# Does the Gender Binary Still Exist in Halakha?

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**Does Gender Matter?**

I often start off lectures, particularly on college campuses, asking this question as a prelude to launching into an analysis of women's obligation in mitzvoth. In order to clarify, I ask them where gender comes into play in our lives. The responses often veer to the biological differences between men and women. Biology, of course, determines certain fundamental differences between men and women. But beyond the biological, many sociological and psychological studies suggest that men and women feel and think differently, experience events and relationships differently, and learn differently. In short, science tells us that men and women are not the same physiologically, and often differ psychologically and emotionally as well.

The question, however, is, how does gender affect the decisions men and women make in the modern world? Inevitably, many people, particularly young people, admit that in their "secular" lives, it hardly matters at all. Their teachers and professors are men and women. Their fellow students or colleagues are male and female. Many have male and female employers or supervisors, or alternatively, employees of all genders. Men and women have equal educational and professional opportunities, and although women are still underpaid in some professions compared to men, and greatly underrepresented in some key areas such as government leadership and CEO positions, they are able to choose to study and work in fields that are meaningful, interesting, and financially lucrative.

Women are more likely than men to choose professions that will give them greater flexibility when raising a family, but many do not. In marriage, men and women create partnerships and divisions of labor with regard to the household and childrearing responsibilities that are not necessarily based on gender. When both parents are doctors, lawyers, research fellows, or computer scientists, scheduling will be based on who has the greater flexibility and on external childcare arrangements.

In contrast, gender matters very much for observant Jews. The traditional religious structure is made up of a binary in which men and women are different and far from equal. Men have more obligations,

which often leads to having more rights. Men alone make up the quorum that allows a prayer service to take place. They alone lead services, read Torah and, generally, oversee the functioning of the synagogue.[1]They are obligated in daily, weekly, monthly, and yearly mitzvoth that take them out of the home to perform often tedious religious duties–but these also confer privilege. Men alone are capable of serving as witnesses (with a few exceptions) and judges, allowing them to halakhically witness marriages and hear petitions in the cases of divorce and conversion. Until recently, only men were asked halakhic questions because only they had studied Talmud and were well-versed in halakhic material. This gave them exclusive decision-making power in halakha and in the proceedings of rabbinic courts, which has had tremendous ramifications on the lives of both men and women. Finally, in Jewish marriage, a man exclusively acquires the sexual rights of his wife. There is no way to soften this legal reality. Jewish divorce requires the husband to willingly release his wife from this contract by saying, “You are now permitted to any man.” According to halakha, adultery is only defined as consensual sexual relations between a Jewish married woman and a Jewish man other than her husband. Married Jewish men cannot be charged as halakhically unfaithful or be implicated in the conception of a *mamzer* if their sexual partners are single women.

In the last 25 years, questions around women’s status in traditional Jewish halakha and community have become among the most pressing, theologically, sociologically, and halakhically. These issues unleash feelings of angst and at times vitriol, along with bigger questions about modernity, morality, evolution of halakha, and rabbinic authority.

Halakha, as a system, has responded admirably and thoughtfully to the challenges of modernity. While there are always myriad positions taken spanning stringency to leniency, science and technology have proven to hold no threat for the inner workings and integrity of the halakhic structure. Organ donation, fertility technology, modern banking systems, electricity on Shabbat, not to mention *eruv*, are all issues that have been considered and resolved. However, social structures, particularly, but not only, with regard to questions of gender, have been met with far less cooperation, great resistance, and suspicion of an agenda that threatens to blow up the traditional binary structure. In truth, the fear is not unfounded. If considered seriously and critically, a shift in gender structure could potentially result in a complete restructuring of traditional Jewish community, family, ritual, and practice;feminist critique identifies a deep-seated gender bias affecting the basic discourse of traditional Jewish sources, from the Torah itself through contemporary writings.

Rabbinic sources about women are complicated. They can be divided, in my opinion, into three main typologies.The first category refers to women as Other.[2] Women are portrayed as temptresses and pollutants.[3] They are light-headed and are liable to misconstrue information.[4] According to one Midrash, even God is unable to control woman’s subversive nature, despite having tried to create Woman as docile and submissive.[5] In one particularly difficult text, the Talmud writes: “A woman is a pot of filth and her mouth is full of blood and all run after her.”[6] These sources show a distinct suspicion toward, and bias against, women as Other in comparison to men.

In the second category, in contrast, sources about Jewish woman are overwhelmingly positive—particularly in their roles as mothers and wives. These texts acknowledge the tremendous influence and impact women have on their husbands and sons. Without women’s commitment to God’s covenant, the men, who are obligated to pass on the Torah, would not have the temerity or discipline to fulfill their duties. Women as wives are thus central partners in the perpetuation of the covenant. In short, Jewish theology saw woman and her role as exalted, but also essentially inferior in body and mind.

Finally, in the third category are texts presenting the halakhic status and obligations of women in distinction to men; here the imbalance between the sexes is made clear. Women are significant, but

unequal, partners. Because men are obligated in more mitzvoth, their lives are worth more. Thus, if a choice must be made to save the life of a man or a woman, the man is given priority.[7] This attitude might be seen as a reflection of the Torah itself, where passages in Leviticus[8] make a distinct difference in the monetary valuation of men and women, with men being worth more.

It is not to say, however, that women are not important or valued. The Jewish nation could not survive without the wombs of Jewish women. Women's importance and stature in traditional Judaism are defined by their position as mothers, passing on the covenant to their offspring, nurturing them as young children, and providing a warm home for the family.

Furthermore, the halakhic structure takes pains to protect the most vulnerable women in society. If a man or a woman needs to be supported financially, a community with limited resources should protect the woman first in order to shield her from a life of debauchery or prostitution. Married women have marital rights to food, clothing, and sexual relations and can petition the court if their husbands are not fulfilling those obligations. Over 1,000 years ago, a rabbinic decree banned polygyny in most of the Jewish world in order to minimize spousal abandonment and reinforce a man's commitment to his one wife.

Nonetheless, as noted above, the halakhic structure does not value egalitarianism. One of the major distinctions between the genders is women's exemption from positive time-bound mitzvoth, a classification of mitzvoth that will be defined and analyzed below. Growing up in the Orthodox world, it is often presented definitively as the seminal proof that men and women are intended by God to fulfill different roles. I would go as far as to suggest that the foundation of gender separation rests greatly on this distinction, which includes mitzvoth such as *tzitzith*, *tefillin*, *sukka*, *lulav*, and *shofar*.

There are two primary reasons that have emerged in modernity and are presented as the reasons behind women's exemption from time-bound mitzvoth. In both cases, it is strongly asserted that women are not inferior to men in any way:

1. Women are more spiritual than men and, as a result, "need" fewer mitzvoth. This is understood to be the innate wisdom of Torah, which recognizes that men and women cannot be religiously fulfilled in the same way. Men are more at risk, and thus require more structure and boundaries to pursue a covenantal relationship with God.
2. Women must be free to take care of children and cannot possibly be obligated in all of the mitzvoth. This is largely the argument used to justify women's exemption from prayer and synagogue, regardless of the presence of actual children. It should be noted that women are actually obligated in prayer, as will be shown below, regardless of childbearing status.

According to either of these approaches, which are ubiquitous throughout Orthodox educational institutions, there is no nefarious hierarchy that privileges men over women. Women and men are in essence equal in the eyes of God. They simply have different roles to play in religious society and this too comes from God. This line of thinking then, interprets the rationale behind the blessing men say daily "Blessed are you God, who has not made me a woman" in a like manner. Men are thanking God for the extra mitzvoth bestowed upon them as men. It should not be perceived as a putdown of women's status. Nonetheless, in stark contrast, women do not make a blessing thanking God for not making them male, but rather, utter a blessing that was added to the prayer service for women, in which they thank God for making them as He desired. This of course, is not parallel at all, and only

serves to reinforce the sense of male privilege when the Jewish man daily says three blessings for what he is thankfully not: gentile, slave, or woman.

Text study also chips away at the genteelly framed explanations put forth above. The Mishna that presents women's exemption from positive time-bound mitzvoth gives no such explanation for the distinction between men and women. In fact, nowhere in the Talmud is any explanation put forth for the exemptions of women from some mitzvoth.

The first attempts to explain this disparity in mitzvah obligation appear in the Middle Ages. In those earliest sources (cited later in this essay), women are presented as spiritually inferior to men and thus, needing fewer mitzvoth. Alternatively, it was suggested that women's time must be free for serving their husbands, thereby exempting them from spending their time serving God. The two reasons cited above—spiritual superiority and care for children—are a modern reworking of these suggested interpretations for the discrepancy in mitzvah obligation. This is presumably in order to present a more coherent picture in line with a modern ethos, which sees women as neither subservient nor fundamentally inferior to men.

These approaches essentially create a façade that denies that gender discrimination is evident in the formulation of a category of positive time-bound mitzvoth and then serves as the fulcrum for the emergence of woman as *ezer kenegdo*—a helpmeet to the more actively obligated men.

**What Is a Time-Bound Mitzvah**?

The primary source for women's exemption from positive time-bound mitzvoth is found in a Mishna in *Kiddushin* (1:7), which presents four categories of mitzvoth without any indication of the source for such classification:

> And all of the mitzvoth the son is commanded to do for the father, both women and men are equally obligated.
> And all of the positive time bound commandments, men are obligated and women are exempt.
> And all of the positive non-time bound commandments, both women and men are obligated.
> And all of the negative commandments, whether time bound or not, both men and women are obligated except for the prohibition to shave one's sideburns or beard with a razor and for priests (male) not to incur impurity of the dead.[RA1]
> All of the mitzvoth that a father is commanded to do for his son, women are exempted from.

The categories presented are defined as positive time-bound mitzvoth, positive non-time-bound mitzvoth, negative time-bound mitzvoth, and negative non-time-bound mitzvoth. Women are obligated in three of the four categories and only exempted from mitzvoth defined as positive time-bound. No explanation is given for this exemption, and there is no clarity as to what time-bound means or how to define the concept of time in this regard. Furthermore, the distinction between time-bound and non-time-bound mitzvoth appears only with regard to the difference in obligation between women and men. It serves no other function in the talmudic discourse.[9]
An idea that women have more of an active duty to husband than to serving God does emerge in a parallel Tosefta,[10] but in the context of key gender differences with regard to honoring parents. Whether this is the intuitive reason behind the broader exemption in the Mishna is unknown, however, it is worth looking at the Tosefta as illuminating the hierarchy that exists in the marital relationship and directly impacts women's ability to practice in the religious sphere.

Men and women are equally obligated in the fifth of the Ten Commandments, "Honor thy father and mother." The passage in Tosefta states that married women however, are not free to fulfill this obligation because they require the permission of their husbands in order to do so. Due to their restricted freedom in the marital relationship, halakha exempts them from their divine duty to their parents.[11] The message is clear: A married woman will not be free to perform this central mitzvah, and perhaps other mitzvoth, in the same way as a man who is married.

Both the Babylonian and Jerusalem Talmud add the caveat that if a woman becomes widowed or divorced she resumes her full obligation to her parents, reverting back to the original nature of the mitzvah obligating both men and women.[12] The exemption is only for the duration of marriage. While no one has suggested such a distinction between single and married women with regard to other mitzvoth from which women are exempt, it is interesting to consider such a possibility when rethinking gender distinction in mitzvoth today.

**What Are Some Time-Bound Mitzvot?**

Following the Mishna that baldly puts forward women's exemption from positive time-bound mitzvoth, the Talmud brings several examples to illustrate. These include *tzitzith*, *tefillin*, *sukkah*, *lulav*, and *shofar*.[13] The mitzvoth can be grouped into two categories, although it is hard to come up with a unifying thread between the two.

1. ***Sukka, lulav, and shofar***. These are time-bound because they can only be fulfilled on specific days of the year. No one disagrees with the time-bound nature of these mitzvoth. They have no meaning once the associated holiday passes. Accordingly, this exemption status should apply to all positive commandments that are calendar dependent, including Shabbat and Passover. This in actuality is not the case and women are obligated in many similar time-bound mitzvoth.

2. ***Tefillin and tzitzith.*** Both of these are ritual objects that are to be worn all day every day, but only in the daytime and not at night, at least in the time of the Talmud.[14] The time-bound nature is completely different than in the first category, since the time dimension is much less significant than in the first category. For instance, if one doesn't wear *tefillin* or *tzitzith* on a particularly day or even for a whole week, one can wake up and perform those mitzvoth on the morrow. In addition, neither of these examples are uniformly accepted as time-bound. There are tannaitic sages who rule that women are obligated in both of these mitzvoth because they are in fact, not time-bound. To illustrate, in Tosefta *Kiddushin* and the parallel passage in the Jerusalem Talmud on *Kiddushin*, the Tanna Kamma defines *tzitzith* as non-time-bound. Only Rabbi Shimon disagrees.[15]

The Talmud in *Kiddushin*[16] begins to explore and challenge the Mishna's classification of these commandments. The discourse is significant, for it brings several examples in which women are obligated in certain positive time-bound commandments and exempted from other positive non-time-bound commandments. The obligations that go against the rule include eating matzah, rejoicing on the holidays, and gathering to hear the king read the Torah every seven years. The exemptions that also go against the rule include Torah study, procreation, and redeeming the first-born son.

It should thus be apparent that the classification of women's exemption from some mitzvoth and obligation in others is by no means clear-cut. The Talmud brings a statement of Rabbi Yochanan, "We do not learn from general statements," to acknowledge the dissonance that emerges from so much

inconsistency. This of course begs the question of why such a classification system needs to exist and what role it plays in shaping the gender binary. There is a deep sense of the arbitrary.

To illustrate, the talmudic discussion continues with an attempt to analyze women's exemption from sitting in a *sukkah* in an attempt to include women in this time-bound mitzvah. On the face of it, it should seem possible to include women in the mitzvah of *sukkah*. In addition to some compelling methodological reasons to do so, there are practical ones as well, since the exemption will potentially mean that men will be dwelling inside the *sukkah*, with wives and daughters on the outside. Given that Sukkot in particular is a holiday in which men and women are supposed to rejoice together, this seems counterintuitive! The famous sage Abaye notes that if the mitzvah on sukkot is to "dwell" in the *sukkah*, it should include women who are equated to a man's dwelling. His colleague Rava argues that *sukkah* should be equated to Passover, since they both fall on the 15th of their respective months. Although the Passover offering and matzah are time-bound mitzvoth, women are unequivocally obligated in them, and so, this could serve as an opening to obligate them in *sukkah* as well. In the end, the Talmud, based on the *Midrash Halakha Sifra*, concludes that they are indeed exempt because of an exegetical analysis of an extra letter in a verse that discusses the mitzvah.[17] Interestingly, the reason is not that it fits into the category of time-bound mitzvoth, even though the Tosefta lists it as such. In fact, through the talmudic discourse analyzing the mitzvoth that can be included or excluded from the Mishna's classification, the principle of exemption from time-bound mitzvoth does not make up the central argument in any of the cases. As a result, in the course of this evaluation of the halakhic nature of women's exemption from some mitzvoth, a parallel reality is explored, in which women could have been included in all of the positive time-bound mitzvoth along with the central obligation of learning Torah using the same methodology that in the end is used toward exempting them.

Maimonides[18] acknowledges this lack of consistency. Women's exemptions from certain mitzvoth and obligations in others do not fit into clearly defined rubrics. He does not attempt to give a reason for the exemptions or the inclusions. He simply states that the mitzvoth women are exempted from are passed on by tradition. The rule exempting women from time-bound mitzvoth is not seen to provide comprehensive or clear guidance, nor does it convey anything about the nature of women when compared to men.

Moving on to the other central text on this topic, in Tracate *Berakhot*[19] women are grouped together with minors and Canaanite slaves, although the focus of the Talmud is really on women.[20] They are exempt from *Shema* and *tefillin* but obligated in prayer, *mezuzah*, and grace after meals. Women's exemption from reciting the *Shema* especially provokes curiosity since *Shema* is a liturgical affirmation of the key doctrinal commitments underlying Judaism (belief in one God and dedication to God through performance of the commandments).[21] The Babylonian Talmud assumes the exemption from *Shema* is because it is a positive time-bound mitzvah from which women are exempt. In the parallel passage in the Jerusalem Talmud, however, the reason for the exemption from *Shema* is based on the verse that traditionally exempts women from learning Torah: *And you shall teach it to your sons—to your sons and not to your daughters.*[22] Here again, there is a lack of uniformity regarding the reason for women's exemption from *Shema*. Is it due to its time-bound nature, or is it because reciting *Shema* is like learning Torah?

The next significant point of analysis in this *Berakhot* passage is regarding prayer called *Tefillah* and referring to the *Shemonah Esreh*. *Tefillah* will challenge the integrity of the entire structure of positive time-bound mitzvoth. If women are exempted from time-bound commandments, why are they obligated in prayer, which is a time-bound mitzvah with an obligation in the evening, morning, and afternoon? The answer given in the standard talmudic text is because women need to petition God for mercy and they are thus obligated. The point-counterpoint in the discourse is fascinating. It would seem, based on the Mishna's principle, that although women should be undeniably exempt from prayer, the need for mercy is enough to override the principle. Interestingly, accepting the yoke of heaven in *Shema* is not enough to implement an override!

What is more noteworthy is that certain talmudic manuscripts, notably the Munich manuscript of *Berakhot* 20a has a totally different version which resolves the latent contradiction in obligating in *Tefillah* but exempting from *Shema*.

This version, which is quoted by the early talmudic commentaries Rif and Rosh in their commentary on this page of Talmud, defines *Tefillah* as a positive non-time-bound mitzvah obligating women. The tension however remains, since *Tefillah* as an obligation consistently refers to the prayer known as *Shemonah Esreh*, which requires commitment to recitation three times a day. This seems, even more than *Shema*, and certainly more than *tefillin* and *tzitzith*, to be time-bound. Subsequent codification of laws around *Tefillah* revolve around exacting time frames in which each *Shemonah Esreh* is said. Maimonides resolves this to a large degree by bifurcating the obligation to pray into two, but even this leads to a certain internal inconsistency in his *Mishneh Torah*. In the first,[23] he states that *Tefillah* is a biblical obligation that is non-time-bound and non-defined. It requires only some sort of recognition and gratitude toward God along with a personal petition at some point in the day. Women and slaves are equally obligated along with men. However, in another chapter of *Mishneh Torah* on the laws of *Tefillah*,[24] he states outright that women and slaves are obligated in *Shemonah Esreh*, which is time-bound.

In short, the Talmud exempts women from time-bound mitzvoth despite the many exceptions to the rule. One of the major exceptions is to obligate women in regular daily *Tefillah*. The internal dissonance caused by this inclusion, which seems like it should be an exemption, leads to a leniency that is actually transgressive, for women naturally feel they are exempt from prayer just as they are exempt from *Shema, tzitzith, tefillin, sukka, lulav,* and *shofar*. From the early modern period until today, when rabbinic authorities have looked around and noticed that women are not praying *Shemonah Esreh* at all, they are pressed to come up with an explanation.

The *Mishna Berura*, for instance, takes issue with the Magen Avraham's attempt to excuse such behavior writing,

Even though this is a positive time-bound mitzvah and women are exempt from those mitzvoth….they obligated them in morning and afternoon prayers like men since prayer is designated to invoke mercy. And this is correct because it is the opinion of the majority of legal deciders….therefore we should instruct women to pray *Shemonah Esreh.*[25]

The defense that women are occupied with childbearing is considered and only partially accepted even in the ultra-Orthodox community as illustrated by both Rabbi Ben Zion Licthman[26] and Rabbi Yekutiel Yehuda Halberstam, who commented as follows:

And perhaps since those who are busy with the needs of the many are exempt…one could argue that women who have small children they care for worried that if they pray they would not be able to properly care for their children and one who is engaged in a mitzvah is exempt from a mitzvah and her husband's demands also fall on her…..[N]onetheless in the Talmud it is written they are obligated and there was no concern for such things and how can we go against a decree of our sages?…Still we must justify the position of the Magen Avraham…there is what to rely on for women at this time since they cannot check to make sure they have proper intent during prayer….since women are greatly distracted, and their husband's authority hangs over them, and the children depend on them. Therefore it seems that most women do not pray regularly and only when they can evaluate themselves to see if they have proper intent do they pray when this is possible and it seems to me this correct…since truly the decree was to obligate them in prayer.[27]

One last text further emphasizes the lack of uniformity on the subject of women's obligation in mitzvoth. It is found in the minor talmudic tractate of *Sofrim*/Scribes[28]:

…for the women are obligated to hear the reading of the book/Torah like men…and they are obligated in the reading of *Shema* and prayer (*Shemonah Esreh*) and the Grace after Meals and *mezuzah*, and if they do not know how to read in the holy language (Hebrew), they should be taught in any language they can understand and be taught. From here, it was understood that one who makes the blessing must raise his voice for his small sons, his wife, and his daughters.

In this rabbinic text, women are obligated to hear the reading of the book (Torah), and they are also obligated in *Shema*, *Tefillah*, Grace after Meals, and *mezuzah*. Furthermore, if they do not know the holy language (Hebrew), they are taught to say the prayers in any language that they can understand.

This is an interesting source for it directly contradicts the Mishna in *Berakhot.* Here the mitzvah of *Shema*, which stands at the crossroad of several critical exemptions (namely, *tefillin* and learning Torah) is defined as an obligation. As was noted in the analysis of the *Kiddushin* passage, there is a sense of a parallel halakhic process in which women could have been obligated in positive time-bound mitzvoth as well as in learning Torah.

Before moving on, below is a chart that underscores some of the lack of consistency that is apparent in the topic of women and mitzvoth. As stated earlier, women's exemption from time-bound mitzvoth is often presented as reflective of women's innate nature toward spirituality or toward raising children. However, a quick look at the chart shows that women are obligated in as many positive time-bound mitzvoth as they are exempted from, and more if you include rabbinic positive time-bound mitzvoth as well.

| **Exemptions Because They Are Time-Bound Mitzvoth** | **Obligations in Mitzvoth Despite the Time-bound Nature** | **Exemptions from Non Time-Bound Positive Mitzvoth** |
|---|---|---|
| Shema | Kiddush | Learning/teaching Torah |
| *Tefillin* (difference of opinion) | Grace after Meals (possibly rabbinic) | Procreation |
| *Tzitzith* (difference of opinion) | *Tefillah* (possibly rabbinic) | Redeeming the firstborn |
| *Sukkah* | Matzah | Circumcision of a son |
| *Lulav* | *Hakhel* | Honoring father and mother |
| *Shofar* | *Simha* | once married |
| Pilgrimage on Festivals | Passover Offering | Destroying the corner of one's beard or hair |
| | Fasting on Yom Kippur (positive and negative) | Laying hands on a sacrificial animal |
| | | Impurity due to contact with a dead person for a (daughter) of a priest |

**Rabbinic Positive Time-Bound Mitzvoth**

| **Women Are Obligated:** | **Women Are Exempt:** |
| --- | --- |
| Hanukkah candles | Counting of the *Omer* (Majority opinion considers it rabbinic but Maimonides counts it as biblical) |
| Megillah and other Purim mitzvoth | *Hallel* |
| *Bedikat Hametz (*difference of opinion) | Blessing the new moon (although Rosh Hodesh was designated as a special holiday for women) |
| Four cups of wine and all Passover mitzvoth | |
| *Hallel* on the night of Pesach | |
| *Lehem Mishnah* or the obligation to have two loaves of bread at the first two and preferably third meal | |
| Lighting Shabbat candles | |
| *Havdalah* | |
| *Eruv Tavshilin* | |

What becomes apparent is that women are obligated in all of the positive time-bound mitzvoth, biblical and rabbinic, associated with Shabbat along with all of the mitzvoth associated with Passover. They are obligated in the mitzvoth of Purim and must light candles on Hanukkah. In fact, there are almost no rabbinically-mandated time-bound mitzvoth from which they are exempt, with the possible exception of counting the *Omer*, which is rooted in biblical origins, and saying *Hallel* on festivals. This calls into question why, if an exemption from time-bound mitzvoth is so central to gender differentiation in Judaism, women were included in so many of the Rabbinic positive time-bound mitzvoth.

In the end, the entire gendered platform of women's exemption from time-bound mitzvoth rests on nine or ten positive time-bound mitzvoth, many of which are not uniformly accepted as time-bound or exemptions for women in the talmudic literature; there are an almost equal number of exemptions from positive non time-bound mitzvoth. It is also interesting that while women are supported and encouraged in many homes and communities to voluntarily take on mitzvoth such as *shofar*, *lulav*, and *sukkah*, and, most especially, little girls, are taught at a very young age to say *Shema* in the morning upon waking up and before bed, there is little to no support within Orthodoxy for women putting on *tefillin* or wearing *tzitzith*. Those mitzvoth remain unquestionably gendered and taboo in their perception within religious society. This is probably because very few women within Orthodoxy wear *tzitzith*, *tallith*, and *tefillin*, while in the non-Orthodox denominations it is part of the coming of age process, which creates a further politicized divide between these time-bound mitzvoth and Orthodox women.

**Infusing Meaning into the Unknown**

At the beginning of this article, it was noted that the explanations most frequently given nowadays as to why women are exempt from positive time-bound mitzvoth are because of heightened spirituality or time restraints while taking care of children. However, the earliest attempts to give reason for these exemptions focus on a wife's subordination to her husband and her spiritual inferiority. Malmad HaTalmidim[29] in thirteenth-century southern France and the Abudraham[30] in fourteenth-century in Spain attribute women's exemption from time-bound mitzvoth to the tension it would cause, placing the woman between God and her husband. Both suggest that without this exemption, women would be caught between "Creator" and husband. Each would be vying for her absolute fidelity, and neither God nor husband would understand her forsaking one for the other. In order to have harmony in the home, God exempted her from these obligations. It is assumed that God had a central role in engineering the exemptions to avoid discord, lest the husband feel undermined by her choosing God over him. They present women as exempt from time-bound mitzvoth that might bring them into conflict with household duties.

A different approach emerges in Rabbi Yehoshua Ibn Shuaiv (fourteenth-century Spain). Citing Nachmanides, he writes that just as the souls of Israelite men are holier than those of non-Jews and

Canaanite slaves, so too they are holier than women's, even those women who are included in the covenant. For this reason men were commanded in all of the positive and negative mitzvoth.[31]

This is startlingly distinct from the more widely known approach in modernity that appears in the sixteenth century, in the commentary of Judah Loew ben Bezalel, known as the Maharal of Prague, in which women are presented as spiritually superior and thus, less dependent on mitzvoth to nurture spiritual development.[32] In the nineteenth century, Rabbi Samson Raphael Hirsch wrote in his commentary[33] that the Torah exempted women from positive time-bound mitzvoth because of their innate connection to the divine. He further writes,

The Torah affirms that our women are imbued with a great love and a holy enthusiasm for their role in Divine worship, exceeding that of man. The trials men undergo in their professional activities jeopardize their fidelity to Torah and therefore, they require from time to time reminders and warnings in the form of time-related precepts. Women, whose lifestyle does not subject them to comparable trials and hazards, have no need for such periodic reminders.

Upon reading Hirsch however, one cannot help but ponder this last sentence. Women were not in the past subject to comparable trials and hazards as men, but what would he say today when men and women interact regularly in the same challenging environments? Given that he greatly contextualizes his explanation to a reality that no longer exists, would he argue that now women should be equally obligated in all positive time-bound mitzvoth?

**Feminist Scholars in the Twentieth Century**

In the late twentieth century, female Talmud scholars began to introduce different explanations for women's exemption from time-bound mitzvoth.
Before Professor Rachel Adler left Orthodoxy, she lived as a fully Orthodox Jewish feminist in Los Angeles. In an essay titled "The Jew Who Wasn't There,"[34] she wrote movingly,

Make no mistake; for centuries, the lot of the Jewish woman was infinitely better than that of her non-Jewish counterpart. She had rights which other women lacked until a century ago... [T]he problem is that very little has been done since then (1000 ce) to ameliorate the position of Jewish women in observant society. All of this can quickly be rectified if one steps outside of Jewish tradition and Halacha. The problem is how to attain some justice and some growing room for the Jewish woman if one is committed to remaining within Halacha. Some of these problems are more easily solved than others. For example, there is ample precedent for decisions permitting women to study Talmud, and it should become the policy of Jewish day schools to teach their girls Talmud. It would not be difficult to find a basis for giving women aliyot to the Torah. *Moreover, it is both feasible and desirable for the community to begin educating women to take on the positive time-bound mitzvoth from which they are now excused; in which case, those mitzvoth would eventually become incumbent upon women.*

It is noteworthy, that when Adler wrote her essay in the 1970s, almost no one was teaching girls and women Talmud. Since then, many, although not all, Orthodox schools have added Talmud classes for girls. More significantly, serious post-high school Talmud study became available both in New York and more centrally, in the Jerusalem area where Matan, Nishmat, Lindenbaum, Migdal Oz, and most recently, Drisha, have educated thousands of young women who are comfortable and competent in Talmud study. Serious halakhic programs with ordination-like curricula have also proliferated in Israel at Matan, Nishmat, Lindenbaum, Migdal Oz, Beit Morasha, and Harel, as well as in New York, with the Maharat program, which has graduated dozens of women, many of whom are serving in some capacity as communal rabbinic figures.

What Adler is suggesting, however, is that the disparity in obligation in positive time-bound mitzvoth inexcusably contributes to the hierarchy that discriminates against women. Ultimately, she left Orthodoxy, and one of the reasons she gave was the rabbinic reluctance to seriously consider a change in the halakhic status of women.

About ten years later, Blu Greenberg, who is known as one of the founders of Orthodox Feminism and specifically of JOFA, (Jewish Orthodox Feminist Alliance) wrote a seminal book called *On Women and Judaism*[35] in which she grappled with her love for tradition, ritual, and religious theology along with her awareness of feminism and the feminist critique of patriarchal structures. With regard to halakhic Judaism, she wrote,

> I am not arguing here whether halakhic Judaism deems a woman inferior, although there are more than a few sources in the tradition that lend themselves to such a conclusion; nor will I accept at face value those statements that place women on a separate but higher pedestal. What I am saying is that halakhah, contrary to the feminist values I have described above, continues to delimit women. In some very real ways, halakhic parameters inhibit women's growth, both as Jews and as human beings.
>
> I do not speak here of all of halakhah. One must be careful not to generalize from certain critical comments and apply them to the system as a whole. In fact, my critique could grow only out of a profound appreciation for the system in its entirety—its ability to preserve the essence of an ancient revelation as a fresh experience each day; its power to generate an abiding sense of kinship, past and present; its intimate relatedness to concerns both immediate and otherworldly; its psychological soundness; its ethical and moral integrity. On the whole, I believe that a Jew has a better chance of living a worthwhile life if he or she lives a life according to halakhah. Therefore, I do not feel threatened when addressing the question of the new needs of women in Judaism nor in admitting the limitations of halakhah in this area.

Neither Adler nor Greenberg was willing to accept apologetic explanations along the lines of separate but equal regarding the exemptions and exclusions of women that have been perpetuated for thousands of years. Both bring a respectful but critical questioning approach that could only emerge in the wake of greater educational opportunities for women, leading to a demand for a seat at the table when evaluating the future of women's status in halakha.

At the beginning of the twenty-first century, Dr. Tamar Ross wrote *Expanding the Palace of Torah*, a book about feminist theology and the interpretation of Jewish text.[36] In the second chapter, she presented her analysis of women and their exemption from mitzvoth.

> The net result is that women are at times classified in halakhic literature together with other marginalized groups such as slaves, children, imbeciles, androgens, hermaphrodites, and the deaf-mute—either because they are excluded from certain mitzvoth altogether or because they are merely exempt. … As in the case of other classes situated on the hierarchical scale, difference in religious responsibility then serves as rationale for women's diminished valuation.

Ross connected the exemption from time-bound commandments with the absolute exclusion from Torah study which ultimately alienated women completely from the interpretive decision-making process in halakha. She called for a reinterpretation, philosophically, of all religious texts, particularly of the Torah, with a female voice rather than the male voice of the Old Testament, in order to read women back into the text.

Within these examples of three female voices come a different interaction and interpretation of the texts laying out the halakhic gender binary that reflects a heightened awareness of the impact this classification has had on the perception of women within marriage, family, community, and nation.

Circling back to the beginning of this essay, gender matters because it has played a pivotal role in how the halakhic structure has functioned for thousands of years. I think it is important to acknowledge that for many, possibly even the majority in the broader Orthodox, ultra-Orthodox, and Hassidic communities, the classification of men and women having different gender roles has been central to religious identity and has probably been empowering to many of those who are committed to observance. However, it is equally important to acknowledge that the positivity assigned to these differing gender roles acts to smooth over a façade behind which lies a social structure that privileges men and can disempower and discriminate against women. The bigger issues are not those of *tefillin* and *tzitzith*, but the general disparities in mitzvah obligation that are emblematic of a hierarchy that excludes women from halakhic decision making, leadership roles, and, most notably, continues to perpetuate the imbalance of power in the marital relationship.

I often say that I do not want to lose the men to gain the women, but I do want men to be less afraid of strong female leadership and women's interest in increased practice in ritual, both in public and private space, particularly when halakhically legitimate. This is not a simple task to implement.

I want to bring an anecdote to illustrate the complexity in what I am suggesting. A college student of mine arrived at her single brother's home for dinner on Friday night. While the meal had not yet begun, they had already made Kiddush. She asked for a cup of wine so that she could make Kiddush, and one of the male guests offered to make it for her. She politely refused and again, asked for wine so that she could make Kiddush. He again offered to make Kiddush for her more aggressively, insisting that women cannot make Kiddush. She knew that she could. What made the conversation more frustrating was that no one else, Day School and yeshiva graduates all, defended her or could remember the halakhic policy on this matter. She knew she was right but could not cite the source from memory. This kind of scene, of what I call permitted but prohibited, repeats itself regularly throughout the religious world. Religious women on college campuses are repeatedly prevented from making Kiddush or *haMotzi* for the community although halakhically they can fill the obligations for everyone. Even more surprising for such egalitarian academic spaces, tremendous resistance is expressed on many campuses to the idea of passing the Torah through the women's section during Shabbat morning services. There is a sense of taboo that is formed around rituals traditionally performed by men but that can be performed by women. As one very important mainstream rabbi at Yeshiva University once tellingly told my brother, "Your sister is halakhically permitted to make the blessing on challah for everyone, but, she simply should not!"

I want men and women together to seek halakhic solutions and build halakhically committed communities with an emphasis on seeking greater partnership between the sexes. This I believe will perpetuate the integrity of a living Torah that continues to infuse and inspire our lives with the sense of the divine. To conclude with a quote from Blu Greenberg, "It is my very faith in halakhic Judaism that makes me believe we can search within it for a new level of perfection, as Jews have been doing for three thousand years."

[1] I am intimately aware of the phenomenon of partnership *minyanim* in which women take an active role in leading some of the prayer service and reading Torah. As of now, those *minyanim*, while largely made up of observant and halakhically committed men and women, are still outside normative halakhic consensus.
[2] For example, B. *Bava Batra* 16b.
[3] For example, B. *Kiddushin* 39b and Genesis Rabbah 17.
[4] For example, B. *Kiddushin* 80b, Shabbat 33b and most significantly, Mishna *Sotah* 3:8.
[5] Deuteronomy Rabbah Parasha 6.

[6] B. *Shabbat* 152a.
[7] B. *Horayot* 13a.
[8] Leviticus 27:1–8.
[9] Hauptman, Judith, *Rereading the Rabbis*, 1998, p. 226.
[10] Tosefta *Kiddushin* 1:1.
[11] *Shulhan Arukh Yoreh Deah* 240:17,24. However, the Mishna considers it grounds for divorce if a man actively prevents his wife from visiting her parents despite the hierarchy that privileges him over them. See Mishna *Ketubot* 7:4.
[12] P. *Kiddushin* 1:7, 61a, B. *Kiddushin* 30b.
[13] B. *Kiddushin* 34a. *Shema*, which is perhaps the most quintessential of time-bound mitzvoth, is missing. It appears in the tractate *Berakhot*, which will be analyzed below. A full list of all exemptions and obligations in positive time-bound mitzvoth will appear below.
[14] In the time of the Talmud, *tefillin* were worn all day every day with a question about wearing them on Shabbat. *Berakhot* chapter 3 is filled with discussions of how to wear *tefillin* into the bathroom. Post-Talmud, there was a move to limit the wearing of *tefillin* to the morning together with the morning prayers.
[15] Tosefta *Kiddushin* 1:10, P. *Kiddushin* 1:7.
[16] B. *Kiddushin* 34a.
[17] *Ibid*., citing *Sifra Emor* 17. What is absent both from the midrash halakha is a reference to the exclusion of women from *sukkah* because it fits the category of time-bound mitzvoth. See Elizabeth Shanks Alexander in *Gender and Time Bound Commandments in Judaism*, 2013, p. 40 footnote 30, where she suggests that the Sifra which would have known of the principle of exemption, does not cite it because it was not the basis for its ruling.
[18] Maimonides commentary to Mishna *Kiddushin* 1:7.
[19] B. *Berakhot* 20a.
[20] While minors, women. and Canaanite slaves are often grouped together, in this particular *sugya*, it seems as though the other two categories were incidental. See Safrai, Shmuel and Ze'ev, Mishnat Eretz Israel, Tractate *Berakhot*, p. 130.
[21] Alexander, p. 137.
[22] Sifre Deuteronomy 46.
[23] *Mishneh Torah*, Prayer and the Priestly Blessing 1:2.
[24] *Mishneh Torah*, Laws of Tefilla and Berakhot 6:10.
[25] *Mishnah Berurah* 106:4.
[26] *Bnei Zion* 106:1.
[27] *Divrei Yatziv* OH 121.
[28] Minor Tractate *Sofrim* 18:5.
[29] *Malmad HaTalmidim*, Parashat *Lekh Lekha*.
[30] Abudraham, Section III.
[31] Ibn Shuaiv, Yehoshua, *Sermons on the Torah, Tazria Metzora*, p. 48.
[32] Maharal of Prague, *Be'er HaGola* 27a.
[33] Hisrch, Samson Raphael, Commentary to Leviticus 23:43.
[34] Adler, Rachel, "The Jew Who Wasn't There, Halakha, and the Jewish Woman," in: *Response: A Contemporary Jewish Review*, Summer 1973.
[35] Greenberg, Blu, *On Women and Judaism*, 1981.
[36] Ross, Tamar, *Expanding the Palace of Torah*, 2004.

[RA1]David, this should be set as an extract--I can't seem to fix the formatting here...