

Women and *Mitzvot*:
Abstention and Dissent

This paper was submitted, in June 2014, as a dissent on “Women and Mitzvot” by Rabbi Pamela Barmash. Dissenting and Concurring papers are not official positions of the CJLS.

I am sympathetic to the aspirational desire of Rabbi Pamela Barmash to “expand the palace of Torah” so that *mitzvah* obligations from which women have classically been exempt would now apply equally to them. However, I am reluctant to expand the scope of *hiyyuvim* when there is reluctance and even resistance to accepting obligations already incumbent upon men and women, and when the desired end can be accomplished in other ways.

This is a principled position which I previously articulated when considering a *teshuvah* obligating Jews by choice to observe mourning rituals for a deceased parent. I argued then that the application of this *hiyyuv* would place an undue obligation on the convert which she or he might be unable to fulfil. Here too, I believe that the imposition of additional obligations on women is an example of *tafasta merubah lo tafasta*.

I accept the historical analysis provided by Rabbi Barmash regarding the expansion of the concept of *mitzvat aseh she'ha'z'man gerama* from a social construct to an inconsistent halakhic principle. However, I do not accept her contention that exemption implies disability. Rather, I understand the Talmudic statement that “one who is commanded and acts is greater than one who is not commanded and acts” to be a homiletical statement encouraging observance and pointing toward end-time reward.

Additionally, as I have previously expressed in relation to other teshuvot, I am extremely reluctant to use halakhic tools in a large-scale manner. The use of *aqirat davar min hatorah* or the

claim that a particular narrative of *halakhah* should lead to a new *nomos* did exist within the quiver of jurisprudential weaponry, but were used sparingly and with great caution. In a similar way, *shinui ha'itim* is such a broad concept that it could be used for almost any halakhic decision. We should approach halakhic change with awe and respect for precedent. The language of change and development has the potential to trigger disrespect for established halakhah. As much as possible, our decisions should be based on interpretation and extension of previous halakhah, rather than on the use of grand statements that authorize unlimited change.

I strongly support the effort to encourage women to take on more *mitzvot* and believe that rabbis, congregations and educational institutions can and should do more to enable women who wish to deepen and intensify their patterns of observance to do so. However, this aspirational goal should not come by simply adding obligations. Not all women desire additional *mitzvah* responsibilities and, by declaring these obligations to be incumbent on our community, we will add a burden to those women who accept the rulings of the CJLS. On the other hand, there is a large group of Jews who already neglect *mitzvot*. Why add to their deficiency, alienate those who do not yet understand or accept the notion of *mitzvah*, or leave the CJLS open to derision or criticism for instituting something which will not be observed?

Additionally, even while declaring women to be obligated, Rabbi Barmash immediately creates an exemption for women who are caregivers. For years, men who seriously observe *mitzvot* accepted the responsibilities of positive time-dependent *mitzvot* regardless of other personal demands. To simultaneously declare women obligated and to provide an exemption either diminishes the importance of the activity or of the person with the *mitzvah* responsibility.

I believe that the correct approach would be for the the CJLS to advocate for women to engage in a serious search for a personal pattern of *mitzvah* observance and to experiment with various *mitzvot*. Recognizing that, initially, some *mitzvot* would more readily be accepted by women, the CJLS should consider those women who adopt specific positive time-linked *mitzvot* to be “as if” commanded. It seems to me that this is a more modest recognition of our limited authority and more in keeping with a contemporary sensibility of spiritual development.

For these reasons, I have chosen to abstain from supporting Rabbi Barmash's teshuvah.

