

Women, Tefillin, and the Stories of the Law

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*In memory of Maida Katz z"l
A true talmidah chakhamah*

The halakhah and aggadah must be united... The concept of bringing together distant realms—this is the basis of building and perfecting the spiritual world, a basic tendency running like a thread through all manifestations of life... Without the halakhah there is no Torah, and without the aggadah there is no piety.

—Abraham Isaac Kook, *Orot Ha-Kodesh*

LEARNING WITH MY GRANDFATHER HAS NEVER BEEN EASY FOR ME. THAT HE DIED WHEN I WAS SIX IS IN SOME WAYS THE LEAST OF IT. MY GRANDFATHER, SAMUEL KALMAN MIRSKY, WAS AN ILLUY, a rabbinic prodigy. Family legend has it that at age six he was quoting scores of *mishnayot* [verses of the Mishnah] by heart. When a terrible pogrom convinced my great-grandfather it was time to leave Russia, he chose Palestine over America in the hope that his prodigious son's talents would flourish in the Holy Land, and they did. My grandfather was ordained at thirteen and accepted as a rabbinic judge at fifteen. He knew more *Gemara* [Talmud] in his teens than I will probably ever know in my lifetime. Moved by the upheavals of World War I and the inclusive teachings of the extraordinary first chief Rabbi of Palestine, Avraham Yitzhak Ha-Cohen Kook, my grandfather decided to move beyond

the ultra-Orthodox milieu of his youth and seek a wider world; rather than become a *rosh yeshiva* [director of a yeshiva], he would be a professor of rabbinics. He set off for America, got his Ph.D. at Columbia, became a professor at Yeshiva University and rabbi of a prominent *shul* [synagogue] in Brooklyn, wrote and edited many scholarly volumes, and was a leading figure in religious Zionism. His chief scholarly passion was the relationship between *halakhah* [Jewish law] and *midrash* [narrative commentary].

For my school-age brother, sister, and me, being Shmuel Mirsky's grandchildren was an inescapable dimension of identity, all the more so as my father, too, had made an academic career at Yeshiva University. My parents wisely tried to shield us from the burdens of my grandfather's stature, but it was an uphill battle. The Orthodox world reveres its scholars. As I entered adolescence, my own intellectual pretensions led to a deep sense of inferiority relative to my grandfather—by the time I realized I was in some kind of race with him I knew I'd been beaten.

THE DEEPER I WENT INTO THE WORLD OF TORAH LEARNING, THE MORE AWED I was by my grandfather's erudition, and the more any hope of meeting him on the plane of scholarly attainment slipped away. The distance that steadily separated us was not only the arid gully of my own insecurities, but the ferments of our time. My grandfather died in 1967, just a few months after the Six Day War, before the intifada, before feminism and multiculturalism, before the currents that deepen our estrangement from our grandparents' lives even, or especially, as we seek our own, authentic footing. My grandfather's learning was facilitated not only by his gifts, and the support and sacrifice of the people around him, but by a serene confidence in the verities of Torah, of Zionism, of *halakhah*—verities that I could not easily embrace.

For most of my intellectual life, I thought of my grandfather's scholarship as a far-off mountain I would never climb, however wonderful the view might be. But recently, through an odd and tragic turn, I found myself able, at long last, to see that scholarship as a gift.

IN DECEMBER 1996, I TAUGHT A STUDY SESSION AT A MEMORIAL TO MY FRIEND Maida Katz, who died suddenly and tragically at age 34. Maida was a true original, an Orthodox intellectual whose knowledge of the hard stuff of

Gemara and halakhah was formidable by any standard, leavened with wit and virtually unprecedented for a woman. Her fidelity to Orthodoxy was a source of both frustration and tremendous creativity.

In keeping with her spirit, I decided to look into the discussions of the medieval authorities on women who assume halakhic obligations. As is well-known, the Mishnah [KIDDUSHIN 34a] adopts a general rule of thumb that women are exempted from time-bound positive commandments, like fixed prayer, eating matzah at the Seder, and so forth. But could women voluntarily observe these *mitzvot* [commandments]? And if they did, could they sanctify their actions by reciting the appropriate *brakhah* [blessing]?

The rabbinic concern with women's voluntary observance of *mitzvot* was twofold:

- (1) Does it constitute *bal tosif*, a freelance addition to the law that disturbs the integrity of the corpus as a whole? Indeed, the Bible considers unwarranted addition to the law as illegitimate as dereliction of its commands [DEUTERONOMY 4:2].
- (2) Would saying a blessing on these voluntary observances run the risk of *brakhah l'vatalah*, an unwarranted invocation of God's name that would run afoul of the Fourth Commandment prohibition on taking that Name in vain? That issue's significance would hinge on whether one viewed the prohibition on *brakhah l'vatalah* as *d'oraita* (of biblical, i.e., divine, origin) or *d'rabbanan* (of rabbinic origin, and hence more readily balanced alongside other considerations).¹

These two concerns are of course related. The legitimacy of performing a *mitzvah* [commandment] would determine whether a *brakhah* is considered appropriate or downright prohibited, while the recitation of a *brakhah* is a declaration that one seeks to embed the performance of the *mitzvah* at hand in the normative structure of Torah as a whole.

Moreover, saying a *brakhah* is no mere technicality. An unnecessary invocation of God's Name not only violates the Fourth Commandment, it disturbs the spiritual equilibrium of our world, which, after all, was created with Divine speech and is sustained by the words of God and humanity.

Thus Maimonides, in his twelfth-century code, *Mishneh Torah*, states that women and servants who wish to perform *mitzvot* from which they are exempt may do so provided they do not recite the blessings [HILKHOT

tzitzit 3:9]. This is in keeping with his opinion stated elsewhere that reciting an unnecessary brakhah violates a Sinaitic prohibition [HILKHOT BRAKHOT 1:15] and indeed threatens the social fabric [HILKHOT SHEVUOT 12:9].

Unlike the Sephardic halakhah represented by Maimonides, the picture in the west was different. In the 11th and 12th centuries, Western Europe saw a revival of women's religious lives, including Jewish women's lives, and the rabbinic authorities of the day were drawn into discussions of this phenomenon and how to evaluate it.² Interestingly, nowhere is the religious observance of a woman denigrated as being in some way inferior to that of a man. Rather, the discussion centers on the question of unnecessary *brakhot* [blessings].

Mahzor Vitry, the cornerstone work of 11th century Ashkenazic halakhah, states the opinions of several early sages that women are free to perform any of the mitzvot from which they are ordinarily exempt, and to do so with a brakhah, insofar as they are no different from a man who performs a mitzvah from which he is otherwise exempt³ (for instance, a mourner who chooses to pray on the morning of a close relative's funeral).

Other Ashkenazi authorities, such as Rabbi Yitzhak of Orleans and Rabbi Moshe of Coucy, author of the halakhic compendium *Sefer Mitzvot Gedolot*, took a stricter view out of concern for *brakhah l'vatalah*, particularly in light of the traditional formula for brakhot: "Blessed are You, God...Who has sanctified us with His commandments and commanded us to [perform the following mitzvah]." Their concern was that it would simply be false for women to say "Who has commanded us." A creative solution to this liturgical problem, recorded in *Sefer Ha-Asufot*, a collection of early Ashkenazic customs, was developed by women themselves, who for their purposes modified the formula of brakhot to say "Blessed are You, God, Who has commanded His people Israel to [perform the following mitzvah]."⁴

Turning to the view of Rashi (Rav Shlomo ben Yitzhak, the 11th century master whose biblical and Talmudic commentaries are still the backbone of Torah learning), the *Mahzor Vitry* reports that while he had no objection to women performing mitzvot from which they are exempt, he forbade them from saying the brakhah, so as not to run afoul of the prohibition of *brakhah l'vatalah*.

One interesting part of the medieval discussion of women performing mitzvot and saying brakhot relates to women wearing tefillin.

While there is scant evidence that women at the time wore tefillin in any greater numbers than they do today, perhaps the striking nature of the image catalyzed debate. Disagreeing with Rashi is his grandson, Rabbi Yaakov ben Meir, known to history as Rabbenu Tam, the greatest Ashkenazic authority of the 12th century.

The starting point of discussion is the Babylonian Talmud, where we read [ERUVIN 96a]: “Michal the daughter of Kush (i.e., Saul) would don tefillin and the sages did not object.” By contrast, we read in the Jerusalem Talmud [BRAKHOT 2:3] that the sages did object to her wearing tefillin. In the Babylonian Talmud, the permissive attitude of the sages is traced to an opinion stated elsewhere by Rabbi Yose [HAGIGAH 17b] that women may voluntarily perform mitzvot, in that case, the rituals preceding animal sacrifice in the Temple, for the sake of *nachat ruach*, to please their spirits.

Against the backdrop of this discussion, Rabbenu Tam says that women may not only perform mitzvot but can say the brakhot accompanying them as well. Rabbenu Tam’s permissiveness here reflects his opinion stated elsewhere that the prohibition on unnecessary brakhot is rabbinic rather than Sinaitic, such that one can err on the side of saying a brakhah even when one is exempted from the mitzvah in question.⁵ Rabbenu Tam was by no means a feminist—over the objections of his disciples he forbade the not uncommon practice in his day of women weaving *tzitzit* [ritual fringes] and assembling *lulav* and *etrog* for ritual use on Sukkot.⁶ But he was adamant that women who do take a mitzvah upon themselves, and certainly one such as tefillin, should make a brakhah. His permissive stance towards women’s brakhot became the normative Ashkenazic position for centuries, even to the preponderance of authorities who generally disapproved of women wearing tefillin.⁷

AFTER I HAD PRESENTED THESE TEXTS AT MY FRIEND’S MEMORIAL, IT STRUCK me that the text generating these discussions was, after all, a midrash, a story, about Michal, the king’s daughter. Nowhere does the Bible depict her participation in Jewish rituals of any sort. What, I wondered, had given the Rabbis the idea that she wore tefillin?

The source, I learned, is the *Midrash Ha-Gadol* [I, 344], commenting on the paean to the Ideal Woman traditionally recited at home

on Friday nights, *Eishet Hayil*. The *Midrash Ha-Gadol* reads this passage, from Proverbs 31:10-31, as a recitation of the lives of the matriarchs and other heroic women of the Bible.⁸ In it we read: "Strength and beauty are her raiment and she laughs on the last day." Who could she be, this majestic woman who greets death with laughter? the rabbis wondered. None other than Michal, the daughter of Saul.

Why Michal? Michal, who "was childless until the day of her death" [II SAMUEL 6:23] as punishment for rebuking David as he danced before the Ark? Note the wording, the Rabbis say: "Until the day of her death." But on the day of her death, they add, she gave birth [SANHEDRIN 21A]. How did Michal meet that most awful of paradoxes, death in childbirth? The Jerusalem Talmud says, "She lowed like a calf and died" [SUKKAH 5:4]. Not according to *Midrash Ha-Gadol*: She laughed. At absurdity, as Sarah laughed when the angels told her she would conceive in her old age? Or perhaps a laugh of triumph, the triumph of her own creativity over her husband's scorn and the hand of death, the strong, deep laughter of those who wear the sign of eternity on their foreheads.

That was the laugh the rabbis heard, the queen's joy in triumph over death, the vindication of her shadowed dignity, and that laugh was translated into law, the law that a woman can wear tefillin, the name of God close to the heart and the head.

How did the rabbis connect Michal with tefillin? According to the verse in Proverbs, Michal was clothed in "strength and beauty," *oz v'hadar*. *Oz* is a euphemism for tefillin, as we read in Brakhot 6a:

Rav Avin bar Rav Ada said in the name of Rabbi Yitzhak: How do we know that God wears tefillin? As it is written [ISAIAH 62:8]: *God has sworn by his right hand and his arm of strength (z'roah uzo)*. His right hand is Torah, as is written [DEUTERONOMY 37:2]: *From his right He has given them a law of fire ["eshdat"—literally, a flowing motion]*. His arm of strength is tefillin [worn on the left hand], as is written: *And all the peoples of the land will see the name of God called upon you, and will fear you* [DEUTERONOMY 28: 10].

Thus, *oz* is tefillin, and it is only fitting that Michal, the king's daughter whose laughter triumphed over death, wore tefillin herself, that token of the Divine Name that triumphs over mortality and fear.

SO NOW I UNDERSTOOD WHERE THE TALMUD HAD GOTTEN THE IDEA THAT Michal wore tefillin. But I was left with the question: From this you make law? This free association of verses, none of which says anything straightforward about the subject at hand, this is a basis for halakhah? With this you can swim against the currents that have submerged women's religious lives for centuries? This is it?

It is not uncommon in Talmudic discussions of women's roles for the stories told by the Rabbis to subtly complicate and at times change the legal picture, the human complexities of storytelling making themselves felt amid the intellectual complexities of the law.⁹ But there is also a well-known principle that one does not learn halakhah from *aggadot*—one does not learn law from stories. Yet here the whole discussion of women and tefillin is based on *aggadot*. How then can Rabbenu Tam derive his opinion that women may wear tefillin and must make the brakhah when they do so?

*But I was left with the question:
From this you make law?*

And then I remembered that the relationship between midrash and halakhah was one of my grandfather's chief scholarly preoccupations, and the one closest to his heart. In the 1940s, my grandfather published one of his first explorations of the issue, a series of articles called "The Midrashic Sources of Halakhot," in which he systematically walked through the first 139 chapters of the *Shulchan Arukh* and illuminated the midrashic sources underlying the legal rulings.¹⁰ My grandfather's passion for the union of halakhah and *aggadah* arose not only from his own sensibility but also from a sense of the new shape that Jewish learning would have to take in the new circumstances of his time. In a collection of essays, my grandfather wrote that recapturing the literary dimension of halakhah was itself a part of the return to Zion, since a living halakhah, the halakhah of renaissance, is organically tied to the life and play of imagination, of language, and the return to Zion entails a reactivation and reintegration of all the dimensions of both our societies and our personalities that have been fragmented and dispersed in centuries of exile.¹¹

I decided to take a second look at my grandfather's articles to see if they could give me some better sense of what was going on in these discussions of women and tefillin. In his introductory comments he demonstrates that the colloquial principle found in later sources that "halakhot are not to be learned from aggadot" results from a series of misreadings of earlier sources in which the aggadot in question are all from the less authoritative Jerusalem Talmud.

Indeed, my grandfather went on to say, halakhah regularly derives from midrash, and he cites as an authority for this proposition none other than Rabbenu Tam, who says that many of our laws derive from midrash.¹² Elsewhere Rabbenu Tam lists a knowledge of midrash as a prerequisite to issuing halakhic rulings.¹³

Looking further into my grandfather's work I found a clarification of Talmudic attitudes towards women and tefillin. His magnum opus, which he finished while literally on his deathbed, was a five-volume critical edition of the *She'iltot D'Rav Achai*, the first post-Talmudic book associated with an author, which was composed in Babylonia during the 8th century. The *She'iltot D'Rav Achai* is also a rarity in that it deliberately weaves together halakhic and aggadic discussions, which is precisely why it so fascinated my grandfather. The *She'iltot* [Questions] were Shabbat afternoon lectures in the Babylonian academies, whose doors were opened to the masses so they could come and learn.

She'ilta no. 47 begins with the declaration, "The entire house of Israel is commanded to wear tefillin." In his commentary my grandfather notes that some Talmudic sources, particularly Palestinian, tend to restrict the wearing of tefillin to a scholarly elite, either out of a concern that only they would know how to maintain the bodily purity necessary for wearing tefillin, or out of the persecution of tefillin-wearers by local authorities, as attested to by some sources, or from a simple misreading of texts which use terms like "learned in Torah" as a euphemism for attaining maturity. At any rate, my grandfather says, in Babylonia no such strictures on tefillin-wearing are found, "and clearly the intention of the *She'iltot* is to emphasize the obligation of all Jews to wear tefillin, not only scholars."

Perhaps, I thought, this could explain the version of the Michal story in the Jerusalem Talmud, according to which the sages objected to her wearing tefillin. Yes, that was their version, but others, including the

Babylonian Talmud and then the *She'iltot*, and then the sages of medieval Ashkenaz, expressly reject that view.

And as I put together those thoughts, I felt that at long last, I was learning with my grandfather. Through the medium of this study, I found I could knit together—if only for a moment and only in my mind—past and present. I was able to take my grandfather's exploration of the connections between Jewish law and Jewish imagination that expand our understanding of the halakhah, and move it a small step forward—towards a wider horizon that will one day, *im yirtzeh Ha-Shem*, encompass that half of the Jewish people, and of the family of humanity, whose lives and voices have for so long been found only in the margins.

IN LURIANIC KABBALAH IT IS SAID THAT TORAH IS NEVER FORGOTTEN, INDEED, no thoughts are ever forgotten.¹⁴ Rather they enter into the universe of forgetfulness, *almah d'shik'chah*, where all the forgotten thoughts are stored, and the Torah that we forget goes into that universe and lifts it up. And that universe is also called *almah d'nukvah*, the women's universe. The women's universe of forgotten thoughts where all our forgettings are redeemed.



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Notes

1. This question was made more difficult by the fact that while one Talmudic passage [TEMURAH 4a] indicated that the prohibition is *d'rabbanan*, another [BRAKHOT 33a] says it is *d'oraita*.
2. For a thorough analysis on which much of this discussion is based, see Israel Ta-Shma, *Halacha, Minhag U'Metziyyut B'Ashkenaz, 1100-1350* [*Law, Custom and Reality in Franco-Germany, 1100-1350*] (Jerusalem: Magnes Press of Hebrew University, 1996), pp. 262-279. On the comparatively high social status accorded Ashkenazi women during the early Middle Ages, see Avraham Grossman, *Khakhmei Ashkenaz Ha-Rishonim* [*The Early Sages of Ashkenaz*] (Jerusalem: Magnes Press of Hebrew University, 1981), pp. 405-409.
3. *Mahzor Vitry*, Nuremberg ed., pp. 413-414.
4. Cited in Ta-Shma, p. 270.
5. See his views in Tosafot to the passage in Eruvin, and his comment cited in Rosh Hashanah 33a, Tosafot s.v. "Hah," that the Talmudic opinion tying an unnecessary brakhah to the Fourth Commandment is an *asmakhta*, a supporting allusion to a law but not a biblically-ordained textual source.
6. See Tosafot to Gittin 45b, s.v. "kol."
7. See the glosses of Rabbi Moshe Isserles to *Shulchan Arukh, Orakh Chayim 17*. The *Shulchan Arukh* rules that women may wear tzitzit [ibid] but should not wear tefillin [ibid, 38]. Some commentators say that this view is rooted in a concern that women are not generally trained in how to conduct themselves while wearing tefillin, which can be met by training and care (see Magen Avraham's glosses, ad loc.).
8. I am indebted to Louis Ginzberg's indispensable *Legends of the Jews* (Philadelphia: Jewish Publication Society, 1925), vol. IV, p. 274, n. 134.
9. See Shulamit Valler, *Nashim U'Neshiyyut B'Sippurei Ha-Talmud* [*Women and Womanhood in Talmudic Stories*] (Tel Aviv: Kibbutz Ha-Meuhad, 1993).
10. They appeared in *Talpiyyot*, vol. I, pp. 40-71, 218-247, 498-532 (1944); vol. II, pp. 29-49, 348-374 (1945); vol. III, pp. 117-138 (1947).
11. Samuel K. Mirsky, *Eretz V'Yamim* [*The Land and the Seas*] (Jerusalem: Sura, 1953), pp. 304-307.
12. The reference to Rabbenu Tam is to be found in *Sefer Ha-Yashar*, no. 620. See also his comments recorded in Tosafot to Pesachim 40b.
13. For additional material on Rabbenu Tam's view, see Daniel Sperber, *Minhagei Yisrael: Mekorot U-Toldot* [*Jewish Customs: Sources and Histories*], vol. II (Jerusalem: Mossad Harav Kook, 1991), pp. 217-218. Sperber's volumes are a fantastically rich trove of source material on the evolution of Jewish customary law.
14. See Rav Yaacov Zemach (c.1660), *Shulchan Arukh Ha-Ari*, Munkacz ed., p. 51.