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An Egalitarian Abstention

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

In the last 60 or 70 years, Conservative Judaism has advanced toward ever more egalitarian practice. The journey began by calling women to read from the Torah then counting women in a minyan and designating them as prayer leaders, then welcoming women into the clergy. We proudly continued our march forward until today, when nearly all Conservative congregations treat males and females equally in ritual and where women have served both as president and executive vice president of our Rabbinical Assembly.

I thoroughly celebrate this commitment, central to our religious ideology. As a Conservative Jew, this is what I stand for: a traditional practice in which males and females are of equal status.

The CJLS has just endorsed Rabbi Pamela Barmash's position summarily affirming that males and females should be regarded as equally obligated in all the commandments (except those few attendant upon sexual anatomy). This is certainly a logical step in the egalitarian evolution of Halakha, perhaps its final (or at least penultimate) stage. I would not vote against this determination, which matches my own religious ideology.

But I chose not to vote for this paper either, and abstained. I would like to explain my non-vote to my friends and colleagues.

When I was studying for the rabbinate, in the first decade after women's admission, the talk was all about *hiyyuv*, obligation. Are women obligated to most ritual commandments? On what basis might we circumvent women's classical exemption from many prayers and rituals? The regnant view of Rabbi Joel Roth was, of course, that individual females could choose to assume obligations that devolved upon males automatically, and thus be numbered in minyanim and lead normative rituals. Equality of *hiyyuv* was *the* defining feature of Jewish participation, and thus the key to equal status.

Rabbi Barmash's religious ideology assumes this same mental framework. She invokes the Talmudic saying: "One who is commanded and acts is greater than one who is not commanded yet acts anyway [Kiddushin 31a]."

This religion, she writes, is all about duty. "Those who are not obligated are considered as lesser," Rabbi Barmash writes. *Halakha* denigrates women by definition, when it demands less of them. The only remedy is to demand more. "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.”

I do not accept what seems to me an excessive focus on *hiyyuv*. This was never the only route to follow in egalitarian halakhic argumentation. As a religious and spiritual ideology it is extremely poorly suited to contemporary *Masorti* Judaism. That is why I chose not to vote for Rabbi Barmash’s paper, though I proudly support gender egalitarianism.

Admittedly, *Halakha* considers *hiyyuv* essential. One cannot ignore themes of duty and submission in halakhic Judaism. Still, other worthwhile theories alternative to Rabbi Roth’s position [advanced variously by Rabbis Mayer Rabinowitz, Judith Hauptman, Stephen Wald and others] depend less upon the Archimedean lever of imposing new obligation to change women’s status. This brief statement is not the place to analyze the merits and shortcomings of those approaches, although some of them might match modern heterodox faith more successfully.

But to comment briefly on our recent endorsement of egalitarian *hiyyuv*, let me note that I believe Rabbi Barmash misinterprets the famous text in *Kiddushin*, an error that distorts her treatment of the role of obligation in contemporary *Masorti* Judaism. As employed in the Talmud, the claim of “one who is commanded and acts is greater” [*gadol hametzveh*] is not a legal statement determining a person’s religious worth and status. It is an aggadic statement about the eschatological reward to be expected for performing mitzvot. As *Tosafot* suggest, this idea of greater reward is probably based on the psycho-spiritual experience of doing what one must instead of what one wills. *Gadol hametzveh* implies no denigration of the human or Jewish status of those *not* commanded, as can be seen from the fact that the non-commanded person to whom this teaching is applied is none other than the very estimable, but blind, Rav Yosef, head of the Yeshiva of Pumbedita.

Who cares about a minor difference in interpreting a Talmudic saying? The stakes are high in this case because the different interpretations say something important about what makes a good Jew. Rabbi Barmash affirms that the coin of the realm is doing one’s duty. She is certainly among an august group of sages throughout history who argue that you cannot be considered a full Jew until you have obligations and discharge them.

Lord knows, I agree that Jews should do mitzvot and conform to the behavioral norms that realize abstract values in practice. But ultimately, I think “obligation” is inadequate to define what makes a fully engaged spiritual and religious *Masorti* Jew. At its best, our religious style entails much more experimenting, aspiring, seeking and balancing. It requires both submitting to duty, and sometimes dissenting. My religious ideology affirms that as individuals and communities, our autonomous Jewish searches are as central as the duties imposed upon us. I believe in “picking and choosing” in the very best sense of the term: using our moral and spiritual faculties to make the best choices.

For this reason, I chose not to vote for a paper that conveys to *Masorti* Jews – especially but not only females – that you’re only as Jewish as your awareness of being commanded. To paraphrase Rosenzweig’s masterful essay “the Builders”: do you really think Jews throughout history kept mitzvot because the *Halakhah* itself told them they had to? If being fully Jewish is all about fulfilling duties, then I fear the vast majority of *Masorti* Jews would reply: *I guess I am not such a good Jew, after all.*

Indeed, insisting on obligation as the key to Jewish status has the ironic effect of denigrating the observance of most Jews. To those thousands of *Masorti* women who for 25 years have been leading communities in prayer, reciting the *Shema* and studying the Torah, Rabbi Barmash and the paper we’ve endorsed say to them, effectively: “we just want you to know, those acts of devotion, worship and celebration – having been formally uncommanded – were actually kind of defective.”

No. I find absolutely nothing defective in the mitzvot Jewish women have chosen to do. And I very seriously doubt that many *Masorti* women experience their own observance that way. Why should they? I doubt they are so influenced by a vestigial and purely theoretical differential between males’ and females’ obligations, which, by 2014, poses absolutely no barrier before any woman or girl seeking to take any Jewish role.

Those who oppose the extension of positive mitzvot to women sometimes complain that “I don’t want to make people sinners.” Generations of pious Jewish women did not lay tefillin or recite *Shema*, it is said. To decree that women must do so now would make people “sinners” simply for following the traditions of their mothers and grandmothers.

Myself, I find this a kind of metaphysical silliness. Mighty though it is, the CJLS is not actually empowered to determine guilt before God. Still, this view has the merit of reminding us that it is halakhically improper for rabbis to set impossible standards. Halakhic norms that cannot be met will leave Jews feeling hopeless and inadequate, not inspired to seek greater holiness. “Do not issue a public decree unless most of the community can follow it,” says the Talmud [*Avodah Zarah* 36b]. In our laudable efforts to make *Masorti* Judaism more egalitarian, I fear the CJLS did just that.

I fear Rabbi Barmash’s paper used a religious language – *hiyyuv* as the definition of full Jewish status – that is not only exaggerated in terms of the classical tradition itself, but is almost unintelligible to the contemporary *Masorti* Jew. We told them that only real Jewish behavior is what you *must* do. But almost everyone I know, in all our *Masorti* communities, experiences *kedusha* and expresses commitment more through the mitzvot we *choose* to do.

I doubt we can give real our communities real religious guidance if our religious teachings are so heavily laden with talk of obligations people cannot meet, to the exclusion of other dimensions of religious value.