

Gender and Tefillin: Assumptions and Consequences

Rabbi Ethan Tucker argues¹ that the Rabbis excluded women from the obligation to lay tefillin because tefillin represent full citizenship and - given their immersion in Roman culture - the Rabbis could not imagine women as full citizens.

This argument is frankly puzzling. The Talmud asserts in several places (Shabbat 62, Eiruvim 95-96) that Rabbi Meir held that women *are* obligated to lay tefillin. On what basis does Rabbi Tucker claim that Rabbi Meir's colleagues found his position unimaginable? Even if the reconstruction of Rabbi Meir's position is not historically accurate, the fact would remain that the Talmud found it imaginable. So why should we read the subsequent tradition, which rules that women are not obligated, as resulting from a lack of imagination?

Note that Rabbi Tucker's argument is derived wholly from the rhetoric of a Mekhilta whose rhetoric finds no echo in the Talmud's various discussions of gender-and-tefillin. It is true that the Talmud in one place (but not in others) assumes that women's exemption from Tefillin is derivative of their exemption from at least one mode of Torah study; but the *derashah* deriving that exemption bears no more relationship to citizenship than the *derashah* deriving women's exemption from other time-bound commandments from tefillin². Indeed, there is no particular reason to assume that citizenship, as defined by Roman political theory, was a relevant category for the Rabbis.

Furthermore, Rabbi Tucker's read of the Mekhilta focuses on its last line:

מכאן אמרו:
כל המניח תפילין כאלו קורא בתורה,
וכל הקורא בתורה פטור מן התפילין

“From here they said:

“One who lays tefillin is as if he reads Torah,
and one who reads Torah is exempt from tefillin”.

From here Rabbi Tucker says:

“the final line of the Mekhilta passage above emphasizes that learning Torah and wearing tefillin are essentially the same thing; indeed, one who is truly learning is exempt from wearing tefillin while doing so!”

But if tefillin symbolize membership in the Torah-studying elite, why should one reading Torah not wear them?

A possible answer is that wrapping tefillin in this stream of interpretation reflects inadequacy rather than mastery – tefillin are *substitutes* for Torah study, not *embodiments* of it. This idea explains why the Mekhilta says that studying Torah exempts one from tefillin, but not vice versa, and is stated explicitly in Masekhet Tefillin Chapter 1:

כך היה רבי אליעזר אומר:
גדולה היא מצות תפילין,
שכך אמר הקדוש ברוך הוא לישראל:

¹ <http://blogs.timesofisrael.com/gender-and-tefillin-possibilities-and-consequences/>

² I hope to post soon a separate article exploring how the Rabbis read the verses intertwining Torah, tefillin, and mezuzah as obligating women in the last while, at least according to most, exempting them from the first two.

"והגית בו יומם ולילה!"
אמרו ישראל לפני הקדוש ברוך הוא:
"רבון העולמים, וכי אנו יכולין להגות יומם ולילה?!"
אמר להם הקדוש ברוך הוא:
"בני, היו נותנים תפילין על ראשיכם ועל זרועותיכם,
ואני מעלה עליכם כאלו אתם הוגים בתורה יומם ולילה,
שנאמר:
'והיה לך לאות על ירך ולזכרון בין עיניך
למען תהיה תורת ה' בפיך'".

So Rabbi Eliezer would say:
Great is the mitzvah of tefillin
as this is what The Holy Blessed One said to Israel:
"My children, put tefillin on your heads and arms,
and I will treat this **as if** you recited Torah day and night,
as Scripture says
"And it will be for you a sign on your hand and a mnemonic between your eyes
so that the Torah of Hashem will be in your mouth."

Later commentators even argue that the intent of the Mekhilta is that tefillin and Torah study are mutually exclusive – one is halakhically required to be consciously aware of tefillin whenever wearing them, and someone studying Torah with proper intensity would inevitably fail this requirement. Wearing tefillin would therefore be a statement that one could not fulfill the true responsibility of Talmud Torah. Women would still be exempt because, not having the same obligation, they have no need for the black badge of **as-if**. But it is hard to see that badge as a critical marker of Roman-style citizenship.

In any case, practical halakhah and popular hashkafah do not follow the Mekhilta, as Rabbi Tucker acknowledges in his essay's first paragraph. The observant community associates tefillin primarily with prayer rather than with Torah, and reasonably sees this association as continuous with the rest of the Talmudic record. So why should we treat the Mekhilta as the dominant voice of Jewish tradition, especially if doing so leads us to categorize that tradition as reflective of Roman chauvinism rather than Torah?

Rabbi Tucker's choice to ignore these alternative understandings of women's exemption fails to accord with the Talmud's core value of intellectual generosity. The Talmud programmatically challenges its own assumptions by constructing *hava aminos*, by seeking out the best arguments for the positions it wants to reject and sees as obviously wrong – and arguments that begin as generously imagined *hava aminos* often go on to win the day in some other *sugya* or later commentator. Failure to imagine the *hava amina* – to treat one's own position as unproblematically *peshitta* (so obvious that it goes without saying) – results in a vicious cycle: texts are read exclusively through the lens of ideology, and then cited as evidence for that same ideology.

Note also that wrapping tefillin has acquired its own liturgy over time, and one core aspect of that liturgy involves men reenacting the betrothal of the Jewish people to G-d – in other words, playing the female role. Degendering tefillin is not simply a matter of overcoming

qualms about crossdressing³. It cannot be accomplished simply by painting the backs of the straps “various colors”, or by reducing male, prayer-based practice to “a strange, arcane ritual devoid of much meaning that is at best the basis for a nostalgic male bonding ritual at a Men’s Club event.” Here Rabbi Tucker seems oddly dismissive of the lived experience of the halakhic community⁴.

Halakhic practice can develop dramatically when someone with absolute faith that Halakhah expresses the binding Will of G-d for all Jews concludes that a conventional understanding of the law is incorrect because it is morally intolerable, and G-d could not Will the morally intolerable. By contrast, moral critiques of Halakhah perceived as coming from external ideology freeze the law; they generate a defensive reaction among those who love and identify with the tradition, along with a suspicion that halakhic conclusions stemming from that critique represent the will of the *posek* (halakhic decisor) subordinating that of G-d, rather than the other way around.

Therefore, it is particularly the most progressive and aspirationally revolutionary of halakhic thinkers who must try hardest to ensure that their critiques of existing practice are and are perceived as organically grounded in the tradition rather than transplanted. Otherwise their every argument damages the causes they believe in.

The Shiltei Gibborim (Rosh HaShannah 9b) cites the 13th-14th century Italian Talmudist Isaiah de Trani the Younger:

וכבר ביארתי בקונטרס הראיות
שאינן הנשים עוברות על כל תוסף
במצוה שלא נצטוו עליה . . .
ואעפ"י [כן] הנשים אסורות לתקוע ביום טוב של ראש השנה
אפילו בלא ברכה
הואיל ואינן מצוות בדבר הרי יו"ט של ראש השנה אצלן כשאר יום טוב
שאסור לכל אדם לתקוע בשבתות וי"ט . . .
וכן אסור לנשים להניח תפלין.
אפילו בלא ברכה

מפני שנראה כדרך החיצונים, שעוברים על דברי חכמים ואינן רוצים לדרשו המקראות כמותן

I have already explained in the Collection of Proofs
that women do not violate the prohibition of adding to the Torah
by performing commandments they were not commanded regarding . . .
nonetheless women are forbidden to blow the shofar on Rosh haShannah,

³Women can play that religious role as well or better than men; my point is that it would not be the *same* experience for women as men, and that the power of the tefillin-liturgy for men may stem precisely from its requirement that they experience a female role in the context of a ritual only men are obligated to perform.

⁴The terms “halakhic community”, or alternatively “normative community”, and even “normative halakhic community” can generate their own circular logic in both directions: I define your community as non-normative or non-halakhic or non-normative-halakhic, and then reject your right to use your community’s experience as evidence of practice, while you argue that the fact of your community’s practice obligates me to seek justifications rather than grounds for rejection. I have tried to avoid that trap in this essay, but to prevent ambiguity, I state here that I do not regard communities who pray in principle without a mechitzah, and/or practice ritual generally without regard to the exemption of women from various mitzvot, as normatively halakhic, and that has implications for the standing of scholars who endorse such behavior *in practice*. I am generally opposed to restrictions on what scholars, or for that matter nonscholars, can argue *should* be the practical halakhah.

even without a blessing -
since they are not commanded in the matter, Rosh haShannah is for them like any other
holiday,
and *all* people are forbidden from blowing the shofar on Shabbat and holidays . . .
and so too it is forbidden for women to lay tefillin,
even without a blessing,
because it seems like the way of the outsiders,
who transgress the words of the sages and do not wish to interpret Scripture as they do

More than twenty years ago, as a student at Yeshiva University, I published a letter to the editor of Hamevaser making the technical halakhic case for permission and concluding that “a responsible posek who permitted women to wear tefillin, particularly in private on a case by case basis, could not be dismissed out of hand”. In practice, I have made clear that women wearing tefillin were welcome to daven in the Orthodox minyanim of Harvard Hillel and Gann Academy, and it seems to me good policy to be as generous as possible when assessing the motives of women who wish to wear tefillin.

But if a halakhic scholar were now to argue, waving Rabbi Tucker’s post as evidence, that the subjective motives of specific women are irrelevant because they are behaving like the “outsiders, who transgress the words of the sages and do not wish to interpret Scripture as they do” - meaning those who reject the Sages’ ruling that women are exempt – I would have a legitimately hard time persuading him or her otherwise.

Moreover - the halakhic community rightly takes the term *chiyuv* (obligation) as reflecting a metaphysical state of being, such that the claim that X is *mechuyav* necessarily carries the implication that everyone who is like X is also *mechuyav* – it is not a matter of personal choice or psychological recognition. Changing the prevalent halakhah to make women obligated to wear tefillin would transform many otherwise observant women into sinners. Not addressing this issue risks creating the perception that one views *chiyuv* as merely a social convention.

My own position remains that contemporary women who wish to wrap tefillin may do so. But there is value in specifically masculine and specifically feminine ritual, and religion must take into account and ideally channel the differences between male and female experiences rather than denying them. Those differences express themselves differently in different times, and it is the obligation of halakhic leadership to develop the practical expression of halakhah accordingly – and surely one positive such development is the explicit inclusion of women talmidot chakhamot among the halakhic leadership. In this regard there is a certain irony that at least the initial public conversation of this issue has been conducted without a woman’s scholarly voice⁵ participating on any side.

⁵ although this article has been significantly influenced by the private comments of two female scholars on earlier drafts.