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"Taking Responsibility for Torah"

2019 ANNUAL ESSAY ON COMMANDEDNESS IN MEMORY OF MATT EISENFELD

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A human action that fulfills a Divine command/צו is religiously different from the same action undertaken in response to Divine will/רצון. This proposition is central to contemporary Orthodox ideology.

The ideological centrality of commandedness manifests itself in three separate contexts, which may pull in opposing directions.

1) Commandedness separates Orthodoxy from non-Orthodoxy. (This is Orthodoxy's perspective – I am not evaluating here the efforts made in other communities to reclaim the language or substance of commandedness.)

2) Commandedness enables an understanding of chosenness that is rooted in responsibility rather than ontology. "Here is contained the response to those who claim that the Jewish religion is a racist religion, Heaven forbid . . . we believe that our chosenness stems solely from our being subject to additional commandments, and anyone who accepts upon himself or herself the Yoke of Heaven is absolutely able to join our nation and is called by the name of Israel." (Rabbi Yaakov Kaminetsky, *Emet l'Yaakov* to Avot 1:11)

3) Commandedness justifies gender non-egalitarianism.

The first two contexts are conducive to framing commanded actions as qualitatively superior. In the third context, however, such claims generate accusations of misogyny and the like. Women are **אינן מצוות** (not commanded) in a set of mitzvot that are experientially central to male Orthodox life, and as a result are excluded from serving as communal religious representatives for those mitzvot.

The primary textual hook for the claim of superiority is Rabbi Chanina's statement that "Greater is the one who is commanded and does than one who is not commanded and does." On Talmud Kiddushin 31a and Bava Kamma 87a, Rav Yosef initially assumes that non-commanded actions are greater than commanded actions, but is convinced by Rabbi Chanina's authority or arguments to reverse his position. (This may also be disputed between R. Abun and R. Levi in Yerushalmi Peah 1:1.)

Any number of achronim further nuance the issue and explain that the *metzaveh* is superior in some ways and cases but inferior in others. Think for example of whether the *mitzva* to love G-d is best fulfilled purely out of a sense of obligation. (Note that the Talmud seems to define R. Chanina's "greater" as "receives greater reward." See also Rabbi Francis Nataf, "Commandment, Coercion, and Modernity," in *The Tent of Abraham*.)

Rav Yosef presumably remained within Orthodoxy even when he thought that acting without being commanded was superior, and I have not seen specific belief in Rabbi Chanina's statement on anyone's list of entrance requirement for the World to Come. What is consensus, and I contend definitional to Orthodoxy, is that G-d commands human beings, and that His commands are binding. It might or might not be best to be motivated by the fact of being commanded rather than by love or fear or awe of G-d and/or an independent sense of His will. But anything He commands must be done.

Moreover, some commanded actions may be forbidden and sinful if done for any motive other than fulfilling a command. The paradigmatic halakhic example is *yibbum* (levirate marriage), which may become incest if engaged in for other motives (at least according to the position of Abba Shaul on Yebamot 109a). See also the position held by Rav Aharon Lichtenstein z"l and the Chofetz Chaim that the erasure of Amalek is murder if done with any admixture of any motive other than the fulfillment of a command. Consider also the deaths of Nadav and Avihu for bringing "a *zurah* fire that He had not commanded them."

Some Orthodox theologians have difficulty finding religious meaning in non-commanded actions. Their banner is **כל הפטור מדבר ועושהו נקרא הדיוט** (Yerushalmi Shabbat 1:2: "He who is exempt in a matter and does it regardless is called an idiot").

This default setting seems to run aground on such concepts as **לפנים מן הדין** (going further in than the letter of the Law). But the apparent conflict may be an artifact of a false equation between "actions that halakhah requires" and "actions that G-d commands," or may be resolvable by developing looser definitions of halakhah that include broad directives such as "You must do the straight and the good."

A more difficult challenge emanates from the position that women are rewarded for performing most or all of the mitzvot from which they are exempt. Many of the controversies around those issues are probably not about gender, but rather about our theological issue. Nonetheless, for understandable reasons, almost all halakhic or hashkafic conversation about them becomes entangled in, and not infrequently warped by, polemics one way or the other about gender.

What seems to me a notable exception is the treatment of these issues in Rav Yisroel Zev Gustman z"l's *Kuntres Shiurim – Kiddushin*, Shiurim 19-20. Rav Gustman's analysis therefore seems an excellent point of departure for what I want to do here, which is to make a preliminary effort at analyzing the halakhic issues around women performing such commandments with an eye to the general philosophy of commandedness.

Rav Gustman himself opens with a philosophic question, as follows: Tosafot and others provide psychological explanations for why a commanded person deserves a greater reward than an uncommanded person. Rav Gustman asks: Why do we need such explanations? Let us simply say that a commanded action is **intrinsically** greater than a non-commanded action!

Now it is well-known that Talmud Eiruvin 96b records a Tannaitic dispute as to whether *nashim somkhot reshut*, meaning whether women can perform the ritual owner's-leaning-of-hands on sacrifices. R. Yose and Rabbi Shim'on say they can, and R. Yehudah says they can't. The Talmud records the rationale for permitting as **כדי לעשות נחת רוח לנשים**, which probably means something like "to assuage women's feelings of exclusion."

Why does Rabbi Yehudah forbid? Rashi explains that R. Yehudah holds that women performing this ritual violate *bal tosif*, the Biblical prohibition against adding to the Torah. Tosafot by contrast contend that the concern is lest women support their weight on the animal and, because they are not commanded, thereby violate the prohibition against *me'ilab* (deriving benefit from animals dedicated as sacrifices).

Tosafot's assumption is that even R. Yose does not permit women to do *semikhab* on the sacrifice in the same way as men, who are commanded. Rav Gustman contends, with the explicit support of Raavad's commentary on Sifra 2, that Rashi disagrees and understands R. Yose as permitting women to put weight on the animal when performing the ritual.

Why isn't this a violation of *me'ilab*? Rav Gustman responds by developing a category he terms **רשות דמצוה**, meaning "an optional act that nonetheless is commanded". (Rav Gustman is following Baal haMaor Rosh HaShanah 9b. Note that this sense of the phrase must be distinguished from its sense on Talmud Bava Metzia 118b of "an action authorized by a mitzvah." See also Rav Tzadok haKohen miLublin in Meishiv Tzedek 54 and on, who may deliberately conflate the two senses.)

In what sense can an "optional" act be "commanded?" Rav Gustman argues that commandedness is a property of actions, independent of who is performing them. Leaning hands on a sacrifice is a commanded act whether performed by women or by men, even though only men are commanded to perform it. (In Brisker terms: *Tzivui* is a *din* in the *maaseh*, not in the *oseh*, and does not depend on the participation of a *metzveh*.)

Rav Gustman can now explain why Tosafot need to provide psychological reasons for the greater reward given to the *metzveh*. Commanded actions are not intrinsically better than non-commanded actions. However, G-d does not keep score based on the objective quality of actions, but rather based on the subjective merit of performers. In Grantland Rice's formulation, "When the One Great Scorer comes, to mark against your name, He marks not that you won or lost, but how you played the game."

Rav Gustman also draws a far-reaching set of halakhic implications. For example: Remember that full *semikhab* must be either a mitzvah or else a sin of *me'ilab* – there is no in-between. It follows that a *reshut d'mitzvah*, the optional performance of a commandment, is sufficient to override what would otherwise be the sinfulness of an action.

Rav Gustman notes that Raavad to Hilkhhot Tzitzit 3:9 records a medieval dispute as to whether women who wear linen garments with tzitzit that include t'khelet (blue wool) violate the prohibition against wearing shaatnez. He argues that the two sides reflect the original dispute regarding *semikhab*. If one thinks that women are permitted to perform *semikhab*, then one thinks that an optional mitzvah they perform is sufficient to activate the principle **עשה דוחה לא תעשה** (roughly: "when the performance of a DO definitionally requires the violation of a DON'T, the DO overrides the DON'T").

Perhaps more radically, Rav Gustman draws an analogy between women's relationship to mitzvot they are exempt from and men's relationship to *ma'ariv*, the Evening Service. Talmud Berakhot 27b records a dispute between Rabbi Yehoshua and Rabban Gamliel as to whether *ma'ariv* is mandatory (*chovah*) or optional (*reshut*). The halakhah follows Rabbi Yehoshua. But on Shabbat 10a, Abbayay contends that if *ma'ariv* is optional, then once a man has "loosened his belt," i.e. gotten ready for bed, we do not bother him to say it. Rav Gustman deduces from here that a *reshut d'mitzvah* is not fully optional – one should always do it unless one has a good excuse or reason for not doing it. Therefore, he concludes, the Torah is not neutral about whether woman should perform commandments from which they are exempt. Women should not pass up opportunities to fulfill them unless they either have a strong excuse, or else face a strong halakhic counterpressure.

But we are not yet at the end of his deductive chain. Rav Gustman sees no reason to differentiate between Jews and non-Jews, either – a mitzvah action is a mitzvah action regardless of the actor. It seems to follow – although he does not draw this consequence explicitly – that non-Jews should seek to do all mitzvot which they are not explicitly forbidden.

Rav Gustman's analysis does not fully convince me, nor do I find all his halakhic conclusions congenial. His conception of "commandedness" as a property of actorless actions seems deeply odd to me. Nonetheless, or if you prefer: as a result, he compels me to acknowledge that my presuppositions about the halakhic and hashkafic implications of commandedness are challengeable.

Understanding and explicating the concept of commandedness, and the associated concept of heteronomy, should be a core task of contemporary Orthodox thought. Yet my sense is that we have made little progress. Probably this is because of the opposing polemical tugs I outlined above.

Polemical fears around gender have also led some of Modern Orthodox communal leaders into the trap of demanding conformity in theoretical halakhic discussions, and an expanding array of practical questions. Each side frames its narrowing circle of legitimate influencers as a necessary response to the perceived threat of the other's monolithicism, in a vicious cycle. The price of imposed intellectual conformity is always integrity. Moreover, a discourse based on fear in one direction often leads to alliances that leave one even more vulnerable to pressures from the other direction.

My hope and prayer is that bringing Rav Gustman's analysis into public view helps stimulate a conversation that models what Orthodox halakhic discourse should be; open-minded and evidence-based with a wide range of legitimate, openly acknowledged, and often conflicting rooting interests.

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