring for her parents. If she has the same independent status as a man, she has an equal obligation.

This principle, that a woman under the authority of a man is exempt from certain mitzvot, exemplified in the issue of responsibility of parents and children, is implicitly connected to what follows in the Mishnah, the obligation of men and women for ritual mitzvot. As we have seen, the principle articulated in regard to this second set of mitzvot is that women are exempt from time-bound positive ones. The Mishnah does not explain why this is so, but the juxtaposition of these two sets of mitzvot, the mitzvot of responsibility of parents and children and the mitzvot that are time-bound, implies that the reason for women's exemption is that women are under the authority of another.

There is further evidence for this reason. Hauptman argues that the placement of rules about women's exemption from mitzvot in the Mishnah immediately after the statutes on marriage in tractate Kiddushin implicitly suggests that once a woman marries, her time and her money become her husband's: she loses the independence necessary to be independently obligated.²⁸ A woman is exempted from the mitzvot that a Jew would be obligated to observe in the normal course of the day, week, and year because the essential ritual acts should be performed only by those of the highest social standing, those who are independent, not subordinate to anyone else. Only males were thought to be fitting candidates to serve and honor God in the most fit way. The acts of those who are subordinate to an earthly master honor God in a lesser way.

It must be emphasized that the subordination of women is about their social status, about their place in the hierarchy of family and society, not about the demands on their time by domestic duties. This is also reflected in the socio-economic reality of the rabbinic period. Married women lived with their husband's family, and most likely the women in the household shared domestic responsibilities. At the very least, women could have requested, or even demanded, assistance from the other women in the household, such as their mother-in-law, sister-in-law, or children. A woman did not have to fulfill her domestic responsibilities on her own. Second, the routine of daily life could be time-consuming and onerous for both men and women. If a couple did not have servants, the chores and requirements of earning a living sufficient for the daily needs of food and shelter were very time-consuming. Both men and women were hard-pressed to fulfill ritual mitzvot if they lacked servants to assist them. The mitzvah that arguably takes up the most time is that of the daily recitation of the Shemoneh Esreh, the eighteen petitionary prayers that had to be recited two or three times daily, and it was obligatory on men and, most likely, also on women.(m. Berakhot 3:3)²⁹ It must be emphasized that the subordination of women did not mean that women were confined to the house concealed from strange men while raising their children.³⁰ The houses of the tannaitic period, when the category of time-bound positive mitzvot developed,

²⁸ Hauptman, *Rereading the Rabbis*, 225-227.

²⁹ See footnote 8.

³⁰ See Tal Ilan, "Introduction," in *A Feminist Commentary on the Babylonian Talmud: Introduction and Studies* (ed. Tal Ilan; Tamara Or; Dorothea M. Salzer; Christiane Steuer; Irina Wandrey; Tübingen: Mohr Siebeck, 2007), 5-6.

were more open and public than the homes of today.³¹ The subordination of women was about their social status.

Our study of the sources leads us to two conclusions about women and mitzvot in the perspective of the tannaim and amoraim: 1) the characterization of mitzvot as positive and time-bound was not a generative principle that determined whether women were exempted from a particular mitzvah; and 2) women were exempted from many, but not all, obligations because they generally had a subordinate role, and the subordination of women was the reason for women's exemption from certain mitzvot. Yet even though the rabbis exempted women because of their subordinate status, it is clear at the same time that the tendency of rabbinic literature after the Mishnah is to extend the obligation of a number of mitzvot to women.³² In the Babylonian Talmud, the obligations of women were extended with practical consequences: one rabbi, Joshua ben Levi, is credited with requiring women to read the megillah on Purim (b. Megillah 4a and b. Arakhin 3a), drink the four cups of wine during the Passover seder (b. Pesahim 108a-b), and light the Hanukkah candles (b. Shabbat 23a), because women were saved by the divine act that each holy day commemorates. Women were obligated to recite Kiddush and observe the ritual of Shabbat as they were bound to observe the restrictions of Shabbat. (b. Berakhot 20b) Women were required to eat matzah on Passover (b. Pesahim 43b, 91b).³³

³¹ Cynthia M. Baker, *Rebuilding the House of Israel: Architectures of Gender in Jewish Antiquity* (Stanford: Stanford University Press, 2002).

³² This is so whatever the case may be historically in the transition from late Second Temple practice to early rabbinic stipulations. How the loss of the Second Temple affected the role of women in ritual is hotly debated. Hauptman argues that the rabbis radically altered the role of women by no longer forbidding them from participating in ritual, even though they were not prepared to obligate them fully. Just as the rabbis created and transformed many ritual practice from being Temple centered to based in the personal piety of individuals in their homes, the rabbis sought to allow women greater participation. Tal Ilan argues that women participated in a far greater extent than generally acknowledged, in prayer and the bringing of sacrifices, and that the rabbis initially, as reflected in the Mishnah, sought to restrict their participation. (Tal Ilan, *Jewish Women in Greco-Roman Palestine* [Peabody: Hendrickson, 1986]) See Rabbi Susan Grossman, "Women in the Jerusalem Temple," in *Daughters of the King: Women and the Synagogue* (Philadelphia: Jewish Publication Society, 1992), 20-37.

It also must be note that it is not clear whether we can accurately reconstruct what actually happened historically. Are rabbinic stipulations descriptive, that is, reflecting what actually was occurring, or prescriptive, that is, prescribing and proscribing what the rabbis wanted to occur? To what extent did the tannaitic rabbis in Eretz Yisrael or the amoraic rabbis, either in Babylonia or Eretz Yisrael, have influence over the synagogue and Jewish society?

³³ Women were allowed, but not required, to eat maror and the pesah offering, even if eating the pesah offering is anachronism in a time when the Temple no longer stood, according to t. Pisha 2:22. Some have argued that the Tosefta on Pesahim reflects material earlier than the Mishnah. See Rabbi Shamma Friedman, "The Primacy of Tosefta to Mishnah in Synoptic Parallels," in H. Fox and T. Meacham, eds., *Introducing Tosefta: Textual, Intratextual and Intertextual Studies* (New York: Ktav, 1999), 99-121; Friedman, *Tosefta atiqta pesah rishon* (Ramat-Gan: Bar-Ilan University Press); Rabbi Judith Hauptman, "Mishnah as a Response to Tosefta," in S. Cohen, ed., *The Synoptic Problem in Rabbinic Literature* (Providence: Brown Judaic Studies, 2000), 13-34; Joshua Kulp, "The Origins of the Seder and Haggadah," *Currents in Biblical Research* 4.1

However, women could not fulfill the responsibilities of men to perform specific mitzvot. Two principles were at work in denying women the ability to fulfill certain mitzvot for others. The first is that an individual who is not obligated for a specific mitzvah cannot satisfy the obligation of another individual who is held responsible for a specific mitzvah. (m. Rosh Hashanah 3:8) But even when women were held responsible for a specific mitzvah, they still could not act on behalf of men. Women, for example, were required to recite birkat ha-mazon, but they were still excluded from being part of the group of three who recite birkat ha-mazon together with zimmun. (m. Berakhot 7:2) Why was this so? Rabbinic sources suggest that social standing matters and that those of higher social standing would lose their dignity if some of lower social standing functioned on their behalf. In the case of the public reading of Scripture:

קטן מתרגם על ידי גדול אבל אין כבודו שיתרגם גדול על ידי קטן

A minor may translate for an adult (who is chanting from Scripture in public) but it is beneath his dignity for an adult to translate for a minor.

(t. Megillah 3:21)

The reader's social status matters: a woman or a minor is eligible technically but nonetheless cannot represent the congregation, and to do so would infringe on the dignity of the congregation. A woman could not fulfill the obligation of a man because she had a lower social status.

Women were allowed to be only spectators at public rituals and could not fulfill those public rituals on behalf of men. There were, however, certain domestic mitzvot for which women were given responsibility.

Cases in Which Women were Given Responsibility for Mitzvot

Traditionally, three mitzvot were considered special to women: the separation of hallah from dough, the menstrual separation, and the lighting of Shabbat candles. (m. Shabbat 2:6)³⁴ Jewish women also observed rituals from which they were exempted, and the performance of many mitzvot was generally permitted on a voluntary basis.³⁵ It must be noted, though, that

(2005), 125-128.

³⁴ See Chava Weissler, "The Traditional Piety of Ashkenazic Women," in *Jewish Spirituality: From the Sixteenth Century to the Present* (ed. Arthur Green; New York: Crossroad, 1997), 245-275.

³⁵ Shofar: O.H. 589:4, 6; Rabbi Moshe Isserles, S.A., O.H. 589:6; Rabbi Hayyim Yosef David Azoulai, Birkei Yosef, O.H. 654:2, and Yosef Ometz, number 82. Lulav: Azoulai, Birkei Yosef, O.H. 654.2, and Yosef Ometz, number 82. Sukkah: Rabbi Avraham ben David of Posquieres on M.T. Hilkhot Shofar, Sukkah ve-Lulav, 6:13. The fast of the first-born before Passover: O.H. 470:1; Rabbi Yosef Karo, Beit Yosef, O.H. 470. Counting the omer: Rabbi Avraham Gumbiner, Magen Avraham O.H. 489.1; Birkei Yosef, O.H. 489.22; Rabbi Akiva Eiger, Teshuvot, appendix to number 1. Tzitzit: Sefer Maharil, p. 82. Tefillin: Yam shel Shlomo, Qiddushin 1, 64; Levush, O.H. 17:2. See Fishman, "A Kabbalistic Perspective on Gender-Specific Commandments," 209-211; Golinkin, *The Status of Women in Jewish Law: Responsa*, 51-76; Rabbi Judith Hauptman,

women's fulfillment of the mitzvot from which they were exempted did ebb and flow through the centuries.³⁶

Women were charged with responsibility for certain domestic mitzvot, mitzvot whose breach incurred serious consequences for the members of the household, including the (male) head of the household.³⁷ What is revealing about these duties is that women were considered sufficiently responsible and capable to ensure the fulfillment of these crucial mitzvot. Furthermore, these mitzvot required knowledge and perhaps formal study of pertinent halakhic details in order for them to be performed properly.

Women were given responsibility for separating hallah from dough. This mitzvah was not solely a duty for women. The use of the masculine singular for the subject in most of the mishnaic tractate dealing with the issue demonstrates that both men and women fulfilled this mitzvah: men served as professional bakers, and the Mishnah does mention dough prepared by herdsmen. (m. Hallah 1.8) But women were charged with the mitzvah of separating hallah from dough for bread baked at home, even though this mitzvah for bread baked outside the home was fulfilled by men.

Women were given the responsibility for the preparation of matzah, and despite the seriousness of the preparations for Passover, they were not supervised by men.³⁸ Women were deemed capable of fulfilling this crucial duty. The evidence for this is found both in the Mishnah and the Babylonian Talmud, and while the sources in Mishnah may be seen as theoretical -- it does include rules for the Jerusalem Temple long after it was destroyed -- the passages in the Babylonian Talmud preserve historical evidence that women were charged with fulfilling the detailed and rigorous preparations for baking matzah and even attended public lectures on the subject. (b. Pesahim 48b; 42a).

The Mishnah charges the (male) head of the household with insuring that food kept warm on the Sabbath was achieved without violating the Sabbath rules. The evidence of the Talmuds, however, reveals that women took care of this task.³⁹ The references to women knowing the many details on keeping food warm on the Sabbath demonstrates that they were educated in halakhic matters and perhaps were even learned entire chapters of mishnah.⁴⁰

The tannaim and amoraim gave women responsibility for ritual tasks that took place in the home without any concern for any lack of knowledge, reliability, or intellect on the part of women. They assumed that women had the intellectual and psychological capabilities to perform

,"הדבר מסור לנשים" קיום מצוות של מצוות עשה שהזמן גרמן על ידי נשים" *Proceedings of the Eleventh World Congress of Jewish Studies, Jerusalem, June 22-29, 1993* (Jerusalem: The World Union of Jewish Studies, 1994), 161-168.

³⁶ See the entry, "Woman," in the 2006 edition of *Encyclopaedia Judaica*, passim. (It is insightful and revealing to compare the 2006 entry to the version in the original 1972 edition of the encyclopedia).

³⁷ Rabbi Judith Hauptman, "הדבר מסור לנשים" (ירושלמי פסחים פרק א הלכה ד): נשים וטקסי דת ביתיים", *Sidra* 24-25 (2010), 83-109.

³⁸ M. Pesahim 3.3-4; Hauptman, "הדבר מסור לנשים", 86-89.

³⁹ B. Shabbat 38b; y. Shabbat 4:1; 6d; 3:1, 5c-d; y. Beitzah 5:1; 62d.

⁴⁰ Hauptman, "הדבר מסור לנשים", 106, 108.

these domestic mitzvot, and the rabbis did charge women with ritual responsibility for others inside the home. Women were the ones in the household responsible for separating hallah from bread, preparing matzah, and keeping food warm on the Sabbath without violating the Sabbath. They may have had formal training in these mitzvot and/or may have attended public lectures on particular mitzvot. At the same time, women did not serve in public ritual roles, nor were they required to perform the mitzvot to be performed by those of highest social standing.⁴¹

To sum up this section, the characteristics of a mitzvah being time-bound and positive did not originate as a category prescribing whether women were exempted from it. Rather, the classification originated for exegetical reasons, and only afterwards was it conceived to be a prescriptive category. However, it was a problematic category because of the many exceptions to it. Rather, women were exempted from certain mitzvot because they, along with slaves, were subordinate to others and were not of the social standing required to perform certain mitzvot. The rabbis did assume that women had the intellectual and psychological capabilities to fulfill a number of domestic mitzvot on behalf of their household, mitzvot whose breach incurred serious consequences for the household, including the (male) head of the household.

III. Later Reasoning About the Category of Time-Bound Positive Mitzvot

Medieval and modern rabbis and Jewish thinkers assumed that the category of time-bound positive mitzvot was a determinative principle and offered reasons for women's exemption. Let a few examples suffice.

Rabbi David Abudraham (14th century, Spain) argues that women were freed from time-bound positive mitzvot because they needed to take care of their husbands:

והטעם שנפטרו הנשים מהמצות עשה שהזמן גרמא לפי שהאשה משועבדת לבעלה לעשות צרכיו. ואם היתה מחוייבת במצות עשה שהזמן גרמא אפשר שבשעת עשיית המצוה יצוה אותה הבעל לעשות מצותו ואם תעשה מצות הבורא ותניח מצותו אוי לה מבעלה ואם תעשה מצותו ותניח מצות הבורא אוי לה מיוצרה לפיכך פטרה הבורא ממצותיו כדי להיות לה שלום עם בעלה.

The reason women were excused from time-bound mitzvot was because a woman is subject to her husband to attend to his needs. Were she under obligation to carry out the time-bound positive mitzvot, it might happen that while in the process of performing one of them, her husband orders her to do his bidding. Were she then to persist in doing the mitzvah of the Creator and neglect her husband, woe to her on account of her husband. However, were she to do his bidding and drop the mitzvah of her Creator, woe to her on account of her Creator. Therefore the Creator excused her from the mitzvot so that she will have peace with her husband.⁴²

⁴¹ Ironically, the labor of women was perceived to be necessary to provide sustenance for men to be fully engaged in the study of Torah. See Rabbi Gail Labovitz, "The Scholarly Life -- The Laboring Wife: Gender, Torah and the Family Economy in Rabbinic Culture," *Nashim* 13 (2007), 8-48.

⁴² Sefer Abudraham, shaar 3, Birkat HaMitzvot.

Abudraham holds that it was the individual woman's subordination to her husband that caused her to be exempt. His reasoning overlaps with what we have determined to be the reason why women were exempted from certain mitzvot, that women were under the authority of men and therefore they were exempted from fulfilling mitzvot that were essential ritual acts to be performed only by those of highest social standing, those who were independent and not subordinate to anyone. The difference between Abudraham and what we hold is that Abudraham focuses on an individual woman's subordination to her husband, while we emphasize that it was the subordination of women as an entire group, as a class in society, that caused their exemption.

Abudraham's claim that women must drop everything to attend to their husband's needs may have been satisfactory in the past when women had subservient status. It is unacceptable that such a consideration would apply to current society when women are now seen as equal to men in legal and political rights, in social status, and in intellectual ability, and when women participate in public life on an equal (or near-equal) basis with men.

In fact, it may be that one of the distinguished rabbis of the 19th century already recognized the impossibility of defending a subservience theory like Abudraham's and devised an argument more palatable to modern sensitivities about women. Rabbi Samson Raphael Hirsch (1808-1888, Germany) contends that women are more spiritual and that since women were less involved in business and the professions, they did not need to have as many periodic infusions of religious inspiration as men, whose occupations made them more subject to the snares of dishonesty and fraud:

The Torah did not impose those mitzvot on women because it did not consider women in need of them. All time-bound positive mitzvot are meant by symbolic procedures to bring certain facts, principles, ideas, and resolutions fresh to our minds from time to time in order to spur us on and to fortify us to realize them and keep them. God's Torah takes it for granted that our women have greater fervor and more faithful enthusiasm for their God-serving calling (taking care of the home) and that their calling runs less danger in their case than in that of men from the temptations which occur in the course of business and professional life. Accordingly, it does not find necessary to give women those repeated goading reminders to remain true to their calling and warnings against weakness in their business lives.⁴³

Hirsch contends that women were on a higher spiritual plane than men for two reasons: 1) their natural disposition of greater spirituality; and 2) they were less involved in commerce, politics, and life outside the home. It is debatable whether women were, or are, more spiritual, and if they are, should they not perform the mitzvot to inspire others, especially those who are less spiritual (in Hirsch's opinion, men), to a higher spiritual plane? Moreover, Hirsch introduces an essentialism about gender, that women are inherently more spiritual, that is lacking in tannaitic and amoraic sources and that fails to explain why slaves were exempted. Hirsch's second reason does not work in modern times: as the role of women has changed and they have become more involved in public

⁴³ Torah Commentary to Lev 23:43. The original German edition is slightly different from the Hebrew translation.

life, commerce, and politics, they too require the daily infusions of ritual that Hirsch argued are necessary to prevent men from lapsing into sin.

Hirsch and Abudraham illustrate the tendencies of traditional scholars,⁴⁴ and a number of contemporary scholars and rabbis have transformed the reasoning for the exemption of women to one less offensive to contemporary sensitivities. The historian Shmuel Safrai, for example, holds that the reason for the exemption of women was that fulfilling time-bound positive mitzvot interfered with a woman's domestic responsibilities in caring for children and managing a home.⁴⁵ Being fully occupied with raising children as a reason for the exemption of women from time-bound positive mitzvot is a modern interpretation, more palatable to modern sensitivities, than being at the beck and call of a husband.

The historian of medieval Jewish history, Avraham Grossman, highlights a significant consequence of women's exemption in his study of Jewish women in the Middle Ages.⁴⁶ He argues that it had a great impact on how women were perceived by the communities in which they lived and that, furthermore, it had harmful consequences on women's self-image, on how they perceived themselves. A Jewish community perceived itself to be a holy congregation, and those who participated in religious life were esteemed. Moreover, the synagogue was the most important institution not just because of its position in the religious life of a community but also because it served as the meeting place for the members of a community to discuss matters of communal concern. Grossman notes that women's exemption leads to the perception that they were inferior, pointing to evidence such as the halakhic-philosophical tract of Rabbi David ibn Shushan inquiring whether women could enjoy an afterlife. Ibn Shushan ponders the question of whether women's souls might not survive after death since women did not perform a large number of mitzvot.⁴⁷ He comes to the conclusion that since women help their husbands and enable them to engage in mitzvot, they could enjoy the afterlife.

Grossman surveys Jewish literature from the Middle Ages to the beginning of the modern period and demonstrates that it presents a typical image for women: they are portrayed as submissive and obedient to their husbands' bidding. They are to avoid dominating their husbands and are to treat their husbands as ruler and master of the home. (Husbands are also enjoined not to subjugate their wives overly much). This is not to say that Jewish women always adopted these characteristics: Jewish women, for example, in Egypt persisted in a "mikveh rebellion" in the late 12th century despite Maimonides' best

⁴⁴ Rabbi Shlomo Goren discusses other traditional approaches in "נשים במצוות עשה שהזמן גרמן", *Mahanayim* (1965), 10-16.

⁴⁵ Safrai, "מחויבותן של נשים במצוות במשנתם של התנאים", *Bar-Ilan Annual for Jewish Studies and Humanities* (בר-אילן: ספר השנה למדעי יהדות של אוניברסיטת בר-אילן), 26-27 (1995), 227-236.

⁴⁶ Avraham Grossman, חסידות ומורדות: נשים יהודיות באירופה בימי הביניים (Jerusalem: Merkaz Zalman Shazar, 2001), 304. English version: *Pious and Rebellious: Jewish Women in Medieval Europe* (trans. Jonathan Chipman: Waltham: Brandeis University Press, 2004), 174. The English version of this book is a greatly reduced version of the Hebrew volume without any of the quoted sources.

⁴⁷ Grossman, חסידות ומורדות, 53.

efforts in pressuring them to immerse themselves.⁴⁸ Jewish women in Christian Europe in the high Middle Ages often ran the family business, whether trading or money-lending, because their husbands were absent from home for long periods during commercial journeys.

Even in traditional sources, there was some chafing against the exclusion of women from mitzvot. The 14th or 15th century mystical text *Sefer ha-Kanah* contends against the logical inconsistencies in rabbinic reasoning, most prominently on the role of women in ritual.⁴⁹ The writer, using the form of a dialogue between student/grandson and teacher/grandfather, has the student/grandson wax eloquent against injustice:

השומע דבריהם עד אלהים ילך קולו ושאלו להקב"ה למה ברא האשה הענייה הזאת שאין לה לא שכר ולא עונש אחר שפטורה ממצות מצות כגון שהז"ג ובאלו המצות שהן פטורין אין שכר בעשייתן ולא עונש בביטולן כענין גדול המצווה וקב"ה חייבה בתלמוד תורה השקול כנגד כל המצות. וחז"ל פטרוה בעבור שמצאו מלת בניכם בתלמוד תורה ולא אמרו שהיא מצות עשה שלא הזמן גרמא ונשים חייבות ולא די להם זה אלא שהקישו תפילין לתלמוד תורה ופטרוה מתפילין ואחר כך עשו תפילין בניין אב לכל מצות עשה שהזמן גרמא ואמרו דפטורות ובלאו הכי היו חייבות ואמאי פטורות מתלמוד תורה והכתיב כי הוא חייך ואורך ימיך וכתוב אורך ימים בימינכם בשמאלם עושר וכבוד ואמרו כל מקום שתלו השכר באריכת ימים נשים חייבות משום דנשים בעלי חיים נינהו כגברי מה תאמר משום דכתיב בניכם מזה תוכיח שעליה אמר הכתוב למען ירבו ימיכם וימי בניכם וחייבה האשה משום גברי בעי חיי נשי לא בעי חיי ומבניכם מה מצינו בן הנאמר נבי יבום הבת בכלל....לא חשו הכא נמי לא שנא אף כל מקום שנאמר בן או בני כי בן ובני חד סוּא ובנותיכם בכלל בניכם. והקשה שבכולן לא די לה לענייה שהשפילה עד לארץ אחר שפטרום ממצות המלך אלא שהקשוה לעבד שאמרו כל מצוה שהאשה חייבת עבד נמי חייב ולמען השם אמור לי ר' מה. טיבו של העבד עם האשה שהאשה בת חורין זרע ישראל

Oh that the question might be submitted before the Holy One blessed be he? Why did he create this pitiful creature, who has no reward or punishment, having been deprived of mitzvot that are time-bound so that, as one uncommanded, she earns neither reward for observing them nor punishment for neglecting them. God obligates her to study Torah -- a mitzvah equal to all other mitzvot. But the sages of blessed memory absolve her on the strength of the word "בניכם" (= "your sons") written in connection with Torah study (Deut 30:20), ignoring the rule about women being obligated to keep mitzvot that are not time-bound. Nor is this all, for they then proceed to equate tefillin to Torah study, thereby extended her exemption to tefillin. Next, they make tefillin the prototype for all time-bound positive mitzvot, thereby exempting her from an entire category of mitzvot that

⁴⁸ Grossman, חסידות ומורדות, 185-188.

⁴⁹ Heinrich Graetz remarked that the dialogue's fixation on the issue made it seem like a 19th century German Reform rabbi sermonizing on the emancipation of women.

would have otherwise applied to her. But how can women be exempted from Torah study of which it is written “so that your days and the days of your children may be multiplied” (Deut 11:19); “Long life in her right hand, in her left riches and honor” (Prov 3:16), when the sages themselves asserted that every mitzvah rewarded by a promise of longevity must also pertain to women because women are living beings no less than men (b. Kiddushin 34a)? Do you really think that this argument could be countered by invoking the word “benekhem” (= “your sons”) once narrowly (in verse 19) and once broadly (in verse 21) in a single context? Moreover, when it says “If brothers live together and one of them dies without leaving a בן, ben (= “son”) (Deut 25:5), the sources do not interpret בן, ben, narrowly to mean “son”, not “daughter”... Rather, they do conclude that male or female issue suffices to fulfill levirate marriage....And the hardest of all: it isn't enough that they debased this poor thing by exempting her from the King's commandments. But they compared her to the slave, saying that a slave is obligated in every mitzvah in which a woman is obligated. For God's sake, tell me, teacher, what does a slave have in common with a woman?! For a woman is free...

The grandson/student rails against the injustice done to women by pointing out the illogic of rabbinic interpretation of Torah. Of course, the rhetorical purpose of the grandson/student's words is not to argue that women should fulfill the mitzvot from which they were exempted but rather to demonstrate the problems of rabbinic interpretation in order to promote kabbalistic thought. The grandson/student is soundly refuted by the grandfather/teacher, who responds that, in contrast to the erroneous reasoning in Talmudic sources, the correct purpose of the exclusion of women from ritual is that their participation would result in inauspicious alignments of the *sefirot*.⁵⁰

Jewish thinkers have tried to provide an explanation for why women were exempted from time-bound positive mitzvot. Abudraham argues that women had to attend to the needs of her husband, and if she were required to fulfill the mitzvot from which she was exempted, it would create an impossible conflict for her. Hirsch devises the theory that women are more spiritual and since they are less exposed to the temptations of business and professional life, they are less in need of the inspiration that fulfilling mitzvot provides. Modern scholars and thinkers have reshaped Abudraham's theory to claim that women were exempted in order to allow them to take care of children and manage a home. While the reasoning offered for the exemption of women from time-bound positive mitzvot may have made sense in the past, they do not hold up well in current society. Furthermore, a historian of Jewish history in the Middle Ages points out that the exemption of women from certain mitzvot had a great impact on how women were perceived by the communities in which they lived and that, furthermore, it had harmful consequences on women's self-image, on how they perceived themselves. Medieval Jewish thinkers were not oblivious to this, and in one kabbalistic work, the injustice of women's exemption received an airing.

⁵⁰ See Talya Fishman, “A Kabbalistic Perspective on Gender-Specific Commandments: On the Interplay of Symbols and Society,” *AJS Review* 17 (1992), 199-245.

IV. The Exemption from Mitzvot and the Study of Torah

Inextricably linked with all mitzvot is the mitzvah of talmud Torah, the study of Torah, and even though the mitzvah of Torah study is not a time-bound positive mitzvah, women were still exempted.⁵¹ The study of Torah constituted the central project of rabbinic Judaism in two ways: 1) Torah was transmitted in a family between one generation and the next; and 2) Torah was the focus of communal and spiritual life in rabbinic Judaism as exemplified in the beit midrash, the house of study.⁵² Women were excluded from both.

It is deeply instructive to see how a tannaitic midrash links women's exemption from the family pattern of Torah study to a biblical verse (Deut 11:19):

ולמדתם אותם את בניכם, בניכם ולא בנותיכם דברי רבי יוסי בן עקיבה
מיכן אמרו כשהתינוק מתחיל לדבר אביו מדבר עמו בלשון הקודש ומלמדו תורה ואם אין מדבר עמו
בלשון קודש ואינו מלמדו תורה ראוי לו כאילו קוברו שנאמר ולמדתם אותם את בניכם לדבר בם,
אם למדתם אותם את בניכם למען ירבו ימיכם וימי בניכם, ואם לאו למען יקצרו ימיכם שכך דברי
תורה נדרשים

And teach them (the words of God) to your sons (בניכם) -- your sons and not your daughters. These are the words of Rabbi Yose ben Akiva.

From here they derived that when a son begins to speak, his father should speak to him in the holy tongue and teach him Torah. And if he does not speak to him in the holy tongue and does not teach him Torah, it is considered as if he buried him, for Scripture states, *and teach them to your sons* (בניכם). If you teach them to your sons, then your days and the days of your sons may be prolonged, and if not, then your days (and the days of your children) will be shortened, for thus are the words of the Torah...⁵³

(Sifre Devarim, Ekev, 46)

This understanding of the verse become normative in both Talmuds.

ומנין שאין אחרים מצווין ללמדה? דאמר קרא: ולמדתם אותם את בניכם - ולא בנותיכם

How then do we know that others are not commanded to teach her? — Because it is written: *And teach them to your sons*, but not your daughters.

(b. Kiddushin 29b)

⁵¹ Rabbinic texts specifically link the exemption from positive time-bound mitzvot to the exemption from the study of Torah. (Mekhilta de Rabbi Ishmael, Bo, 17)

⁵² Alexander, *Gender and Timebound Commandments in Judaism*, 178-210.

⁵³ Benovitz reconstructs another line in the passage of Sifre Devarim, a line that would have required daughters to be taught Torah. ("Time-Triggered Positive Commandments," 85-87) There were tannaitic sources that reflect this idea or posit that women had knowledge of tannaitic sources: m. Nedarim 4:2; t. Berakhot 2:12; t. Sotah 7:9; t. Ketubot 4:7. However, as Benovitz notes, the position of Rabbi Yose ben Akiva became normative in the Talmuds and was followed in the later codes of halakhah. (M.T. Talmud Torah, 1:13; Tur and S.A., Y.D., 246.)

נשים מניין ולמדתם אותם את בניכם את בניכם ולא את בנותיכם

In regard to women, (how do we know that they are exempt from the study of Torah)? (Because it is written): *And teach them to your sons*, but not your daughters.

(y. Berakhot 3:3, 6b)

The exemption of women from the mitzvah of studying Torah is based on a reading of Deuteronomy 11:19, a reading that understands the word בניכם to mean “your sons”, not “your children.” This reading is deeply subjective: the possessive suffix used with the noun is a masculine plural, often used as a common plural.⁵⁴ The phrase could easily have been understood as “your children” -- there is nothing in the context that restrict it to “sons” (nor anything in the context that would necessitate the reading “children”). Yet it was obvious to the rabbis that this was the case, that while it was possible to argue that בניכם meant “your children”, it was obvious to the tannaim and amoraim in the context of the society in which they lived that בניכם meant “your sons.”⁵⁵ It simply was not conceivable to them that women were required to study Torah. The rabbis lived in a male-dominated world, where the model in all legal discussions is the adult free Jewish man.⁵⁶ The assumption made that בניכם means “your sons,” not “your children” was obvious, inevitable, and not problematic to the amoraim and tannaim.

It is essential to highlight that the exemption of women from the mitzvah of the study of Torah is not about gender: slaves were exempted from this mitzvah as well.(b. Kethubot 28a) Women and slaves were both exempted because of their place in the social hierarchy. They were subordinate, and as those who were not full members of Jewish society, they were not expected to exercise (and excluded from) full citizenship in the central activity of Jewish life, the interpretation and teaching of Torah, and in the location of the rabbinic study of Torah, the beit midrash. The exemption of women from Torah study was a two-fold claim: 1) the interpretation of Torah and transmission of Torah by women was unnecessary and unneeded; and 2) the beit midrash was not a place for women.

While women did not engage in Torah study as men did, women did have access to Torah incidentally. Women overheard and participated in informal discussions about issues emerging from the beit midrash.⁵⁷ They were also educated in halakhah that pertained to domestic matters. This informational mode of Torah study is reflected in the only mishnaic text addressing directly the question of whether women were obliged to study Torah: it is debated is whether it is beneficial or hazardous, beneficial to women to be taught certain laws so that they would not

⁵⁴ E.g. Gen 31:9.

⁵⁵ Benovitz, “Time-Triggered Positive Commandments,” 65.

⁵⁶ In classical antiquity in general, there was a great antipathy against the formal schooling of women due to the perception of their intellectual and/or social inferiority. See Teresa L. Morgan, *Literate Education in the Hellenistic and Roman World* (Cambridge: Cambridge University Press, 1998), 135-140.

⁵⁷ Rabbi Judith Hauptman, “A New View of Women and Torah Study in the Talmudic Period,” *Jewish Studies: An Internet Journal* 9 (2010), 249-292.

transgress them, or hazardous to women because they would learn to evade the law and engage in misconduct. (m. Sotah 3:4) However, women's access to Torah study was either incidental -- they learned of it by chance -- or informational -- they needed to learn it in order to fulfill their domestic duties. They were not part of the ritual transmission of Torah within the family nor was the communal tradition of study in the beit midrash open to them.

How do we relate to the exclusion of women from Torah study? To say that the study of Torah is the central mitzvah in rabbinic Judaism is to understate the importance of Torah study. The study of Torah is the highest spiritual activity, and at the heart of our communities is a culture of Torah study. To obligate women to study Torah is to make women equal members of the central project of rabbinic Judaism. It is to say that women's role in the transmission and creation of Torah is needed and expected in order to sustain our communities. Women would not be visitors to the beit midrash but are necessary participants, essential links in the chain of Jewish tradition and learning.⁵⁸

We can return to the verse in Deuteronomy interpreted in Sifre Devarim and understand it differently, *And teach them to your children*, both your sons and your daughters.

V. History of the Conservative Movement and Women's Participation in Ritual

In the past century, the involvement of women in Jewish religious and liturgical life has changed significantly. Jewish women have aspired to the privileges and responsibilities enjoyed by Jewish men through the millennia. This has been especially true of Conservative communities and institutions. The Committee on Jewish Law and Standards (CJLS) has played a crucial role in this development.

In 1954, a resolution was passed by the Rabbinical Assembly calling for the equalization of the status of women:

We call upon our Committee on Jewish Law and Standards and upon the Joint Conference to intensify their effort to formulate additional תקנות leading to the complete equalization of the status of women in Jewish law as a true expression of a Torah of justice.⁵⁹

In 1955, two teshuvot were passed by the CJLS on the question of whether women could have an aliyah. Rabbi Aaron H. Blumenthal's minority teshuvah argued for women being allowed aliyot on all and any occasion, while Rabbi Sanders Tofield's majority teshuvah argued that aliyot for women be restricted to special occasions.⁶⁰

⁵⁸ This is not to say that women's interpretation means the perspective of women as women, i.e. from a feminist perspective. Rather, the study of Torah by women would be as individual as the study of Torah by men: it would be reflected and refracted through their spiritual sensitivities and intellectual abilities.

⁵⁹ *Proceedings of the Committee on Jewish Law and Standards of the Conservative Movement 1927-1970* (New York: The Rabbinical Assembly, 1997), 1. 377.

⁶⁰ The teshuvot are found in *Proceedings of the Committee on Jewish Law and Standards of the Conservative Movement 1927-1970*, 3. 1086-1108. See the discussion in *Proceedings of the Committee on Jewish Law and Standards of the Conservative Movement 1927-1970*, 1. 382-390.

At the Rabbinical Assembly convention in 1972, the organization Ezrat Nashim called for the equalization of religious roles for women. In 1973, the CJLS issued a takkanah that allowed women to be counted in a minyan, although it was specially noted that like other decisions of the CJLS, each rabbi and congregation would make the decision whether or not to follow the new CJLS ruling.⁶¹ The majority decision held that men and women should be counted equally, and the minority decision held that women should not be counted in a minyan.⁶²

The position papers of the faculty of the Jewish Theological Seminary (JTS) on the ordination of women as rabbis dealt with the issue of the obligation of women for the mitzvot and the ability of a woman to serve as shliḥat tzibbur, prayer leader, a role generally assumed to be enjoyed only by those who are obligated to pray.⁶³ Rabbi Joel Roth argued that a woman can count in a minyan or serve as a shliḥat tzibbut only when she has voluntarily accepted being obligated. Rabbi Mayer Rabinowitz contended that equality of obligation is not the criterion for being counted in a minyan and that the correct criterion is whether an individual is an adult and a free person. Rabbi Rabinowitz argued that in past ages, women were not free but were legally subservient, either to a father, brother or husband, but nowadays in most societies women are as legally free as men. These papers played a crucial role in the acceptance of women into the rabbinate and served as the rationale for permitting the ordination of women at JTS, but it is unclear what the status of these faculty papers is since they are not official teshuvot of the CJLS. Moreover, women were accepted into the rabbinical school at JTS by the vote of the JTS faculty on a resolution that specifically omitted any qualification that their acceptance would be based on either Rabbi Roth's or Rabbi Rabinowitz's teshuvah. Although the committee appointed to implement the faculty decision decided that women candidates for the rabbinical school would have to follow Rabbi Roth's teshuvah and obligate themselves, the reality is that women in our communities count in the minyan and serve as shliḥat tzibbur without being specifically asked if they have voluntarily obligated themselves.⁶⁴

In 1984, Rabbi Phillip Segal wrote a teshuvah, "Responsum on the Status of Women: With Special Attention to the Questions of Shaliḥ Tzibbur, Edut and Gittin," a teshuvah that was tabled but still was published by the CJLS.⁶⁵

⁶¹ Unfortunately, the CJLS rulings from the 1970's have not been published in a way accessible to the public (or even to members of the Rabbinical Assembly).

⁶² Rabbi David Fine in his teshuvah "Women and the Minyan" presents a masterful investigation of the peregrinations of the written materials from the 1972 decision.
<http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/oh_55_1_2002.pdf>

⁶³ Simon Greenberg, ed., *The Ordination of Women as Rabbis: Studies and Responsa* (New York: The Jewish Theological Seminary, 1988).

⁶⁴ This applies to rabbinical students at the Jewish Theological Seminary as well. The writer of this teshuvah entered rabbinical school in the fall of 1987 and was never once asked if she had voluntarily obligated herself (nor was the female guest who served as shliḥat tzibbur at the writer's senior sermon in 1990). Perhaps it was just assumed without any need for a formal declaration.

⁶⁵ *Proceedings of the Committee on Jewish Law and Standards of the Conservative Movement, 1980-1985* (New York: The Rabbinical Assembly, 1988), 269-296.

Va'ad ha-Halakhah, a law committee for Knesset ha-Rabbanim, the Israeli branch of the international Rabbinical Assembly, has operated from 1985 to the present.⁶⁶ A number of teshuvot touching on the obligation of women for the mitzvot were issued. A number of teshuvot, written by Rabbi Reuven Hammer, Rabbi Michael Graetz, Rabbi Gilah Dror, Rabbi David Golinkin, and Rabbi Abraham Feder, addressing the ordination of women as rabbis, dealt with many of the same issues as the position papers of the faculty of the Jewish Theological Seminary.⁶⁷ Subsequently, Rabbi David Golinkin wrote a teshuvah on women in the minyan and as shliḥat tzibbur.⁶⁸ The scope of the authority of Va'ad ha-Halakhah is unclear. The first volume of responsa presented the implicit argument that the situation of Jewish communities in Israel merited special responsa, thereby maintaining that the teshuvot of Va'ad ha-Halakhah had authority solely in Israel. This was stated explicitly in the published reflections made on the tenth anniversary of Va'ad ha-Halakhah.⁶⁹

The latest major publication of the Conservative Movement, *The Observant Life*, attempts to present both sides of the issue.⁷⁰

In recent decades, the CJLS has endeavored to present and approve a series of papers dealing with the major issues of women and halakhah. The issue of whether women who are bat kohen and bat levi are to be assigned the aliyot traditionally reserved for the male descendents of kohanim and levites was treated by Rabbi Joel Roth in 1989.⁷¹ In 1993, Rabbi Gerald Skolnik addressed the issue of whether a ceremony equivalent to pidyon ha-ben should be performed for a first-born daughter.⁷² The issue of whether women who are bat kohen could participate in the ritual of נשיאת כפים, the Priestly Blessing, was addressed in a teshuvah by Rabbi Meyer

⁶⁶ Although as of the writing of this teshuvah, Va'ad ha-Halakhah has not published any teshuvot since 1998.

⁶⁷ תשובות ועד ההלכה של כנסת הרבנים בישראל, כרך ה', תשנ"ב - תשנ"ד (ירושלים: כנסת הרבנים בישראל; התנועה המסורתית; תשנ"ה), יג-פג.

⁶⁸ תשובות ועד ההלכה של כנסת הרבנים בישראל, כרך ו', תשנ"ה - תשנ"ח (ירושלים: המכון לחקר ההלכה ויישומה שליד מכון שכטר ללימודי היהדות; כנסת הרבנים בישראל; התנועה המסורתית, תשנ"ט), נט-פ.

⁶⁹ תשובות ועד ההלכה של כנסת הרבנים בישראל, כרך ו', תשנ"ה - תשנ"ח, עמ' שכו.

⁷⁰ Martin S. Cohen and Michael Katz, eds, *The Observant Life: The Wisdom of Conservative Judaism for Contemporary Jews* (New York: The Rabbinical Assembly, 2012), 12, 25, 66-68, 109, 197-198, 251-254, 599-602..

⁷¹ *Proceedings of the Committee on Jewish Law and Standards of the Conservative Movement 1986-1990* (New York: The Rabbinical Assembly, 2001), 419-434.

⁷² *Responsa 1991-2000: The Committee on Jewish Law and Standards of the Conservative Movement* (ed. Kassel Abelson and David J. Fine; New York: The Rabbinical Assembly), 163-165.

Rabinowitz approved in 1994.⁷³ The teshuvot of Rabbi Myron Geller⁷⁴ and Rabbi Susan Grossman⁷⁵ on women and edut (testimony) were approved in 2001, and Rabbi David Fine's teshuvah on women and the minyan was approved in 2002⁷⁶. Teshuvot on other topics regarding women and other specific mitzvot were commissioned but as yet have not appeared. This writer was invited in 2011 to write a teshuvah on women and the obligation to observe the mitzvot.

VI. Shinnui ha-ittim (nishtanu ha-zemanim) -- "Times have changed"

The principle of נשתנו הזמנים (nishtanu ha-zemanim) or שינוי העתים (shinnui ha-ittim), "times have changed," has inspired significant change in halakhah. Unlike medical and scientific data, social reality is more difficult to measure and quantify.⁷⁷ Nonetheless, its use is justified. A sociological reality gave rise to a legal standard, and over time that standard was justified because social customs remained the same. However, when social customs change significantly, the new social reality requires a reappraisal of that standard.⁷⁸

This principle of נשתנו הזמנים, "times have changed," can have striking and far-reaching consequences. Sociological change can impel profound change in who can decide halakhah. The Babylonian Talmud had a general rule that a person had to be at least forty years old in order to instruct others in halakhah. While even the Babylonian Talmud recognizes that this was not a hard and fast rule and that the rule was not about a specific age as much as it was about a person gaining sufficient maturity, it is surprising that Rambam did not make mention of it anywhere in

⁷³ *Responsa 1991-2000: The Committee on Jewish Law and Standards of the Conservative Movement*, 9-12. See also the teshuvah on the same topic with a different ruling by Rabbi Stanley Bramnick and Rabbi Judah Kogen in the same volume, 13-15.

⁷⁴ <http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/geller_womenedut.pdf>. A number of dissents to the teshuvot of Rabbi Geller and Rabbi Grossman were submitted.

⁷⁵ <http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/grossman_womenedut.pdf>.

⁷⁶ <http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/oh_5_1_2002.pdf>

⁷⁷ Louis Jacobs, *A Tree of Life: Diversity, Flexibility, and Creativity* (second edition; London: Littman Library of Jewish Civilization, 2000 [1984]), 110-120; Joel Roth, *The Halakhic Process: A Systemic Analysis* (Moreshet Series XIII; New York: The Jewish Theological Seminary, 1986), 248ff.

⁷⁸ Elliot Dorff, "Custom Drives Jewish Law on Women," *Conservative Judaism* 49:3 (Spring, 1997), 3-21. Response to critics: *Conservative Judaism* 51:1 (Fall, 1998), 63-73; reprinted in *Gender Issues in Jewish Law: Essays and Responsa* (Walter Jacob and Moshe Zemer, eds.; New York: Berghahn Books, 2001), 82-106 and in Elliot N. Dorff, *For the Love of God and People: A Philosophy of Jewish Law* (Philadelphia: Jewish Publication Society, 2007), 253-273

the Mishneh Torah.⁷⁹ One of his commentators, Rabbi Abraham ben Moses di Boton, the author of the commentary *Lehem Mishnah*, ventures the following reason:

ולוי נראה לתרץ לדעת רבינו דס"ל דמאי דאמרו בגמרא עד ארבעין שנין אין הקפידה בזמן אלא בחכמה... וס"ל לרבינו דהיינו דוקא בזמן קדמון שלא היו לומדים אלא מפי סופרים ולא מפי ספרים... אבל עתה שהתורה בכתב ואנו לומדים מפי ספרים ודאי דלא בעינן כולי האי... וכעין זה שמעתי בשם אחד שכתב בשם חכם אחד שבזמן הזה ליכא מורה הלכה בפני רבו מפני שאנו לומדין מפי ספרים והספרים הם המלמדים

It seems to me that the omission can be explained according to Maimonides on the grounds that he felt that the statement of the Gemara “until age forty” implies concern with wisdom, not time...and he would affirm that it applies only to very early periods during which study took place orally, without the benefit of books...but now that the Torah has been written and we study from books, surely such an age requirement is not needed...And in a similar vein, I have heard from someone that the principle that forbids one to instruct in matters of halakhah in the presence of his teacher does not apply in these times since we study from books, and the books themselves are the teachers.⁸⁰

Di Boton argues that how people acquire knowledge has changed radically and therefore restrictions that were necessary in the past are no longer needed. The sociological reality of the past is the case no longer: a rule that was justified in the past, a minimum age to act as an authority, has been nullified by a change in human behavior, the transition from oral learning to book study. The prohibition has been reversed completely for all who acquire expertise in halakhah because they are doing so in a completely different way from the past. Furthermore, Di Boton contends that this sociological change has yet another consequence: a rule necessary in the past, the prohibition of adjudicating halakhah in the presence of one's teacher, no longer applies: the means of acquiring learning and discernment have changed. It must be highlighted that this recognition of a change in human behavior has yielded momentous change in halakhah.

In another example of the far-reaching consequences of the principle that “times have changed, Rabbi Moses Sofer, the Hatam Sofer, addressed the issue of whether a woman would be allowed to remarry if her husband had disappeared. In this case, the man's disappearance falls into the category of one who has disappeared into a body of water all of whose shores cannot be seen from a single point, the problem being that it would have been possible for him to have come out alive on an unseen shore. If this were the case, he would still be alive and married to her and, therefore, she could not remarry even if she never heard from him again.

והנה נלע"ד דכל זה הי' בימיהם דהי' שייך לומר ב' חששות או שהמים הובילוהו מרחוק לנוד וא"א שיודע הדבר לבני ביתו ומכ"ש בים דגלי אשפילוהו כביבמו' קך"א ע"א או שע"י החבלה נחסר ממנו אבר ובוש לחזור אל ביתו כעובדא דגברא חרוכא דשדי פיסת ידא ביבמות ק"א ע"א... וידוע שלע"ע נשתנו הזמני' בענין זה ממה שהי' במיהם שעתה קביע בי דואר במתא בכל המדינות הידועות ואפילו מארצות תוגרמה מגיע הכתב אלינו בזמן קצר מאוד ואלו הי' עולה מהמים בכל

⁷⁹ Jacobs, *A Tree of Life*, 127 n.26; Roth, *The Halakhic Process*, 135-152, 260-261.

⁸⁰ *Lehem mishnah* to Mishneh Torah, Talmud Torah 5:4.

מקום שהוא ה' מודיע לביתו ע"י איגרת ואו ה' מפקיע הקול אפ' ע"י מגיד חדשות שקורין צייטונג
/עתון/... גם זה נשתנו הזמנים דברי לנו אפ' אי נשברו כל איבריו ה' בא או מודיע לבני ביתו ולא
ה' בזה שום כיסופא

It seems to me that this (category of one who has disappeared into a body of water all of whose shores cannot be seen from a single point) was applicable in their days, during which two concerns were relevant. Either that the current carried him far away and it was impossible for him to let his family know, as in Yevamot 121a, or that as a result of his injuries he lost a limb and was embarrassed to return home, as in Yevamot 101a... Yet it is clear that times have changed regarding this matter from what was true in their time. For now we receive mail even from the Balkan states within a very short time. And if he had come out of the water at any spot whatsoever he would notify his family by letter or he would have posted a notice in a newspaper... So, too, regarding the second concern that he might have fled because of shame, times have changed. For it is clear to us that even if all his limbs had been broken, he would either come or inform his family, and his injuries would not be the cause for any shame.⁸¹

The Hatam Sofer argues that there has been a demonstrable change in human behavior and applies the principle of נשתנו הזמנים.⁸² The historical circumstances that gave rise to the original rule no longer apply. Means of communication have changed radically, and attitudes toward physical disability have shifted dramatically. As a result, the Hatam Sofer argues that the halakhic ruling has to be altered, an alteration that has dramatic consequences.⁸³

VII. Women and Mitzvot

In this teshuvah, I have followed a number of lines of inquiry and analysis. I have suggested that the category of time-bound positive mitzvot was not intended as a principle determining whether women were to be exempted from a specific mitzvah. Originally, it was a characterization that developed by the exegetical determination about one particular mitzvah. This origin accounts for the many mitzvot that do not conform, the time-bound positive mitzvot for

⁸¹ Responsa of Hatam Sofer, Even ha-Ezer, part 1, no. 58.

⁸² The application of the principle נשתנו הזמנים, “times have changed,” is all the more remarkable considering the Hatam Sofer’s general orientation of prohibiting innovation.

⁸³ The principle of נשתנו הזמנים is also applied by Rabbi Mordecai Ye’akov Breisch, Helkat Ya’akov, Y.D., number 70; Rabbi Menashe Klein, Mishneh Halakhot, part 3, number 42; Rabbi Shemuel Halevi Wosner, Shevet ha-Levi, part 9, number 303; Rabbi Michael J. Broyde and Avi Wagner, “Halachic Responses to Technological and Technological Change,” *Journal of Halacha and Contemporary Society* 39 (Spring 2000), 95-125. My teshuvah on deaf Jews argues that social change must inspire halakhic change
<<http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/Status%20of%20the%20Heresh6.2011.pdf>>

which women were deemed responsible as well as the exemption from non-time-bound mitzvot. Only later was the category conceived of as a determining factor.

In reality, the social standing of women caused their exemption: the essential ritual acts are to be fulfilled by those of the highest social standing. Only they honor God in the most fitting way; only they uphold the dignity of the community. Nonetheless, women were not exempted completely. Indeed, the tendency in the Tosefta and the Talmud is to extend women's role in ritual mitzvot, and at times women were given responsibility for certain domestic mitzvot, including ones whose breach incurred serious consequences for the household.⁸⁴ Women were considered by the tannaim and amoraim as sufficiently capable of ensuring the proper fulfillment of those mitzvot. What women could not do was to be involved in public ritual acts and fulfill mitzvot on behalf of men. This impediment was due to their subordinate social status.

The role of women in public life has changed dramatically in modernity. In society in general, women are now involved in commerce and the professions on an equal basis with men, and secular law considers women legally free and independent. In Jewish communities, women have been seeking to enrich their lives with more mitzvot. The changes in women's social lives in general and in Jewish communities are not just a matter of external behavior but reflect a changed perception of women. Women are now seen as equal to men in social status, in intellectual ability, and in political and legal rights. The historical circumstances in which women were exempted from certain mitzvot are no longer operative, and we must embrace the realities of life in the 21st century.

The principle of *נשתנו הזמנים*, "times have changed" has been used in halakhic analysis to make dramatic alterations in tradition. When social customs change significantly, the changed social reality requires a reappraisal of halakhah. The change in the social status of women calls for a new determination of women's responsibility for mitzvot and participation in public ritual acts. The Conservative movement has been in the process of making a new determination for many decades. In Conservative synagogues, schools, and camps, women have been taught to observe mitzvot from which they have been traditionally exempted and have been educated to participate in public ritual observance.

The Committee on Jewish Law and Standards therefore rules that women are now held equally responsible for the mitzvot as men have been. Women are responsible for the mitzvot of reciting the Shema and the Shemoneh Esreh, wearing tzitzit and donning tefillin, residing in a sukkah, taking up the lulav, hearing the shofar, counting the omer, and studying Torah.⁸⁵ Mothers are equally responsible for the circumcision of their sons and the covenantal naming of their daughters and the redemption of their first-born sons and daughters as fathers are. The Committee on Jewish Law and Standards recognizes that the social status of women entitles them to participate in public ritual and may fulfill mitzvot on behalf of others.

⁸⁴ The traditional mitzvot for women are to be cherished and are not to be deemed as lesser mitzvot because they were not required of men. They should not be disparaged because they were always in the preserve of women.

⁸⁵ Women are also obligated for the fast of the first-born before Passover. While it may seem that the fast of the first-born is triggered by the text in Exodus 11:4-6; 12:29, in the plague of the first-born, and therefore that the fast should continue to be limited to first-born males, rabbinic tradition holds that the first-born Egyptian daughters also died (except for Bitya the daughter of Pharaoh, on whose behalf Moses interceded). (O.H. 470: 1; Beit Yosef, O.H. 470:1; Exodus Rabbah 18:3)

It must be stated clearly that while we rule that men and women are equally responsible for the mitzvot because women are no longer subordinate to men, there are anatomical differences between men and women. Gender differences are socially constituted, but the sexual organs of human beings do determine certain behavior. The mitzvah of brit milah (circumcision) applies only to males. The mitzvah of niddah (menstrual separation) is primarily observed by women, although it does affect their sexual partners.⁸⁶ The mitzvah of procreation applies to men and not to women because of the health risks of pregnancy and labor to women. Requiring women to become pregnant would subject them to dangers to their health. Even today, when the risks have decreased substantially, the risks inherent in pregnancy and labor for women still remain far greater than the risks of intercourse for procreation for men.

The spirit of egalitarianism has created a number of issues left unpondered in our tradition. In the course of this teshuvah, I have noted that one of the traditional reasons offered for the exemption of women, that women needed to serve the domestic needs of their husbands, has been transformed in modern times to one less offensive to contemporary sensitivities, that the reason for the exemption of women was that fulfilling time-bound positive mitzvot interfered with a woman's domestic responsibilities in caring for her children.⁸⁷ While this was not the reason why women were exempted, it does raise a significant issue. If (some) women are occupied with caring for infants and young children, who need intensive daily care, perhaps an exemption in part might be appropriate. The same would be true for men who bear those duties. If fathers are now taking more responsibility for infants and young children, and men are now assuming a greater commitment for taking care of frail relatives and friends, it may be that their domestic responsibilities mean that they should be released from the mitzvot that interfere with caregiving for the duration in which they bear those duties.

An exemption for care-givers has ample precedents in halakhah. The tradition has always made realistic adjustments, such as for the minimum in daily prayer.⁸⁸ Furthermore, an essential principle of rabbinic tradition has been that an individual who is busy with one mitzvah is exempt from another. (b. Sukkah 25a) Caring for the young and the elderly and frail are tasks with religious significance, and if a person is busy fulfilling the need to care for those in need of care, that person ought to be released from certain religious tasks, such as prayer, that might interfere. Since this exemption is limited to that particular span of time when an individual care-giver is occupied with responsibilities, that care-giver would retain the responsibilities and privileges that he/she would otherwise have. Care-givers may, for example, be included in the minyan because they still are obligated for prayer, even if at times they may be exempted. This exemption applies only to individuals during the time they are fulfilling a mitzvah and would not be applied across the board to them as a class. The exemption would be granted case-by-case, as conflicts in care-giving tasks interfere with fulfilling a specific opportunity to fulfill a mitzvah. This understanding

⁸⁶ See the teshuvot on this issue approved by the CJLS written by Rabbi Susan Grossman, Rabbi Miriam Berkowitz, and Rabbi Avram Reisner.
<http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/mikveh_introduction.pdf>

⁸⁷ Safrai, "מהויבותן של נשים במצוות במשנתם של התנאים", 227-236.

⁸⁸ See, for example, the discussion by Rabbi Karen G. Reiss Medwed on prayer in *The Observant Life*, 18.

of care-giving duties may also raise awareness of their value, a powerful statement to counteract the negative value that society oftentimes assigns to care-giving.⁸⁹

We aim to guide our people into lives suffused with more Torah and more holiness. We pray that our people will enrich their lives with mitzvot and with seeking God both in public and private. Therefore, we rule that women and men are equally obligated to observe the mitzvot. Those ritual mitzvot required and expected of men are now to be required and expected of women (except for those mitzvot that are determined by sexual anatomy).

A Special Note

It is the case that learning to integrate the performance of mitzvot into our daily routines takes time and reflective effort for all of us, both women and men. For those in our communities who are in their beginning steps in the journey of mitzvot, and even for those of us who have integrated many mitzvot into the path of our lives, it must be emphasized that we are all trying to increase the holiness that mitzvot bring to our lives and that each mitzvah observed causes holiness to suffuse our lives more and more. Each mitzvah allows us to walk another step in the journey toward and with God. In the process of learning the observance of mitzvot, no one is expected to learn to fulfill every mitzvah all at once.

For many women who grew up in a different atmosphere regarding women's roles, the call to observe mitzvot heretofore closed to them will be inspiring and deeply spiritual. They will feel ready to fulfill many mitzvot, and they will eagerly learn new habits. But for some women who were raised in a non-egalitarian or not-completely egalitarian atmosphere, it is understandable that they may be hesitant to take on new mitzvot. Learning new mitzvot may be challenging, and some women may find certain mitzvot daunting for a significant span of time. However, it is the calling of our communities, synagogues, schools, and camps to teach men and women to consider themselves equally obligated to fulfill mitzvot and to educate them equally in mitzvot.

Summary

The general exclusion of women from many mitzvot is based on the characterization of those mitzvot as positive and time-bound. A number of reasons have been devised for the link between this category and the exclusion of women from those mitzvot. However, it turns out that this category was devised for exegetical (formal interpretive) purposes, and only later was the category extended to other mitzvot from which women had already been excluded. It was never a generative principle.

Instead, women were excluded because they had subordinate status. They were exempted from the mitzvot that Jews are obligated to observe in the normal course of the day, week, and year because the essential ritual acts should be performed only by those of the highest social standing, those who were independent, those who were heads of their own households, not subordinate to anyone else. Only males were considered to be fitting candidates to honor God in the most fit way. The acts of those who were subordinate honor God in a lesser way and, therefore, women were excluded from them. Furthermore, social standing matters in relations

⁸⁹ Greenberg, *On Women and Judaism*, 91.

between human beings, and those of higher social standing would lose their dignity if some of lower social standing functioned on their behalf. Women were endowed with ritual responsibilities for others inside the home because the rabbis thought that women had the intellect and reliability to do so. It was social status alone that determined whether women were exempted from certain mitzvot. Women were also not involved in public ritual ceremonies because of their position in social hierarchy.

The involvement of women in Jewish religious and liturgical life has changed significantly in the past century and even more in the past few decades. Jewish women are aspiring to the privileges and responsibilities enjoyed by Jewish men through the millennia. The halakhah has recognized that when social customs change significantly, the new social reality requires a reappraisal of halakhic practices. The historical circumstances in which women were exempted from time-bound positive mitzvot are no longer operative, and the Conservative movement has for almost a century moved toward greater and greater inclusion of women in mitzvot. In Jewish thought and practice, the highest rank and esteem is for those who are required to fulfill mitzvot. We rule therefore that women and men are equally obligated to observe the mitzvot. We call upon Conservative synagogues, schools, and camps to educate men and women in equal observance of mitzvot and to expect and require their equal observance of mitzvot. ⁹⁰

קסג

Women and men are equally obligated to observe the mitzvot, with the exception of those mitzvot that are determined by sexual anatomy.

⁹⁰ I would like to express my appreciation to Rabbi Susan Grossman for the inspiring suggestion to write on this question and especially to the following for their comments and suggestions: the members of CJLS, Alex L. Freedman (a former student of mine at Washington University and JTS rabbinical student), Dr. Nancy Ordway, and Rabbi Avram Reisner.

Appendix: Did Women in Biblical Times Participate in Ritual?

The question of whether women in biblical times participated in ritual in ways that differ from the time of the classical rabbis (of the Mishnah and Talmud) is a question that emerges from a historical awareness: rabbinic interpretation of Scripture is not the same as understanding Scripture in its own historical and literary context(s). There is also a difference between how we interpret Torah for our communities today as a living text and the meaning that Scripture had in its own time and place, in its historical and literary context(s). Rabbis and scholars who adopt a historical approach have offered contradictory opinions as to the status of women in biblical times: did biblical verses on ritual apply equally to men and women (and therefore the classical rabbis deliberately restricted the activity of women), or did the rabbis ease restrictions on women that were put on them in Scripture?

A close study of biblical texts reveals a nuanced portrait, one of contradictory tendencies and, at times, a lack of evidence. An example from non-ritual law exemplifies a number of the problems. The role of women as witnesses in legal proceedings is impossible to reconstruct. The paltry number of biblical texts dealing with testimony does not indicate whether women served as witnesses: these texts use only the masculine forms, leading to the question of whether the masculine forms include women. An additional quandary arises if we want to project from another period and culture onto the Bible: do we retroject the restrictions on women as witnesses from the classical rabbinic period, or do we argue that women did serve as witnesses based on the unambiguous evidence from Mesopotamia, the culture that influenced ancient Israel?⁹¹

Whether women in biblical times participated in ritual is a question to which can be offered a none too decisive answer. The ritual calendars in Exod 23:17 and 34:23 stipulate that only the males need appear at a sanctuary for the festivals, as does the ritual calendar in Deut 16:16. The stipulations to rejoice found in Deut 16:11 and 14 are directed at the second person masculine singular, leading us to suppose that they are meant to prescribe the behavior of the male head of the household, yet the list of those included in the household and the community omits any mention of a wife. Does this mean that she is included in the second person masculine singular and therefore the commandment is directed to her as well? The omission of the mention of a wife is also found in the Decalogue's imperative to observe the Sabbath (Exodus 20:8-11; Deut 5:12-15), yet the final section of the Decalogue specifies that a neighbor's wife is not to be coveted, a rule clearly directed at men.(Exod 20:14; Deut 5:18) Moreover, it is difficult to ascertain whether the second person masculine singular commands, such as in Deut 6:4-9, are meant to include women or not. (This question may apply as well to the use of the second person masculine plural, such as in Deuteronomy 11:18-20).

The command for the public reading of Scripture in Deuteronomy 31:10-13 every seven years specifically includes women (as well as children and resident aliens) with the purpose of learning how to observe the stipulations therein.⁹² The theophany at Sinai is portrayed as occurring in the presence of both men and women.(Exodus 19 and 24) At the same time, the

⁹¹ Bruce Wells, *The Law of Testimony in the Pentateuchal Codes* (Beihefte zur Zeitschrift für die Altorientalische und Biblische Rechtsgeschichte; Wiesbaden: Harrassowitz, 2004).

⁹² It may be worthwhile to mention how the rabbis interpret this instruction. They posit different actions for men and women: the men were there to learn Torah, while the women were there just to hear.(t Sotah 7:9) The men related to Torah actively, while the women were passive.

preparation for theophany includes a specific injunction directed at men without a parallel injunction directed at women.(Exodus 19:15) Does this mean that the “all Israel” that is commanded to make ready for the Theophany includes only men?

Miriam is portrayed as leading public worship in Exodus 15:20-21, but no other texts yield evidence for women officiating at official liturgical events, even if they were present.(Nehemiah 8:2-3) Miriam’s status as a prophet is shared with two other women, Deborah (Judges 4:4) and Huldah (2 Kings 22:14-20), a biblical figure less known to us today but of great influence because she legitimated the Deuteronomic Reform, and there was possibly a fourth women who served as a prophet.⁹³ The overwhelming majority of the prophets mentioned in the Bible were men, and women did not serve as priests or Levites.

It appears, then, that men had the primary role in ritual and women the secondary role, a social structure that continued in the rabbinic period. But even if this was the case in the historical and social reality of Scripture, we have the freedom and responsibility to interpret Scripture anew as inspiration for our own times.

⁹³ It is possible that there was another female prophet. The prophet called Deutero-Isaiah may have been a woman. We do not know anything about this prophet’s biography except that he or she lived during the decree of Cyrus (ca. 538 BCE). For this reason alone, it cannot be determined whether the prophet was male or female. Independent and separate from this is the use of female imagery for God found in Deutero-Isaiah (66:13; 42:13-14; 45:10; 49:14-15) -- would a female prophet be more likely to use female imagery for God? Perhaps.