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## Parshat Ki Tetze

### LETTERS TO THE EDITOR: RESPONSES TO MICHAEL BROYDE ON TIME-BOUND COMMANDMENTS

#### Acknowledging Female Scholarship on Time-Bound Commandments

I read with great interest Rabbi Michael Broyde's [latest article](#) about time-bound positive commandments. He concludes that women are exempt from a certain subset of commandments that would render us vulnerable, that our exemption is a form of protection in line with the way the Torah protects many who were historically of lower class. In general, I am quite partial to arguments like Rabbi Broyde's, though they too have weaknesses, some of which he addresses in the article. However, I write to raise what I see as a profound flaw not in the main argument of the article but in its composition. A reader of the

article's literature review might come to imagine that women Torah scholars have neglected the topic, considering their complete absence from this section. Nothing could be further from the truth. The earliest writings I am familiar with by a woman on this subject are by the eighteenth-century scholar Rachel Leah Horowitz in her introduction to *Tkhine Imohos*. Today, the Talmudic texts in question have been explored in great depth by scholars like Dr. Elizabeth Shanks Alexander in her 2013 book [Gender and Timebound Commandments in Judaism](#) and Dr. Sarit Kattan Gribetz in her 2020 book [Time and Difference in Rabbinic Judaism](#). In Hebrew, Rabbanit Malka Puterkovsky addresses this topic from a halakhic lens in her 2014 book *Mehalekhet be-darkah*. For readers who want to think more deeply about the questions raised regarding maternal obligation in the cited writings of Dr. Saul Berman, I would encourage a slow read of Dr. Mara Benjamin's 2018 book [The Obligated Self: Maternal Subjectivity and Jewish Thought](#). Rabbi Broyde

does briefly footnote the extensive work on this subject by Rabbanit Laurie Novick from the website [Deracheha](#), but the footnote lacks meaningful engagement with any ideas put forth by Rabbanit Novick, and her work is also excluded from the literature review section.

Readers of the Lehrhaus interested in this topic should know that women who live our tradition and love these texts have written expert scholarship on the matter through the lenses of Talmud scholarship, halakhic writing, and Jewish thought. The above represents an incomplete bibliography but certainly a strong starting point for further reading.

[Leah Sarna](#)

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### **A Theory That Skews the Data**

I read with interest Rabbi Michael Broyde's [recent article](#). The article is characteristically learned and creative. Nevertheless, Rabbi Broyde's theory is highly implausible.

Two of my objections concern claims about individual commandments. First: in order to explain away women's obligation in *simhat yom tov*, Rabbi Broyde claims that this is a merely "internal" commandment and hence does not trigger the *heftza*-dependency concern. This is a very surprising claim about a commandment regarding which wine, good food (typically meat), and fine clothing are crucial elements. Second: Rabbi Broyde's explanation of women's obligation in *kiddush* relies on the premise that there is no Torah-level requirement of wine to fulfill this obligation.

His source for that premise is Rambam's description of wine for *kiddush* as a requirement "*mi-divrei soferim*," a notoriously ambiguous phrase that does not necessarily translate into "*mi-de-rabanan*." Yet even if we grant that controversial interpretation of the phrase, it remains hard to understand why Rabbi Broyde would so casually detach the *de-rabanan* layer of this commandment. Rabbinic requirements are halakhically binding and can be disregarded only in specific extenuating circumstances. Surely, then, the question of a woman's exemption should presuppose the applicability of a commandment's *de-rabanan* layer.

My broader and primary objection concerns Rabbi Broyde's historical approach. As a preliminary remark, let me point out that Rabbi Broyde's theory is a historicizing one. He suggests that women were exempted from *heftza*-dependent commandments because "women were weak and vulnerable in times of old." In other words, the exemption is not the product of a timeless halakhic vision; instead, it was meant to address contingent circumstances. The distinct possibility thus arises that the disappearance of those circumstances should herald the disappearance of the exemption. Intended or not, then, Rabbi Broyde's theory has subversive implications. While it is of course debatable whether that simple fact constitutes an objection to the theory, the fact is worth noting all the same.

That said, I wish to directly object to Rabbi Broyde's historical reasoning. Rabbi Broyde conjures up the specter of "abuse" that women might suffer were they to be dependent on others for certain *heftzaim shel mitzvah*. Three

possible lines of attack cast serious doubt on this historical conjecture.

One could argue, first, that increased dependency of women on men, in a society whose women were “weak and vulnerable,” would be a way to protect women. Women obligated in time-bound positive commandments might well become much closer to the men in their lives capable of providing them with the necessary *heftza*. Those men would then be more inclined and better equipped to shelter the women from all manner of threats to their well-being. We could easily conceive of this happening through the informal socializing effect of constant requests for *heftzaim shel mitzvah* or through the formal halakhic grounds of the obligation of *arvut*.

Alternatively, one could argue that Rabbi Broyde has overstated the potential for abuse here. If women were obligated in all time-bound positive commandments, the communal infrastructure would adjust accordingly. So, if women were obligated to don *tefillin*, surely they would either receive their own pairs or be given easy access to a shared pair. And if women were obligated to say *Shema*, surely they would have their own *siddurim* or have easy access to a *siddur* (or learn at an early age to accurately recite it by heart!). The vulnerability of Jewish women would correspondingly become much less acute.

This is similar to a third possible argument against Rabbi Broyde’s speculative history. One could argue that the vulnerability of women is not reduced but *entrenched* when they have fewer obligations. The reality is that diminishing the number of women’s

obligations diminishes their status in the eyes of Jewish men. For some men, this occurs due to an implicit or explicit holiness thesis (“I must be holier than them because I have more obligations”); for others, this occurs due to the simple sense that they have a greater stake in religious matters. Whether or not these attitudes are appropriate is irrelevant; it invariably happens on a wide scale. If the goal is to minimize abuse and maximize independence, it would actually be better to *obligate* women in *heftza*-dependent commandments.

All three of these potential arguments present accounts of the historical relationship between women and *heftza*-dependent commandments that are just as believable as, if not more believable than, Rabbi Broyde’s account. Rabbi Broyde’s hypothetical history is far from the most likely. To me, at least, it appears altogether unlikely.

Now, Rabbi Broyde would likely respond that the puzzling phenomenon at hand demands *some* explanation, even if the objections it spawns “might require an imperfect answer.” Because Rabbi Broyde has judged the existing theories inadequate to “explain the data,” he has offered a new explanation that purportedly identifies a “common denominator” of the cases of time-bound positive commandments in which women are obligated. However, a superior explanation is available—though it is not the kind of explanation that Rabbi Broyde seeks.

Rabbi Broyde is searching for an overarching theory to illuminate the data. And yet, as Rabbi Broyde himself observes early in his article,

“The reasons for these exemptions are diverse and each noted in the Talmud respectively.” Why not take the Gemara at face value? The Gemara cites *derashot* from *pesukim* to explain the cases where women are obligated in time-bound positive commandments. Accordingly, we could simply understand these as *gezeirot ha-katuv*, inscrutable Torah decrees. If we were to stubbornly insist on scrutinizing those decrees, we could attempt to give local explanations of each case. But a grand theory unifying the cases, however alluring the prospect, is entirely unnecessary.

Indeed, Rabbi Broyde’s theory tends to distort the data. Must we really believe, for instance, that the dissenting tradition regarding women’s obligation to count the Omer is the true reflection of the divine will? And is it really so hard to accurately memorize *Shema*? Rather than interpreting all the data to conform with a theory, it is far better to interpret the data impartially and only then ask if it conforms with a given theory. When one does that, Rabbi Broyde’s theory does not work.

Despite my objections, I am very grateful to Rabbi Broyde and the *Lehrhaus* editors for sharing this stimulating and sophisticated contribution to contemporary halakhic conversation.

Avi Siegal, New York

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<sup>1</sup> This summary follows the halakhic reading of these verses whereby the soldier is permitted one act of battlefield intercourse before the captive woman begins a thirty-day mourning period in his home. See, e.g., Rambam, *hilkhot melakhim u-milhamah*, [chapter 8](#); [Tosafot Kiddushin 22a](#) s.v. “she-lo yilhatsenah be-milhamah.” It is worth noting that a plain reading of the Biblical text could also suggest,

*Ed. Note: The following article was originally published in 2021. We are rerunning it in conjunction with Parshat Ki Tetze.*

## THE CHILDREN OF THE BEAUTIFUL CAPTIVE

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**T**he first *aliyah* of this week’s *parashah* (*Ki Tetzei*) presents three passages, each difficult in its own way, in rapid succession: 1. “When you take the field against your enemies” you (the Israelite warrior) may have sexual relations with a beautiful captive (*eshet yefat to’ar*) from the ranks of the vanquished enemy, provided you marry her thereafter <sup>1</sup> ([Deuteronomy 21:10-14](#)); 2. “When a man has two wives, one beloved and one hated” he may not favor the children of the beloved wife over an eldest son from the hated one ([21:15-17](#)); 3. “When a man has a stubborn and rebellious son” the child’s parents may bring him to the city elders to have him stoned to death ([21:18-21](#)).

Encountering passages like this, which challenge our ethical intuitions (about forced marriage or the execution of juveniles, for example), is not unexpected for students of Torah, but it remains disconcerting. Sometimes we dwell on these challenges, trying to find a way out, but just as often (if my experience is

alternatively, that the warrior and woman must go through the extended process described before having any sexual contact. See Tosafot, *id.*, for arguments and authorities on both sides.

any guide) we shunt the trouble, and the passage, aside, and move on. In this piece I will choose to dwell with the difficult beginning of *Parashat Ki Tetzei*, particularly with how the Rabbis of the Talmud put it in conversation with later Biblical narratives. This exploration may add complexity to the problems more than solve them, but I believe seeing what the rabbis did with this passage can be helpful not only substantively, but methodologically.

[Rashi](#), following the *midrash*, comments that the three passages that begin the *parashah* are causally related:

The Torah [permits the beautiful captive to the Israelite warrior] only in response to the evil inclination. If the Holy One, blessed be He, does not permit her, he will marry her unlawfully.

But if he marries her, in the end he will hate her, as it says afterwards (verse 15) ‘when a man has [two wives, one loved and one hated]’ and in the end he will father from her a wayward and rebellious son. Therefore these sections were placed next to each other.

According to Rashi, The man who gives into his evil impulse and takes a battlefield wife, even in a quasi-sanctioned way, will find himself hating her, and their children together will come to no good.

As Rashi presents it, this parade of horrors is hypothetical: a cautionary tale against embracing the suspension of ordinary norms in battle, or, perhaps, a comment on marriages founded primarily in male lust and female powerlessness.

At the level of the original *midrashim* on which Rashi is based, however, the progression is not merely hypothetical. [Midrash Tanhuma \(Ki Tetzei 1\)](#) follows up its explanation of the juxtaposition of laws with an example: “For so we find with David. Because he lusted after Ma’akhah daughter of Talmi the king of Geshur when he went out to war, he sired Absalom, who sought to kill him.” The warrior who failed to control his battlefield urges is none other than David, and Absalom is the resulting rebellious son.

According to the Rabbis, furthermore, Absalom is not the only child David bore with a beautiful-captive wife. On [Sanhedrin 21a](#), Rav Judah states in the name of Rav: “David had four hundred children, and all born of beautiful captives; they all grew a *blorit* (gentile hairstyle) and all drove in golden carriages. They used to march at the head of the troops and were the strongmen (*ba’alei egrofot*) of the house of David.”

The text carries a hint of braggadocio: See how many women the great warrior David accumulated! See how many sons he fathered! See how wealthy his sons were! At the same time, the description of the sons is a critique. They sport a “*blorit*,” a hairstyle that for the rabbis signals association with a corrupt heathen culture (e.g. [Sotah 47a](#)). The sons are described, further, as “*ba’alei egrofot*,” literally men of fists, an appellation that connotes reliance on brute force, and not without a hint of bullying (see, e.g., [Tosefta Menahot 13:4](#)).

Even if the sons are using their fist-powers for the good of the king, the image of marauding

bands of princelings living richly recalls their origin. These sons of beautiful captives were conceived on a battlefield where their father should have exercised self control rather than listening to his evil inclination. The warrior who must have the beautiful woman he sees fathers (from her!) sons who meet the world in an acquisitive mode, fists drawn.

What of the women in all of this? So far, the captive wife seems little more than a foil for the virtues or follies of her husband-by-force. But that changes in the next line of the same passage in *Sanhedrin*: “Rav Judah further said in Rav’s name: Tamar was a daughter of a beautiful captive.”

Tamar, Absalom’s full sister, was no rebel. In [II Samuel 13](#), she dutifully served her half-brother Amnon, at their father’s command, only to have him rape her, despite her [pleading](#), “Don’t, brother. Don’t force me. . . . Please, speak to the king; he will not refuse me to you.” Tamar seeks to avoid the shame of rape by offering to marry her attacker – an exchange that recalls the rabbinic reading of [Deuteronomy 21](#) as a deal with the evil inclination. She seeks to regularize an undesired union through marriage where the likely alternative is not abstinence, but an even worse abuse.<sup>2</sup> Amnon refuses, and rapes her without even the courtesy of a coerced marriage.

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<sup>2</sup> For the rabbinic reading, Tamar’s proposal of marriage actually serves as the proof that her mother was a beautiful captive. Since she was conceived while her mother was not Jewish, she would be

Amnon overpowers Tamar, his own sister,

without any of the safeguards the Torah puts in place for an enemy captive. And, as Rashi and the *Tanhuma* predict, his lust gives way to hatred—not after years of marriage but immediately. “Then Amnon hated her with very great hatred; for the hatred with which he hated her was greater than the love with which he had loved her. And Amnon said to her: ‘Get up, go’” ([II Samuel 13:15](#)).

For the captive woman, being sent out if she is no longer desired is supposed to be some sort of kindness – after all she has been through, at least she will not be sold into slavery ([Deuteronomy 21:14](#)). But for Tamar, being sent out is the height of cruelty. She “went her way, crying aloud as she went,” and eventually settled “desolate in her brother Absalom’s house” ([II Samuel 13:19-20](#)).

Combining the two statements of Rav Judah in the name of Rav, we have David’s daughter from a captive wife experiencing similar trauma to her mother – indeed, in some ways worse, because Amnon denies her the protections afforded to alien captives. Meanwhile, David’s 400 sons from captive wives run amok engaging in minor versions of the same sort of problematic behavior that brought them into the world: swaggering

legally permitted to her biological half-brother (see [Sanhedrin 21a](#)).

through life taking what they want by force. But it is Amnon himself, the king's firstborn and not the son of a captive wife, whose behavior replicates, and exaggerates, the worst elements of the *yefat to'ar* scenario for his half sister.

By identifying the rapacious soldier of [Deuteronomy 21](#) with King David, and then playing out consequences of David's actions over the next generation, these texts raise hard questions about cycles of violence: David's sons reenact their father's violence and lack of self control. Here, perhaps, the Gemara, like Rashi, is telling a morality tale: a father who behaves badly cannot expect better from his sons, so be careful fathers. Indeed Amnon, despite his own parent's union being apparently untainted by the stain of *yefat to'ar*, acts out a horrifying caricature of the captive-wife scenario against his own sister. David's sons, in ways large and small, hold up a mirror to David, reflecting the king's own (mis)behavior.

Even more troubling is the fate of David's daughter, or, more precisely, Ma'akhah's daughter. The choicelessness that marked Ma'akhah's marriage, which we might naively think stems from its inception in war, would seem inapposite to Tamar's life. She is the daughter of the victorious warrior, a princess in a stable polity, with the [fancy clothes](#) to prove it. And yet, choicelessness of sexual assault finds the well-kept princess in the city as it found her mother on the battlefield.

The *yefat to'ar* morality tale, and its corollary in the 400 sons, contains some logic, some story as to how the sons' negative traits are formed by their family origins. But the story of Tamar is

the opposite: no matter what she did, or who she was, she could become a victim of sexual violence. Unlike her half-brothers, Tamar's reenactment of the *yefat to'ar* cycle has nothing to do with her own choices.

The passage in *Sanhedrin* picks up on the seeming mismatch between Tamar's status and her fate:

It was taught in the name of Rabbi Yehoshua ben Korhah: Tamar established a great fence at that time [by way of her public outcry]. People said: [If] such an occurrence could happen to the daughters of kings, all the more so to the daughters of ordinary people. [If] such an occurrence could happen to modest women, all the more so could it happen to licentious women.

Tamar exposed the bitter truth that sexual assault can happen to anyone, even the modest daughter of a king.

There is one character in the sordid tale of David and the children of his captive wives who tries to confront the rot head on. The one who takes Tamar in after her rape, and eventually takes revenge on her rapist, is her full brother, Absalom. And it is Absalom's revenge-killing of Amnon ([II Samuel 13:20-29](#)) that sows the seeds of his rift with, and eventual rebellion against, David (see [II Samuel 13-15](#)).

Absalom's rebellion begins, then, not with a reflection or magnification of David's battlefield faults, but with a reaction against them. And yet Absalom too is no hero: he reacts brashly and violently (having Amnon murdered ([II Samuel](#)

[13:23-29](#)); having Joab's field burnt to try to force a rapprochement with David ([II Samuel 14:28-30](#)). In his attempt to take the throne prematurely he even sleeps with his father's concubines in public ([II Samuel 16:20-23](#)). Absalom's own overreach may have begun with a reaction against David, but it ends with

Absalom exhibiting the same faults as the battlefield husband/father: taking what he wants, now, by force, and relegating women to the position of objects in his quest.

Absalom fulfills the dire prediction of Rashi: "if he marries her . . . in the end he will father from her a wayward and rebellious son." It is almost as if, once the sin of battlefield rape or quasi-rape is baked into the house of David, it cannot be removed. David's initial choice carries irreversible consequences for his children.<sup>3</sup>

Actions have consequences; what's done cannot be undone. So where does that leave us?

In Deuteronomy, the captive woman is given space to weep for her family in her captor/husband's house ([Deuteronomy 21:13](#)), but is otherwise silent. Tamar, however, leaves Amnon's house wailing aloud in public, and verbally confirms to Absalom what has

happened. The Talmud in [Sanhedrin \(21a-b\)](#) casts Tamar and her public grief as a catalyst for greater awareness. Furthermore, according to the rabbis, Amnon's assault on Tamar led the rabbis of the time to enact legal changes (a prohibition on seclusion) intended to prevent similar incidents in the future. Unlike her mother, Tamar is the king's daughter – a status that was not enough to protect her from violence, but at least brought her some after-the-fact concern. And that concern, according to the Rabbis, led to prophylactic action to protect not only other princesses, but ordinary women as well.

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Reading texts like these is unpleasant, even if we can scrape a barely hopeful message of change out of them in the end. On a practical level, the cautionary tales of the *yefat to'ar* was not enough to save Tamar, and Tamar's tale has not saved many who came after her. With that in mind, what have we as readers gained from laying bare these traumas within the biblical and rabbinic texts?

The Talmud takes the formalized legal passages of the captive wife, the hated wife, and the rebellious son, and excavates them in the

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<sup>3</sup> In addition to the captive wives attributed to David by the *midrash*, my teacher R. David Silber has noted that the Bible itself portrays David's taking of Bathsheba as a perverse *yefat to'ar* situation: rather than a soldier in battle taking an enemy woman, David stays home from the battle and takes the beautiful wife of one of his own soldiers. David's ability to recognize his own sin (with prompting from Nathan the prophet – see [II Samuel 12](#)) may open another avenue out of the seemingly hopeless cycle

that the *midrash* paints for the children of captive wives, as it is David's post-penitence child from Bathsheba who ultimately inherits his throne. The full implications of this reading are outside the scope of this essay.



context of a family narrative. Rather than turn away, it digs in. The abstract warrior becomes David, and his battlefield decisions create real characters whose suffering is not abstract. Pedagogically, perhaps one lesson for us is to similarly dwell on difficult texts, to explore what they really mean emotionally, rather than turn away. And when the text ends with an unsolved problem, perhaps it is our job, like the rabbis who (as the Talmud tells it) reacted to Tamar, to step in and add something new to the story – if not to Tamar’s then to our world – with the hope that the ending can be different.

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