

A Note On Women, Obligation, and *Mitzvot*

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One of the most well-known and recognizable elements of halakhic observance, as it is practiced among Orthodox communities, is its *gendered* nature. If the people of Israel bear the obligation (חייב, *hiyuv*) to fulfill *mitzvot*, this obligation falls differently upon women than it does upon men. As we read in the Mishnah (*M. Kiddushin* 1:7):

וכל 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...

Concerning any positive *mitzvah* [a commandment to perform an action, a “thou-shalt”] that is time-bound,¹ men are obligated to perform it and women are exempt from that obligation.

And concerning any positive *mitzvah* that is not time-bound, men and women are equally obligated to perform it.

And concerning any negative *mitzvah* [a prohibition against an act, a “thou-shalt-not”], whether or not it is time-bound, men and women are equally obligated.²

From this, we learn that women are exempt from the obligation to fulfill such *mitzvot* as *k'riat shma* (the recitation of the Shma), *t'filin*, *tzitzit*, *sukkah*, *lulav*, and *shofar*, because all of these involve a positive action that must be performed at a particular time. On the other hand, women are equally obligated with men to fulfill such positive non-time-bound *mitzvot* as fixing a *m'zuzah* to one's doorposts and giving *tz'dakah*. True, there are many exceptions to these rules - for example, women are obligated under traditional *halakhah* to eat *matzah* on the first night of Pesach, to hear the *megillah* read on Purim, to rejoice on the festivals, and to say *kiddush* on Shabbat, even though these are all time-bound *mitzvot* – to the point that Rambam writes in his commentary to this *mishnah* that “the general rule (*k'lal*) is that we do not derive *halakhah* from general rules (*k'lalot*).”³ (We're not sure, but this may be the only actual joke that Rambam records in his writings.)

Still, traditional halakhic practice does exempt women from the obligation - *hiyuv* - to fulfill many positive time-bound *mitzvot*. And since this element of *hiyuv* is what constitutes the community of Jewish ritual practice, women's exemption from obligation means that they are excluded from that community. For example, a woman cannot sound the *shofar* on Rosh

¹ Rambam *ad loc.*: “A *mitzvah* that is obligatory at a particular time and that outside that time period is not an obligation at all.”

² The *mishnah* cites two exceptions to this rule: Lev. 19:27 (“you shall not round off the side-growth of your head”) and Lev. 21:1 (rules prohibiting a *kohen* [priest] from coming into contact with a corpse other than that of his parent, child, wife, or sibling).

³ See *B. Kidushin* 34a.

Hashanah for a congregation that includes men because, as we read in the *Shulḥan Arukh (Orah Hayyim 589:1)*: “כל שאינו מחוייב בדבר אינו מוציא אחרים ידי חובתן: “one who is not obligated to fulfill a particular *mitzvah* [e.g., women with *shofar*] cannot help others [e.g., men] to fulfill their obligation.” This is why traditional ritual *halakhah* can be called a *gendered* system: one’s obligation or lack thereof is frequently determined by whether one is male or female.⁴

This distinction is deeply rooted in the sources, so much so that it seems taken for granted as natural, as part of the Divine plan. Seldom, then, do we find the authorities inquiring as to the rationale – the *ta`am* – behind it: *why* are women exempt from the obligation to fulfill positive time-bound *mitzvot*? But some do ask that question, and they arrive at answers that are most instructive. One of the earliest *poskim* to ask it is R. David Abudarham (14th-century Spain), in his compendium of liturgical *halakhah*:⁵

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 (*ta`am*) that women are exempt from the obligation to fulfill positive time-bound *mitzvot* is that the wife is legally bound⁶ to her husband to perform household duties. If she were obligated to fulfill positive time-bound *mitzvot*, it is possible that her husband would issue an instruction to her at the time she was performing a *mitzvah*. If she [chooses] to perform the Creator’s *mitzvah* and to forsake that of her husband, her husband would be angry. And were she to make the opposite choice, her Creator would be angry. Therefore, her Creator has exempted her from the obligation to His *mitzvot* in order that she should live in peace with her husband.

We find a somewhat different version of this explanation in a responsum of R. Benzion Meir Hai Ouziel (d. 1954), the first S’fardic chief rabbi of the State of Israel:⁷

ולי נראה שטעם פיטורן הוא משום שלפי טבען ומהות תפקידן בחיים הן משועבדות לזמן במשק הבית וגדול הילדים וטפולן, ולא הזמן נתן לרשותן... ולפי טעמים אלה מסתבר שהנשים הן בכלל בית ישראל בעיקר כל המצוות אלא שפטרה אותם התורה מדין עוסק וטרוד בטרדה של מצוה.

In my view, the reason (*ta`am*) for women’s exemption (from the obligation to fulfill positive time-bound *mitzvot*) is that, due to their nature and the nature of their role in life,

⁴ Thus, there are special rules for when an individual’s gender cannot be precisely determined by physical observation. See *Shulḥan Arukh Orah Hayyim 589:4*: מוציא את מינו אינו מוציא את מינו; טומטום, אפילו את מינו אינו מוציא את מינו.

⁵ *Sefer Abudarham, sha`ar sh`lishi, birkat hamitzvot umishpateihem*. See also *Sefer Kolbo* (14th century Provence), ch. 73.

⁶ The word is משועבדת, which has the connotation of “mortgaged, contractually obligated,” in the same way that a debtor is legally bound to his creditor.

⁷ *Resp. Mishp`tei Ouziel*, v. 4, *Inyanim K`laliyim* no. 4. See also R. Hayyim David Halevy (Ouziel’s student), *M`kor Hayyim Hashalem*, vol. 1, p. 38.

they are legally obligated⁸ to time – with respect to household duties and the care of children – so that their time is not at their disposal... For these reasons, it makes sense to say that, women are included in the community of [those obligated to fulfill positive time-bound] *mitzvot*⁹ but that the Torah exempted them on the grounds that one who is busy with the performance of a positive *mitzvah* is exempt from performing other, conflicting positive *mitzvot*.

Six hundred years separate these two authorities, and it seems that some progress has been made during that interval. Where Abudarham thinks of the wife as legally obligated (literally, “mortgaged,” encumbered) to her husband, Ouziel has her legally obligated to “time.” He also explains her exemption from positive time-bound *mitzvot* on the grounds of a general halakhic principle, namely העוסק במצוה פטור מן המצוה: one who is *osek bamitzvah*, presently engaged in performing a positive commandment, is exempt from the obligation to perform others that would get in the way of one’s present duty.¹⁰ Both *poskim* are united, though, in explaining the limitation upon women’s ritual obligations as a special exemption due to a social role which leaves them preoccupied with other urgent tasks. That is to say, women are not released from ritual obligations by some *g’zeirat hakatuv*, some Divine fiat supported by no discernible rationale. The underlying logic of the *osek bamitzvah* is that his– or her – *hiyuv* to perform a ritual *mitzvah* will be back in force once s/he has completed the performance of the *mitzvah* presently at hand.

Thus, according to Abudarham and Ouziel, the only justification for the exemption of women from the obligation to perform positive time-bound *mitzvot* is that women are constantly occupied in the performance of the *mitzvot* of home-making and child-rearing, obligations uniquely assigned to them and which, as never-ending preoccupations, entitle them to an exemption from competing obligations. But by that very reasoning, the exemption would no longer apply in a liberal or progressive community, one that strives toward the ideal of gender equality and which rejects the notion that women are assigned by their “nature” to perform a gender-specific social role. In such a community, women are not *oskot bamitzvah* on the basis of their gender alone; their exemption from ritual *hiyuvim* no longer makes sense and should disappear.

The egalitarian revolution in our liberal societies – imperfect and incomplete as it may be – therefore carries with it some obvious halakhic consequences. If women no longer perform a special social role assigned to them by reason of their gender, then by virtue of the Abudarham/Ouziel argument they bear the same obligations as do men for the performance of positive time-bound *mitzvot*. Accordingly, they are counted in the *minyan* for the performance of those *mitzvot*

⁸ Again, the word is משועבדות.

⁹ As the context of Ouziel’s *t’shuvah* makes clear, this is an important point. If women were *never* included within the community of those obligated to perform positive time-bound *mitzvot*, they might be permitted to perform such acts on a voluntary basis but it would be difficult to justify their recitation of *b’rakhot* over them (i.e., how could a woman recite a blessing that contains the word *v’tzivanu*, “Who has commanded us?”).

¹⁰ *B. Sukkah* 26a. See *M. B’rakhot* 3:1: one who is occupied with the burial of his dead is exempt from other ritual obligations until the burial is complete. See also *B. B’rakhot* 11a.