

Mikhal bat Kushi Wore Tefillin
A concurrence to Women and Mitzvot by Pamela Barmash
Rabbi Avram Israel Reisner
May 2014 / Iyar 5774
Y.D. 246:6.2014f

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

Rabbi Barmash has done in this Teshuvah what sorely needed to be done, but we have heretofore been unready to do. She has stated clearly what we all have long assumed, that the study of Torah is as much a matter for women as for men. That, much more than her unpacking of the category of time-bound positive commandments (mitzvot aseh she-haz'man grama), is the primary achievement of this Teshuvah for which she should be lauded. For it is in the realm of education (Torah study) that we first brought woman's equalization to the fore, and the matter of the performance of mitzvot lagged behind. That is where our movement's intuitive drive for the religious equalization of women lays at heart.

Unfortunately, her focus on the unpacking of the primary category by which women have been exempt from mitzvot, and her relatively shorter and more perfunctory discussion of the midrash exempting women from Torah study, which is attributed in Sifrei to Rabbi Yosi bar Akiva and then cited by both Talmudim, Bavli and Yerushalmi, moves me to elaborate.

She is clearly correct that the category of time-bound positive commandments as a simple principle indicating those mitzvot from which women were exempt fails except as a very general mnemonic and cannot have been the principle generating those exemptions. This was probably conceded already by the Tannaim themselves, as Rabbi Barmash points out on page 8, in Sifre B'midbar, where the sages discount that principle by associating it with Rabbi Shimon. It was clearly recognized by the Babylonian Talmud which dismisses it, citing Rabbi Yochanan that one should take all generalizations with a grain of salt (p. 9, Kiddushin 34 a) and codified with that caveat by Maimonides (p. 10).

She reviews several attempts to understand the thinking behind the exemptions, determining, again it seems to me correctly, that the exemptions were essentially a reflection of the limited social standing of women in the rabbinic society of antiquity. This is no longer the case in our day and in our social milieu, notwithstanding the continuing battle over equal pay for women, and she correctly deploys the halakhic principle that when times have changed (nishtanu haz'manim) the law must change to reflect these new facts. [Rabbi Barmash cites no less a recognized authority than the Hatam Sofer who rules that certain old rules that do not allow interpreting a husband's disappearance as proof of his death so that his wife might remarry no longer apply due to improved communications, writing that "it is clear that times have changed regarding this matter" (p. 28).]

As I have said, her argument is correct and compelling with regard to the selection of the matters from which women should be exempt. But in the Talmudic discussion on Kiddushin 34a, after citing Rabbi Yochanan that one should take lightly the generalization that women are exempt from time-

bound positive mitvot, the Talmud attempts nonetheless to justify that principle, this time in light of the basic understanding that women are, in any case, not obligated in Torah study. As Rabbi Barmash points out (p 21), this is not even a time-bound commandment. It is simply an exemption assumed here and elsewhere by the Talmud. Its source, she shows, is a direct rabbinic derivation from a verse that appears in Sifre D'varim, Ekev in the name of Rabbi Yosi bar Akiva (elsewhere equated with Issi bar Yehudah). The verse, from the second paragraph of Shma, Deut. 11:19, "V'limadtem otam et b'neichem / You shall teach them to your children (!)" is interpreted by Rabbi Yosi, there, "bneichem -- v'lo et bnoteichem / your sons, not your daughters." And she concedes that "This understanding of the verse becomes normative in both Talmuds."

Rabbi Barmash addresses this challenge in the following way: "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... -- there is nothing in the context that restrict it to "sons"... Yet it was obvious... to the tannaim and amoraim in the context of the society in which they lived that בניכם meant "your sons." It simply was not conceivable to them that women were required to study Torah... The assumption made that בניכם means "your sons," not "your children" was obvious, inevitable, and not problematic to the amoraim and tannaim.

"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...

"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."

Rabbi Barmash, again, addresses the heart of the matter. She is correct that it is necessary to find women fully obligated in the primary Jewish vocation of Torah study in our day. It is unconscionable not to. And she is correct that that is easy to do if we liberate ourselves from the rabbinic midrash and interpret the Biblical verse as it seems obvious to us that it should be interpreted. But what is not so easy to do is to liberate ourselves from a primary midrash that is fully supported by our tradition. Rabbi Barmash's implicit repair to the principle of nishtanu ha-z'manim, that times and our perceptions have changed, is insufficient when arrayed not against a rabbinic principle, but against a direct rabbinic derivation from a biblical verse.

We on CJLS have faced this challenge in the recent past and have shied away, I would argue correctly so, from challenging basic biblical derivations. Those who proposed dealing with the position of homosexuals by denying the authority of a clear biblical verse in Leviticus or reinterpreting it in various ways, were rejected in favor of a ruling that relied on maintaining the biblical verses but circumventing them in practice. Those who proposed banning the category of mamzer were turned away in favor of discrimination in rabbinic evidentiary rules. On the very vexed matter of the aguna, we have not been willing to waive away a basic understanding of the Biblical text that gives the right of divorce solely to the husband, despite our strong egalitarian intuitions, and so have crafted carefully rabbinic doctrines that permit annulment of the marriages of husbands who refuse to give a get in order to free chained women. What we do not do, I believe, is disregard settled interpretations of biblical texts.

In the matter nearest to this, the matter of women's testimony that on its face is found to be prohibited by the rabbinic derivation of a biblical verse, both Rabbis Geller and Grossman, in their

response (Woman is Able to Testify, 2001 and Edut Nashim k'Edut Anashim, 2001) spent considerable energy showing that the derivation was itself suspect and that the matter of the prohibition of women's testimony had a rabbinic history of being given limited regard, as Rabbi Barmash does here with regard to the rabbinic principle of time-bound positive commandments.

Rabbi Barmash has done half the job, here, by showing that there is no inherent reason why the verse should be interpreted in an exclusively gendered reading and that it could easily be read otherwise. I would point out, as well, that in the discussion both in Kiddushin 34a and in the Mekhilta d'Rabbi Ishmael upon which it is based (see below) tefillin (women exempt) are compared to Torah study (women exempt on the basis of the gendered reading of b'neichem in the Shma) and not to Mezuzah (women obligated), when the natural context would suggest that the three are a unit coming together and not to be teased apart. But there is more to be learned from that Mekhilta text.

The following is the text of Mekhilta d'R. Ishmael, M'sekhta d'Pascha, Bo, 17 (about the Pesach seder -- tefillin is simply a metaphor for a reminder in this context).

[וְהָיָה לְךָ לְאוֹת עַל יָדְךָ וּלְזִכְרוֹן בֵּין עֵינֶיךָ] לְמַעַן תִּהְיֶה תּוֹרַת ד' בְּפִיךָ" (שְׁמוֹת יג, ט) -- לְמָה נֹאמְרָ? לְפִי שְׁנֹאמְרָ: "וְהָיָה לְךָ לְאוֹת" שׁוֹמֵעַ אֲנִי אֶף הַנְּשִׁים בְּמִשְׁמַע. וְהַדִּין נוֹתֵן: הוֹאִיל וּמִזוּזָה מִצְוֹת עֲשֵׂה וּתְפִילִין מִצְוֹת עֲשֵׂה, אִם לְמַדַּת עַל מִזוּזָה שֶׁהִיא נוֹהֶגֶת בְּנָשִׁים כְּבָאֲנָשִׁים יִכּוֹל אֶף תְּפִילִין יִנְהַגוּ בְּנָשִׁים כְּבָאֲנָשִׁים: תְּלַמּוּד לֹאמַר: "לְמַעַן תִּהְיֶה תּוֹרַת ד' בְּפִיךָ" -- לֹא אֲמַרְתִּי אֲלֵא בְּמִי שְׁחִיב בְּתַלְמוּד תּוֹרָה. מִכֵּאן אֲמָרוּ הַכֹּל חַיִּיבִין בְּתְפִילִין חוּץ מְנָשִׁים וְעִבְדִּים. מִיכֵל בֵּת כּוֹשֵׁי הֵיטָה מְנַחַת תְּפִילִין. אֲשֶׁתּוֹ שֶׁל יוֹנָה הֵיטָה עוֹלָה לְרַגְלִים. טְבִי עִבְדוֹ שֶׁל רַבֵּן גַּמְלִיאֵל הִיא מְנִיחַ תְּפִילִין.

"[It will be a sign on your hand and a reminder between your eyes],

so that God's Torah will ever be on your lips" -- Why is this added?

Because when it says "it will be a sign" I understand that to include the women. And that makes good sense -- since the mezuzah is a positive mitvah and tefillin are a positive mitzvah, if we have learned that women are obligated in mezuzah just like men, does it not follow that women should be obligated to tefillin just like men? That is why it says: "so that God's Torah will ever be on your lips" -- this [tefillin] does not apply except for those obligated to Torah study. Therefore they ruled: Everyone is obligated to tefillin save women and slaves.

Mikhal daughter of Kushi (said to be Saul, see Moed Katan 16b) put on tefillin. Jonah's wife went on the pilgrimage. Tavi, Rabban Gamaliel's slave would put on tefillin.

Can we understand the story of Mikhal, Jonah's wife and Tavi, Rabban Gamaliel's servant as a repudiation of the derivation that has gone before, to be substituted by another pshat of our choosing, as Rabbi Barmash proposes? In theory we could, but unfortunately, the Talmud shuts the door on such an interpretation.

Eruvin 96a:

תְּנִינָא: מִיכֵל בֵּת כּוֹשֵׁי הֵיטָה מְנַחַת תְּפִילִין וְלֹא מִיחּוֹ בֵּה חֲכָמִים, וְאֲשֶׁתּוֹ שֶׁל יוֹנָה הֵיטָה עוֹלָה לְרַגְלֵי וְלֹא מִיחּוֹ בֵּה חֲכָמִים. אֲלֵמָא קְסַבְרִי [תְּפִילִין] מִצְוֹת עֲשֵׂה שְׁלֵא הִזְמִין גְּרַמָּא הִיא. וְדִלְמָא סַבְרֵי לֵה כֹּר' יוֹסִי דְאֲמַר נְשִׁים סוּמְכוּ רִשּׁוֹת? דְּאִי לֹא תִימָא הִכִּי, " וְאֲשֶׁתּוֹ שֶׁל יוֹנָה הֵיטָה עוֹלָה לְרַגְלֵי וְלֹא מִיחּוֹ בֵּה חֲכָמִים" -- מִי אִיכָא לְמִ[אֶן] דְּ[אֲמַר] רַגְלֵי לֹא מִצְוֹת עֲשֵׂה שֶׁהִזְמִין גְּרַמָּא הוּא? אֲלֵא רִשּׁוֹת -- הִכָּא נְמִי רִשּׁוֹת.

Mikhal daughter of Kushi put on tefillin and the sages did not object, Jonah's wife went on the pilgrimage and the sages did not object. It follows that they thought that [tefillin] were not a time-bound positive commandment [from which women are exempt].

Perhaps [that is not what they thought, but rather] they agreed with Rabbi Yosi that

women might voluntarily act? For were that not the case, [of the second clause], “Jonah’s wife went on the pilgrimage and the sages did not object” is there anyone that says that the pilgrimage is not a time-bound positive commandment? Rather it was voluntary [in the latter case] so also was it voluntary here.

In considering that the sages might have endorsed Mikhal’s behavior they would not only have needed to find the behavior not time-bound, but they would have had to vacate the midrash that women are not involved in Torah study, for tefillin were not forbidden in the first instance because they are time-bound but because they are associated with Torah study. But the Talmud settles, instead, on the explanation that the behavior was not commanded, but voluntary.

Though it is certain to be unsatisfactory to her, at this point Rabbi Barmash’s argument that times have changed is more than sufficient for a rabbinic enactment in our day that “Women and men are equally obligated to observe the mitzvot, with the exception of those mitzvot that are determined by sexual anatomy,” but she has not marshaled sufficient evidence to override a basic rabbinic exegesis of the biblical text, as much as we would prize that result.

There is one benefit of this less than perfect result. A cursory review of the list of the time-bound positive commandments from which women are exempt (p. 4) will show that women are likely to easily accept all of those as obligatory -- save tefillin (and the halakhic literature already shows that many have already been recognized as having attained the status of a rabbinic obligation -- see Joel Roth’s responsum on Women’s Ordination which was largely based on this mechanism). In our discussions at CJLS, in USY and Camp Ramah, in the Schechter Day Schools and in our congregations we have heard time and again anecdotal evidence that, for whatever reason, the practice of laying tefillin is not being easily accepted. Rabbi Barmash has a “Special Note” toward the end of her teshuvah (p. 31) which does not mention tefillin, per se, but which I understand to be aimed squarely at this problem. If we choose to understand that this ruling of obligation is a rabbinic obligation based on the voluntary assumption of obligation, as has been broadly applied in the past, then we can be easier as the process of individual women accepting tefillin upon themselves or not plays out. It is in that vein that I have been able to support this teshuvah whole-heartedly. Rabbi Barmash is altogether correct that women should be regarded as fully enfranchised in the study of Torah in our day, notwithstanding the limiting midrash of Rabbi Yosi bar Akiva. Whereas in their day Mikhal bat Kushi and Jonah’s wife, also B’ruriah and others, stood out as women who dared to push the envelope of the societies in which they flourished, more and more today we can and should say, as Tosafot are reported to have said in another matter (Mordechai Pesachim, end of addenda, re Pesachim 108a): “All of our women are important.”

Postscript:

In discussing the ways of midrash halakhah, Menachem Elon (HaMishpat halvri, 243-263) distinguishes between creative midrash (midrash yotzer) and midrash that simply attempts to attach an already established conclusion to a biblical verse (midrash m’kayem, asmakhta) and concedes the long history of dispute in this regard. He inclines toward seeing both forms of midrash as existing side by side and generally finds that they can be teased apart by weighing the naturalness of the interpretation. I am inclined to see it that way as well, and that is how I understand the effort that Rabbis Geller and Grossman expended on showing the inherent weakness of the midrash before them and the history showing that it was not given great authority. That, too, is how to understand Rabbi Barmash’s rejection of the unchallenged midrash of Rabbi Yosi bar Akiva for another, better, pshat. But these terms and

concepts are not traditional parts of the halakhic system, and before we can allow ourselves to depart from established biblical interpretations, in this way, much more work needs to be done systematizing this approach and bringing it into halakhic discourse. Then, but only then, will we be able to do full-throatedly what Rabbi Barmash proposes, to liberate ourselves from an unchallenged classical midrash in order to repair to another interpretation in which we can more easily believe.