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TRADITION

A SPECIAL SUPPLEMENT
Hair Covering and Jewish Law:
Biblical and Objective (*Dat Moshe*)
or Rabbinic and Subjective
(*Dat Yehudit*)?
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HAIR COVERING AND JEWISH LAW: BIBLICAL AND OBJECTIVE (*DAT MOSHE*) OR RABBINIC AND SUBJECTIVE (*DAT YEHUDIT*)?

Because it is a commandment and an obligation to justify the practices of the community of Israel, I have therefore devoted myself to developing a permissive ruling, as we will, God willing, discuss.

—*Arukh ha-Shulhan OH 345:18*

All is dependent on wisdom and the sake of heaven—This is the normative rule of Jewish law, that all is dependent on what a person sees in himself. If he needs to distance himself more, he must do so, even such that he not see women's undergarments when they are being washed. So too if he sees in himself that he has no erotic thoughts, he can look and speak with a woman prohibited to him sexually and to ask about the well being of a married woman. This explains the conduct of Rabbi Yohanan who looked on the women as they were immersing, without any erotic intent, and Rav Ami who spoke with the king's mother, and other Rabbis who spoke with various Matrons [immodest women], and Rav Ada bar Ahava who danced with the bride on his shoulders at a wedding, none of whom were afraid of erotic thoughts. Rather, one should not be lenient on these matters unless one is a greatly pious person, acutely aware of one's own desires.

—*Ritva, Kiddushin 82a, cited in Pit'hei Teshuvah, Even ha-Ezer 21:6*

But if all the daughters of Israel would have the practice of going out with their hair uncovered, there would be absolutely no prohibition to do so, even among married women . . . And even if the opposite were to be the case, that married women would go out with their hair uncovered but unmarried women covered their hair, it would be forbidden for unmarried women [to uncover their hair]

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but permissible for married women . . . for all of [these regulations] are dependent on the practices of married women—heed this well!

—*Responsa Sefer Yehoshua, Even ha-Ezer 89*

Know, my child, that the prohibition of married women uncovering their hair was quite strong in our community, as it was in all of the Arab lands, before the influx of French Jewry. However, in short order after their arrival, the daughters of Israel transgressed this law and a great dispute arose amongst the rabbis, sages, and God-fearing learned masses . . . Now all women go out with uncovered heads and loose hair . . . Consequently I have devoted myself to find a justification for the current practice, for it is impossible to fathom that we can return to the status quo ante . . . I attempted to search through the writings of the legal decisors laid out before me, only to find stringency upon stringency and prohibition upon prohibition. I then set out to fetch knowledge from afar to draw from the sources—Mishna, Talmud and commentaries—before me: perhaps in them I would find an opening of hope through which to enter . . . Many thanks to God that we have found numerous openings to this area to enter in a lawful rather than unlawful manner.

—*Collected Letters of R. Joseph Messas, no. 1884*

I. PREFACE

During previous generations, among many communities throughout the Diaspora, married women—including those meticulous in their observance of Jewish law—were accustomed to going with their hair uncovered, whether at home, in a courtyard, or in the street. Most *Ahronim* take the view that a married woman who walks in a public thoroughfare with her hair uncovered violates a biblical prohibition.¹ However, one who closely examines the writings of the *Rishonim*—particularly the school of *Tosafot*, the *Tur*, and the *Shulhan Arukh*—finds that a great many of them take the view that the prohibition of uncovering hair is categorized as a rabbinic prohibition (*dat yehudit*) and not a biblical prohibition (*dat moshe*).

¹ See, e.g., *Yehavveh Da'at* 5:62; see also *Yabi'a Omer, Even Ha-Ezer* 3:21 and 4:3; *Tsits Eli'ezer* 6:48 and 7:48; *Minhat Yitshak* 6:106; *Iggerot Moshe, Even Ha-Ezer* 1:53, 57; *Seridei Eish* 3:30; *Responsa Maharsbam* 7:215; *Responsa Hatam Sofer* 3:12 (*Even ha-Ezer* 1:12); *Responsa Teshuvah me-Ahavah* 1:48; *Responsa Be'er Sheva* 18; *Responsa Radvaz* 1:445. See also generally, *Otsar ha-Poskim, Even ha-Ezer* 21:4.

The purpose of this article is to collect and analyze their views. Everything that follows has been written as an attempt to justify the halakhic practice of the daughters of Israel who otherwise dress and act modestly. It is for this reason that I have departed from the usual style of generally summarizing disparate views while directly citing in relatively few instances; in a matter such as this it is important for the numerous sources and authorities of old to be quoted as fully and robustly as possible. (Note: Emphasis throughout the paper has been added by the author.)

One who delves into the laws of hair-covering must clarify several issues and questions. As with any halakhic issue, one must clarify what halakhic matter is found in the Talmud; what is cited by Rambam, the *Shulhan Arukh*, and their commentaries; and also what views can be found in the writings of the leading *Rishonim*, whose analysis is crucial to the understanding of the underlying issues. This paper does just that, in sections II-VII. After close examination of the *Rishonim* and *Shulhan Arukh*, I then return to a more careful analysis of the Talmudic passages to uncover the Talmudic basis for those *Rishonim* who take the view that the uncovering of hair is a rabbinic prohibition (*dat yehudit*). The paper concludes with a collection of all the *Abronim* I have been able to find who, like the *Rishonim*, take the view that the parameters of the prohibition to uncover hair are dependent on the customs of modest women which vary according to time and place.

II. THE BASIS FOR THE PROHIBITION OF UNCOVERING HAIR IN THE TALMUD AND RISHONIM

The primary Talmudic source for our entire discussion of hair covering is a mishna and its attendant gemara in *Ketubot* (72a-b):

Mishna: The following are to be divorced without receiving their *ketubah*: a wife who violates *dat moshe* or *dat yehudit*. What is [regarded as a violation of] *dat moshe*? Feeding [her husband] untithed food, having intercourse with him during the period of her menstruation, not setting apart the dough offering, or making vows and not fulfilling them. What is [considered to be a violation of] *dat yehudit* (*Rashi*: which the daughters of Israel practice even though it is not expressly written in Scripture)? Going out with her head uncovered, spinning in the marketplace, or conversing with every man . . .

Gemara: . . . What is [considered to be a violation of] *dat yehudit*? Going out with her head uncovered. [Is not going out with an] uncovered head a Biblical prohibition (*Rashi*: so why is it not considered *dat moshe*?)—as it is

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written, “And he shall uncover her head” (Num. 5:18), and the school of R. Yishmael taught that this is a warning (*Rashi: from the fact that we disgrace her in this manner commensurate to her act of making herself attractive to her lover [by uncovering her head] we can infer that it is forbidden. Alternatively, since Scripture states, “And he shall uncover,” we can infer that at that time her head was not uncovered; we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered: this is the main explanation*) to the daughters of Israel that they should not go out with uncovered head? [R. Yehudah answered in the name of Shmuel:]² Biblically, her work-basket is a satisfactory head covering; however, according to *dat yehudit* even a basket [on her head is insufficient and] is prohibited as well.

R. Assi stated in the name of R. Yohanan: When a woman goes with a basket [on her head], she is not considered to be [going with] an uncovered head. R. Zera took issue with this: Where are we talking about? If you were to say, in the marketplace—this is already considered to be *dat yehudit* [and forbidden]; but if you were to suggest instead, in a courtyard (*Tosafot: meaning, even without a basket there still is no prohibition of going with an uncovered head; for if this were not the case, then you have not left a single daughter of our patriarch Abraham . . .*) if so, you have not left a single daughter of our patriarch Abraham who could live with her husband! Abaye, or alternatively R. Kahana, answered: [R. Yohanan’s ruling is meant to apply to a woman who goes] from one courtyard to another by way of an alley.

Thus, the simple understanding of the Gemara’s conclusion is that uncovering of a woman’s hair is biblically prohibited. Rif, too, includes the main points of this passage in his anthology. He writes (32b in Rif pagination):

What is *dat yehudit*? Going out with her head uncovered. [Is not an] uncovered head a Biblical prohibition, as it is written, “And he shall uncover her head,” and the school of R. Yishmael taught that this is a warning to the daughters of Israel that they should not go out with an uncovered head? R. Yehudah answered in the name of Shmuel: Biblically, her work-basket is a satisfactory head covering; however, according to *dat yehudit* even a basket is prohibited as well. R. Assi stated in the name of R. Yohanan: When a woman goes with a basket, she is not considered to be of uncovered head (*Ran: on this it is said in the Gemara, “If so, you have not left a single daughter of our patriarch Abraham who could live with her husband—meaning, if R. Yohanan states that only with a basket is*

² This is the textual version of all the *Rishonim*; see Rosh and Rif; see also *Dikdukei Soferim*.

a woman not considered to be of uncovered head, the implication is that without a basket, a woman is considered to be of uncovered head; if so, all Jewish women would be required to divorce, as no woman is scrupulous about this in her own courtyard). Abaye, or alternatively R. Kahana, stated: [R. Yohanan's ruling is meant to apply to a woman who goes] from one courtyard to another by way of an alley (*Ran: where many people are not normally present*). *Talmud Yerushalmi*: A courtyard which many people use as a pass-through is [considered] as an alley; an alley through which many people do not pass is [considered] as a courtyard.

Rambam (*Hilkhot Ishut*, 24) writes similarly:

11. If a woman has done one of the following, she is considered to have violated *dat moshe*: Going out in the marketplace with her head uncovered, making vows or taking oaths and not fulfilling them, having intercourse with her husband during the period of her menstruation, not setting apart the dough offering, or feeding her husband forbidden foods—insects, reptiles, and the carcasses of unslaughtered beasts go without saying, but even foods that are untithed. How is the husband to know? For instance, if she said that these fruits were tithed by such-and-such Kohen [priest], or such-and-such woman set aside the offering from this dough, or such-and-such sage ruled my menstrual spotting to be pure, and then after he ate or slept with her, he inquired of that person, who informed him that such an incident never took place . . .

12. What is considered to be *dat yehudit*? Those are the modest practices which the daughters of Israel practice. If a woman has done one of the following, she is considered to have violated *dat yehudit*: Going out in the marketplace or in a through-alley with her head uncovered and without the headscarf that all other women wear, even though her hair is covered by a kerchief; or spinning in the marketplace with rouge or the like on her face—on her forehead or cheeks, in the manner of the promiscuous non-Jewish women . . .

The simple understanding of Rambam is that a woman who goes out with her hair completely uncovered violates *dat moshe*. However, Rambam is of the opinion that the category of *dat moshe* includes violations which are only rabbinic in nature. (Menstrual spotting is certainly rabbinic according to all opinions. According to Rambam, failing to separate dough and tithes are also considered to be rabbinic violations.) It is impossible to ascertain whether in principle Rambam is of the view that uncovering of the hair is only a rabbinic or a biblical violation. Rambam's position will be addressed at length in section VII below.

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III. UNCOVERING OF HAIR CATEGORIZED AS *DAT YEHUDIT* IN THE *TUR* AND *SHULHAN ARUKH*

Nearly all of the halakhic decisors subsequent to Rambam based their rulings on Rambam's formulation of the law—but they switched the prohibition of completely uncovering one's hair from *dat moshe* to *dat yehudit*. The *Tur*, as is his practice generally, constructed his own explanation of the prohibition to uncover hair from Rambam's wording, but he reclassified many of the violations from *dat moshe* to *dat yehudit* in order to elucidate his own view and highlight the *halakhot* in which he disagreed with Rambam. The *Tur* (*Even ha-Ezer* 115) rules:

The following are to be divorced without receiving their *ketubah*: a wife who violates *dat moshe* or *dat yehudit*. What is *dat moshe*? Feeding [her husband] untithed food or any of the other prohibited food items, such as blood or forbidden tallow, where she caused him to sin and he ate relying on her word and was informed subsequently: for instance she averred that such-and-such sage made this pile legally fit for use [by separating the priestly dues] on my behalf, or issued me a ruling that this piece of meat is permissible, or issued me a ruling that my current discharge of blood is pure, and then was found to be lying . . . And what is *dat yehudit*? Going out with her head uncovered; even if it is not uncovered entirely but only covered by her work-basket—since she was not covered with a head-scarf, she is to be divorced. Rambam wrote that even though a woman's hair is covered with a kerchief, since she is not wearing a head-scarf³ like all women, she is to be divorced without receiving her *ketubah*.⁴

³ Or a face veil; see Rambam, *Commentary on Mishnah, Shabbat* 4.

⁴ The author of the work *Tsedah la-Derekh* (Rabbeinu Menachem b. Aaron, student of R. Yehudah, son of Rosh, and a contemporary of the *Tur*) writes:

The following are to be divorced without receiving their *ketubah*: a wife who violates *dat moshe* or *dat yehudit*. What is *dat moshe*? Feeding [her husband] untithed food or any of the other prohibited food items, and subsequently he finds out: for instance she averred that such-and-such sage made this pile legally fit for use [by separating the priestly dues] on my behalf or issued me a ruling that this piece of meat is permissible or issued me a ruling that my current menstrual discharge is pure, and then was found to be lying . . . And what is *dat yehudit*? Going out to the marketplace or through an alley or courtyard which many people frequent in the manner of promiscuous women.

In this formulation, the entire prohibition is dependent on the modest practice of women.

The *Tur* switches or modifies all of the rabbinic prohibitions classified by Rambam as *dat moshe* and classifies them instead as *dat yehudit*. For example, the *Tur* eliminates the word “menstrual spotting” and replaces it with “discharge of blood,” and he changes “dough” to “pile.”⁵ The general rule behind these changes is that all the prohibitions that are only rabbinically forbidden were recategorized as *dat yehudit*; by doing so, the *Tur* eliminated all matters related to hair covering that Rambam classified as *dat moshe* and listed them only under *dat yehudit*. According to the *Tur*, a woman who goes with “head uncovered” is included in the category of *dat yehudit*—both uncovered entirely, and “even if it is not uncovered entirely but only covered by her work-basket.” *Nothing related to the prohibition for a woman to uncover her hair is categorized as dat moshe*⁶ in the view of the *Tur*.⁷

⁵ The opinion of the *Tur* is that tithes and priestly dues are biblically prohibited even nowadays; therefore, he wrote of the “pile,” which relates to priestly dues, and not the dough offering. But the *Tur* does not eliminate the case of feeding untithed food (even though Rambam is of the view that the consumption of untithed food is only rabbinically prohibited, and therefore he writes, “even foods that are untithed”—meaning, even though they are not biblically prohibited)—because the *Tur* takes the view that the consumption of untithed food is prohibited biblically. See *Tur, Yoreh De'ah* 331.

⁶ It is untenable to argue that the *Tur* (and *Shulhan Arukh*) recorded this prohibition in the category of *dat yehudit* (even though it should be categorized as *dat moshe*) merely because there is no difference at all between *dat moshe* and *dat yehudit*. Similarly, it is untenable to argue that *Even ha-Ezer* 115 is limited to whether a woman is divorced without receiving her *ketubah*, and in this regard there is no difference between the two, because even the section which describes the prohibition for a woman to go with her hair uncovered (*Even ha-Ezer* 21:2) does not use an expression that would indicate a biblical prohibition. There is no single place in the *Tur* and *Shulhan Arukh* that describe hair covering using the language of biblical prohibition. The phraseology of the *Tur* and *Shulhan Arukh* consistently employs terminology of *dat yehudit* and rabbinical prohibitions, and there are significant differences between this terminology and that of biblical prohibitions and *dat moshe*. An examination of the *Abironim* reveals that there are great differences between the two; see below, section V, “What is *dat moshe* and what is *dat yehudit*?”

⁷ The view of the *Tur* can also be found in the *Kitsur Piskei ha-Rosh* (also written by Rosh’s son R. Jacob b. Asher, author of the *Tur*). It states:

An exposed handbreadth of a woman’s body is considered forbidden nakedness, and it is forbidden to recite the *Shema* in the presence of such a woman . . . The *shok* of a woman is considered forbidden nakedness, as is the hair of a married but not unmarried woman, as is the voice of a woman, to which it is forbidden to listen.

The *Tur* explains that the prohibition found in *Berakhot* 24 is not restricted to forbidden nakedness during prayer; rather, he is of the view that the Gemara is talking about a general prohibition (whose source is only rabbinic, as the verse from which this law is derived is from Song of Songs; but see *Mishpetei Uziel* 94 who disagrees).

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The *Bab*—but not *Bet Yosef*⁸—quotes the Gemara (*Ketubot* 72b) and voices his own opinion that going out with one’s head entirely uncovered is a biblical prohibition and considered *dat moshe*.

Even though the *Shulhan Arukh* generally bases his codification of the law on the wording of Rambam, for this particular law the *Shulhan Arukh* quotes the wording of the *Tur*—and not Rambam.

Shulhan Arukh (*Even ha-Ezer* 115) writes:

1. The following are to be divorced without receiving their *ketubah*: a wife who violates *dat moshe* or *dat yehudit*. What is *dat moshe*? Feeding [her husband] untithed food or any other prohibited food item, or having intercourse with him during the period of her menstruation, and he was made aware of this subsequently—for instance she averred that such-and-such sage made this pile legally fit for use [by separating the priestly dues] on my behalf or issued me a ruling that this piece of meat is permissible or issued me a ruling that my current discharge of blood is pure, and then was found to be lying

4. What is *dat yehudit*? The modest practices which the daughters of Israel practice. If a woman has done one of the following, she is considered to have violated *dat yehudit*: Going out in the marketplace or in a through-alley or in a courtyard which many people frequent with her head uncovered and without the headscarf that all other women wear, even though her hair is covered by a kerchief.

(Cf. *Tur*, who adds, “Even if [her head] is not uncovered entirely.”)

Even though Rosh (*Ketubot* Ch. 7, no. 9) quotes the Gemara which states that uncovering of the hair is “of biblical origin,” the *Kitsur Piskei Ha-Rosh* (ibid.) does not explain Rosh that way. R. Jacob b. Asher, author of the *Tur*, summarizes Rosh without at all mentioning the category of one who violates *dat*. A similar formulation can be found in the *Tur*, *Even ha-Ezer* 21. The *Tur* writes: “The daughters of Israel should not go out in the marketplace with their heads uncovered, no matter if they are unmarried or married.” The *Tur* does not distinguish between married and unmarried women, even though he himself is of the opinion that there is no prohibition for an unmarried woman to go out with her hair uncovered. Perhaps with regard to everything contained in *Even ha-Ezer* 21, the *Tur* is of the view that the prohibitions are only rabbinic in nature, and apply only in the time and place of promiscuous women: see Ritva, *Kiddushin* 82a (cited in *Pit’hei Teshuvah*, *Even ha-Ezer* 21) and below, p. 45.

⁸ The *Bet Yosef* writes: “That which [the *Tur*] wrote, ‘Even if it is not uncovered entirely but only covered by her work-basket, since she was not covered with a headscarf, she is to be divorced,’ is from [*Ketubot* 72b]. That which he ascribed to Rambam appears in Chapter 24 of *Hilkhot Ishut*, and it is an explanation of the gemara’s remark, ‘Biblically, her work-basket is a satisfactory head covering; however, according to *dat yehudit* even a basket [on her head is insufficient and] is prohibited as well.’”

Likewise, in *Even ha-Ezer* 21, the *Shulhan Arukh* draws no distinction between married and unmarried women. In *Even ha-Ezer* 21:2, he writes, “The daughters of Israel should not go out in the marketplace with their heads uncovered, no matter if they are unmarried or married.”⁹ The simple understanding of the *Mehaber* is that all of the laws of hair covering—for both married and unmarried women—are equivalent and based on a single principle (namely, that all these laws are *dat yehudit*).

Rema adds nothing in regard to this paragraph, thus he does not disagree.¹⁰ Similarly, the *Terumat ha-Desheh*—whose rulings the Rama regularly quotes when they do not appear elsewhere in the *Shulhan Arukh* itself—ruled that the prohibition involved here is not biblical. In the Responsa *Terumat ha-Desheh* (no. 10), in discussing the obligation for men to cover their heads, he answers by way of comparison to a more severe prohibition (compared to a custom): the obligation of women to cover their hair, as “the prohibition for a woman to have her head uncovered *has some support in the Torah*.”

The *Levush* also cites the wording of the *Mehaber* in *Even ha-Ezer* 115 without altering it. In *Even ha-Ezer* 21, the *Levush* rules, “The daughters of Israel should not go out in the marketplace with their heads uncovered, no matter if they are unmarried or married, for this is promiscuous for a woman, and *there is also a deeper meaning according to the Kabbalah*.” It is reasonable to understand that the last clause, “there is also a deeper meaning according to the Kabbalah” comes to

⁹ There is a dispute amongst the *Abronim* as to the meaning of the word “unmarried” (*pennyah*). Most authorities are of the view that it should be understood as referring to a woman who was once married but is currently unmarried, rather than to one who is single and has never been married; see *Helkat Mehokek, Bet Shmuel* and *Dagul me-Revavah* on *Even ha-Ezer* 21:4. See also *Bah* (*ad loc.*) who disagrees, as does Magen Avraham, OC 75:3. See also below, section XI.

¹⁰ There is some evidence that the Rema rules that the prohibition of a woman uncovering her hair is *dat yehudit* and not *dat moshe*: See Responsa of Rema 20, *Shulhan Arukh*, OC 75:2 (“the same is true of women’s hair that regularly protrudes from under their coverings”), and *Darkei Moshe, Even ha-Ezer* 115, where he rules that the prohibition is only for a woman to go with her head uncovered in the marketplace and nowhere else (see the remarks of *Minhat Ani*, below, p. 33); see also *Responsa Rema* 45. See also *Responsa Binyamin Ze’ev, Dinei Kiddushin* (par. 50), who explains *dat moshe* only as the *Mehaber* does (see also his responsum 127). The *Perishah*, too, does not disagree with the *Tur*’s view. In *Even ha-Ezer* 115 (*Perishah* no. 11) he writes that the prohibition is for a woman to go with her hair completely uncovered in the marketplace, and in *Even ha-Ezer* 21 he writes that “*women should not go out in the marketplace with their heads uncovered, no matter if they are unmarried . . .*—apparently it seems that [the *Tur*] means to say [unmarried,] such as a widow or divorcee; but single women who have never been married are permitted to go out, as is our custom.”

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explain that even though as a matter of technical law these matters are only rabbinically prohibited, there is additional reason to be strict according to the Zohar.¹¹

Upon close examination of the *Tur*, *Shulhan Arukh*, Rema, and the *Levush*, we see that they did not find any aspect of the prohibition of women to have their heads uncovered belonging to the category of *dat moshe*; in their view, the entire prohibition is based in *dat yehudit*.

However, the *Bet Shmuel* and *Bah* disagree. The *Bet Shmuel* writes, “The general rule is as follows: if a woman is in the public domain and her head is completely uncovered, it is [a violation of] *dat moshe*; if her head is covered by her work-basket, it is [a violation of] *dat yehudit*.”

The *Bah* writes:

In the seventh chapter of *Ketubot*, the Mishna teaches: “What is [considered to be a violation of] *dat yehudit*? Going out with her head uncovered.” The Gemara then asks, “Going out with an uncovered head is a Biblical prohibition (so why is it not considered *dat moshe*)? The Gemara answers, “Biblically, her work-basket is a satisfactory head covering; however, according to *dat yehudit* even a basket [on her head is insufficient and] is prohibited as well . . . The *Aruk* wrote similarly under the entry “*kalat*” (work-basket) that even though going out in the marketplace

¹¹ The Zohar (Parashat Naso, p. 125b–126a) is exceedingly strict with regard to the prohibition of women going with uncovered hair. The Zohar writes:

77) R. Hizkiyah stated: A stupor shall befall the man who allows his wife to let her hair be seen protruding forth. This is one of the modest practices of the home. A woman who exposes some of her hair for self-adornment causes poverty for her household, causes her children to be unimportant in their generation, and causes a foreign spirit to dwell in her house. What causes all this? The hair of her head that could be seen protruding forth. If this is true within the home, how much more so in the marketplace. And how much more so [could it lead to] even further brazenness. Thus the verse, “Your wife shall be as a fruitful vine in the innermost parts of your house” (Psalms 128:3).

78) R. Yehudah stated: The hair of the head of a woman being exposed causes “other hair” [i.e., the powers of impurity] to be revealed and harm her. Thus, a woman is required to ensure that even the beams of her house not see a single hair of her head, and all the more so outdoors.

See also R. Menachem Recanati, *Ta’amei ha-Mitsvot ha-Shalem*, Mitsva of *Sotah*, and the *Even Yekarah* commentary of R. Mordechai Yaffe (published in the complete works of the Levush).

with only a basket perched on her head is biblically permissible, by *dat yehudit* it is forbidden to do this in the marketplace.¹²

Indeed, there is a fundamental disagreement between the *Tur* and *Mehaber* on the one hand and Rambam, the *Bah*, and *Bet Shmuel* on the other. According to the *Tur* and *Mehaber*, the prohibition for a woman to go with her head uncovered falls under the category of *dat yehudit*, “the modest practices which the daughters of Israel practice.” According to Rambam, the *Bah*, and *Bet Shmuel*, uncovering of the hair in its entirety is considered *dat moshe*, and the prohibition is not dependent upon the practices of the daughters of Israel but rather is unchanging.¹³

There is an obvious difficulty with the position of the *Tur* and *Shulhan Arukh*: why did they switch uncovering of hair from *dat moshe* to *dat yehudit*, contrary to the simple understanding of the Talmud and Rambam? Let me suggest that the *Tur* and *Shulhan Arukh* based their view on two fundamental ideas:

1. A close examination of the *Rishonim* reveals that many of them considered the prohibition for a woman to uncover her hair to be *dat yehudit* and not *dat moshe*.
2. It may be that Rambam is of the view that the prohibition of a woman going with her hair uncovered is only rabbinic.

Consequently, the *Tur* and *Shulhan Arukh* ruled that the prohibition for a woman to go with her hair entirely uncovered is only considered *dat yehudit* and forbidden rabbinically. Even though these two positions are not found among the leading *Ahronim* (particularly the two together), a careful analysis of the *Rishonim* may be helpful for understanding the ruling of the *Tur* and *Mehaber*.

¹² It seems that the Gra, too, disagrees; see *Bi'ur ha-Gra, Even ha-Ezer* 115:19 and the comments of the *Birkat Eliyahu*, who explains the language of the Gra to mean that he disagrees as well.

¹³ In general, the laws of modesty in the category of *dat yehudit* are dependent on the practice of modest Jewish women who are Torah-observant. For example, see Responsa *Maharam Alshakar, Even ha-Ezer* 35 who rules as a matter of Jewish law that it is permissible for a modest married woman to reveal the hair which protrudes from under her hat, if that is the societal practice, since all agree that no biblical prohibition is involved when a woman is wearing a hat. R. Moshe Feinstein (*Iggerot Moshe, Even ha-Ezer* 1:57 and 4:32[4]) also permits the violation of *dat yehudit* in cases of need when such action is not inherently immodest. See also the discussion of the difference between *dat moshe* and *dat yehudit* below, section V.

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IV. UNCOVERING OF HAIR CATEGORIZED AS DAT YEHUDIT AND A RABBINIC PROHIBITION IN THE RISHONIM

Many of the *Rishonim* have examined this topic and reached the conclusion that the prohibition for a woman to uncover her head in its entirety is properly categorized not as *dat moshe* but rather as *dat yehudit*. Their view forms the basis for the ruling of the *Tur* and *Shulhan Arukh*. For example:

A. Rosh

The Talmud (*Gittin* 90a-b) states:

This is characteristic of a wicked man who sees his wife go out with her head uncovered, spin in the marketplace with both sides of her torso exposed, and bathe with other men. Do you really mean to say bathe with other men? (*Rashi*: *If so, it would be circumstantial evidence that she is unfaithful and thus forbidden to him.*) Rather, [she bathes] in the same place as the men. Biblically, one ought to divorce such a woman.

Tosafot ha-Rosh on this passage explains:

“Do you really mean to say [he sees her] bathe with other men?”—*Rashi* of blessed memory explained that if that were the case, there would be circumstantial evidence that she is unfaithful and thus forbidden [to her husband], and the Talmud would not have said in that case one ought to divorce such a woman, but rather one *must* divorce her. If you challenge this by saying, if that is true, *then certainly one must also divorce a woman who goes out with her head uncovered because she violates dat yehudit*, yet it is an unresolved question in *Sotah* 25a as to whether or not a husband may choose to stay married to such a woman [and the Talmud does not draw such an inference], one may answer that there [in *Sotah*] the violation was rabbinic [and so one need not in fact divorce such a woman], but here [actually bathing with other men] would be a biblical violation . . .

Thus *Rosh* is of the view that a woman who goes out with her hair uncovered violates *dat yehudit* (and not *dat moshe*). And while *Rosh* initially entertains the possibility that a man must divorce a woman who violates *dat yehudit*, he ultimately concludes that one may divorce her but need not do so. *Rosh* on *Ketubot* (7:9) also writes:

The rule that a woman who violates *dat moshe* and *dat yehudit* does not receive her *ketubah* payment applies specifically to cases in which she causes her husband to sin, such as those in our Mishna and the like—for instance, feeding him forbidden fats or blood, or making vows and not fulfilling them (for one’s children [die on account of this sin]). However if a woman violates other prohibitions, such as if she herself were to consume a forbidden item, she does not forfeit her *ketubah*. With regard to *dat yehudit*, the husband is able to deprive his wife of her *ketubah* on account of her impudence and on account of the suspicion of infidelity.

From this we see that, according to Rosh, a woman having her hair uncovered is not considered *dat moshe* because she is not causing her husband to sin; rather, it is only considered a violation of *dat yehudit* (and only in a time and place that uncovered hair would indicate impudence and a suspicion of infidelity). A similar expression of this idea can be found in the Responsa of Rosh 32:8, regarding a married woman who committed adultery under life-threatening duress (but willingly did so):

Nonetheless, it seems to me that she does not forfeit her *ketubah* payment, because a woman is only considered to have violated *dat moshe* if she [actively] caused her husband to sin, similar to those [actions] listed in the Mishna (*Ketubot* 72a): feeding him untithed food, not setting apart the dough offering, making vows and not fulfilling them, or having intercourse with him during the period of her menstruation.

The proof to this proposition is that the Talmud states regarding a woman who makes vows and does not fulfill them—“As our master stated, on account of the sin of [unfulfilled] vows, one’s children die.” We see that the sin of not fulfilling her vows is itself not sufficient for her to be considered to have violated *dat [moshe]* such that she would forfeit her *ketubah* payment—only because her actions cause harm to her husband by leading to the death of his children [is she considered such].¹⁴

¹⁴ Rosh (*Ketubot* 7:9) also writes:

Dat yehudit is going out with her head uncovered. [Is not an] uncovered head a Biblical prohibition, as it is written, “And he shall uncover her head,” and the school of R. Yishmael taught that this is a warning to the daughters of Israel that they should not go out with uncovered head? R. Yehudah answered in the name of Shmuel: Biblically, her work-basket is a satisfactory head covering; however, according to *dat yehudit* even a basket is prohibited as well [*Hagabot Asheri: This is so in the public domain, but in a courtyard, even the absence of a work-basket is not considered a violation even of dat yehudit*—R. Hezekiah of Magdeburg]. R. Assi stated in

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Therefore, according to Rosh, it is impossible to argue that a woman who goes out with her hair uncovered has violated *dat moshe*.

A related presentation can be found in Rosh in *Berakhot* (3:37) explaining the passage in the Gemara (24a) which lays out the rule that “the hair of a woman is considered *ervah*.” Rosh is of the view that this prohibition is not at all dependent on whether one is praying; rather, it applies at all times and in all places. He writes, “That which is normally covered up by a woman [is considered *ervah*.] . . . The hair of married women, who normally cover their hair, is considered *ervah*, but it is permitted [even] to pray in view of unmarried women who normally go with their hair uncovered.” R. Yom Tov Lipman Heller, in his *Divrei Hamudot* commentary to this paragraph of Rosh, writes that according to Rosh,

. . . a woman’s forearms are not considered to be her hands [which are certainly permissible]. Nonetheless, it is logical to conclude that [the laws in] every place should be dependent on local practice as a consequence of the above rationale, yet parts of a woman’s body that are not normally covered are not considered *ervah*, for men are not aroused by looking at them . . .

Thus R. Heller is of the view that wherever the custom of modest religious women is to uncover a particular part of their body (such as forearms, and certainly hair), there is no prohibition to do so according to Rosh.¹⁵ According to this understanding, in Rosh’s view there is a dispute among the Talmudic passages in *Ketubot* 72 and *Berakhot* 24.¹⁶

the name of R. Yohanan: When a woman goes with a basket, she is not considered to be of uncovered head. Abayee, or alternatively R. Kahana, stated: [R. Yohanan’s ruling is meant to apply to a woman who goes] from one courtyard to another by way of an alley. *Talmud Yerushalmi (Ketubot Ch. 7)*: A courtyard which many people use as a pass-through is [considered] as an alley; an alley through which many people do not pass is [considered] as a courtyard.

See also the discussion relating to the comments of the *Minbat Ani*, below, p. 33.

¹⁵ R. Aaron Samuel Kaidanover, commenting on this in his *Tiferet Shmuel*, writes: “meaning, he comes to exclude that which women normally uncover, such as the face and neck and hands, but it seems simple to me that the practice of women to regularly uncover their forearms and have their garments open nearly to their breasts is an evil practice; to them I apply the term a no-good place: an exposed handbreadth of a woman is considered *ervah*.”

¹⁶ See also Rosh on *Gittin* 9:15, as well as note 7 above. If *Berakhot* 24 is not dealing exclusively with the ability to recite the *Shema*, then the three body parts discussed in *Berakhot* (hair, voice, and legs) parallel the three activities classified as *dat yehudit* in the Mishna in *Ketubot* 72.

B. *Tosafot*

A view similar to that of Rosh can be found in *Tosafot*. The second to last *Tosafot* in *Gittin* (90b) rules:

“Do you really mean to say [he sees her] bathe with other men?”—Rashi explained that if that were the case, there would be circumstantial evidence that she is unfaithful and thus forbidden [to her husband], and the Talmud would not have said in that case one ought to divorce such a woman, but rather one *must* divorce her. This seems difficult, for [according to this view] one must also divorce a woman who spins in the marketplace or goes out with her head uncovered—not just that one *should* divorce her, yet the question in *Sotah* 25a as to whether or not a husband may choose to stay married to a woman who violates *dat yehudit*¹⁷ remains unresolved—why did the Talmud not raise this issue there [by bringing these cases as clear proof]? One may answer that because *the question in Sotah was only in regard to a rabbinic violation*, it is reasonable for the Talmud to posit that one ought to divorce such a woman, but here [in *Gittin*], one is biblically obligated to divorce [a woman who bathes with other men].

In *Sotah* (25a), *Tosafot* rules that “a husband is permitted to remain married to a woman who violates *dat [yehudit]*¹⁸ even after warning her numerous times.”

An examination of the *Or Zarua* regarding Rav Sheshet’s ruling on *Berakhot* 24 that the hair of a woman is considered *ervah* reveals that the *Or Zarua* rules:

That which Shmuel said: A woman’s hair is considered forbidden nakedness [*ervah*], as it says, “Your hair is like a flock of goats,” my teacher R. Yehudah b. Yitzchak explained as not dealing with the recitation of the *Shema*.

If that statement is not in regard to the *Shema*, then one readily concludes that *Berakhot* 24 is dealing with matters of modesty in general. And since all of the laws in *Berakhot* are derived only from verses in the Prophets or Writings, one readily concludes that the prohibitions are entirely rabbinic. Thus the Gemara in *Berakhot* 24 and *Ketubot* 72 are dealing with the same subject matter. In fact, the rulings of *Ketubot* 72 do not appear anywhere in the *Or Zarua*. A similar approach (that the passage in *Berakhot* is not limited to matters of prayer) is found in R. Menachem Recanati, *Piskei Recanati* no. 26 (p. 6) as well as in the *Ohel Moed* citing Rabbeinu Tam, end of *Netiv* 5. The *Halakhot Pesukot le-Talmidei R. Yehudai Gaon* (p. 87 11-4), whose methodology, like Rif’s, is to quote only the Talmudic passages that are relevant to the final law, quotes only the Mishna on *Ketubot* 72 without any mention of a biblical prohibition.

¹⁷ The gemara in *Sotah* does not use the expression “*dat yehudit*”; this is an interpretive gloss by *Tosafot*.

¹⁸ It is not possible to argue that *Tosafot* here are speaking of a woman who violates *dat moshe*, as it is certainly forbidden to continue to live with a woman who causes her husband to violate biblical prohibitions. (Rashi, too, s.v. *overet al dat*, understands the

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The *Helkat Mebokek* (115:18) writes, “That which the Talmud states at the end of the ninth chapter of *Gittin* (90a-b), that one ought to divorce [a woman who acts immodestly], it is possible that it is discussing one who is exceedingly promiscuous, such as one who goes with both sides of her torso exposed or bathes, etc., as stated there.” It is a biblical commandment to divorce a woman who conducts herself in the manner of promiscuous women (as in *Gittin* 90).¹⁹ However, a woman who is not “exceedingly promiscuous” (where there is no suspicion of infidelity at all in her actions), certainly according to *Tosafot* there is only a rabbinic obligation to divorce such a woman, and *Tosafot* maintains that a husband may pardon a wife who violated *dat yehudit* in situations where there is no suspicion of infidelity.²⁰

Tosafot (*Gittin* 90) raises the question as to the difference between situations where one should divorce one’s wife and where one is obligated to do so. *Tosafot* answers that we say one must divorce one’s wife biblically only when there is evidence that she is unfaithful and there is therefore a biblical prohibition to live with her. According to this basic framework, there are three categories within the obligation to divorce.

The first is a biblical obligation that one must divorce his wife, but this is limited to cases where there is evidence that she is unfaithful (such as a woman who bathes with men unclothed). The second is a biblical imperative that one *ought* to divorce his wife (but biblically one is not required to do so)—this applies in cases where she “goes out with her head uncovered, spins in the marketplace with both sides of her torso exposed,” and bathes in the same place as the men (but not when they are actually in the water). This is considered actual promiscuity (which the *Helkat Mebokek* calls “exceedingly promiscuous”), and it carries an imperative where one *ought* to divorce such a woman biblically but *need not*. The third category pertains to a woman who violates *dat yehudit* in such a way that her actions are not exceedingly promiscuous, but still is not acting in a modest manner like the rest of the daughters of Israel—in that

Gemara in *Sotah* to be limited to one who violates *dat yehudit*.) See also *Shut ha-Bah ha-Hadashot* 84.

¹⁹ *Bet Yosef, Even ha-Ezer* 119, s.v. *bameh devarim amurim*. See also *Bet Shmuel, Even ha-Ezer* 115:19, who maintains that “even according to the view of *Tosafot* and Rashba (see *Shitah Mekubetset* 72), that the resolution to the question is that a husband may choose to remain married to such a woman, nonetheless they are of the view that one ought to divorce her.”

²⁰ Since it is impossible to maintain that whenever there is a biblical commandment to divorce, one may forego the commandment. See also R. Yitshak Isaac Herzog, *Heikhal Yitshak, Even ha-Ezer* 1: 9.

case, there is only a rabbinic obligation to divorce.²¹ *Tosafot* maintains that a woman who goes “with her head uncovered” but not “with both sides of her torso exposed” in an exceedingly promiscuous manner violates only this third category, and is considered as one who violates *dat yehudit* (“or goes out with her head uncovered . . . violates *dat yehudit*”²²); *Tosafot* rules that one may remain married to a woman who fits into this category, even in a case where she admits to violating *dat yehudit*.

One cannot possibly argue that *Tosafot* maintains that uncovering of hair is only a rabbinic violation yet is still categorized as *dat moshe*, because throughout these *sugyot*, *Tosafot* consistently refers to hair covering as a violation of *dat yehudit* and not *dat moshe*.²³ *Tosafot* even goes so far

²¹ It is possible that the full scope of *Tosafot*’s position escaped the view of the *Bet Shmuel* (*Even ha-Ezer* 115). The *Bet Shmuel* maintains that the view of Rashi, that there is no obligation to give forewarning before divorcing one’s wife for a violation of *dat moshe*, is a solitary view. Yet this seems to be the view of *Tosafot* here as well (if one is biblically obligated to divorce one’s wife, then there need not be an obligation to forewarn her).

R. Yosef b. Moshe Trani, Responsa *Mabit* 1:76, writes:

However, I believe [jewelry on Shabbat] ought to be compared to hair covering and *dat yehudit* found in the seventh chapter of *Ketubot*, as matters of modesty are to be derived from like matters of modesty. There (*Ketubot* 72) the Talmud states, “R. Assi stated in the name of R. Yohanan: When a woman goes with a basket, she is not considered to be of uncovered head. R. Zera took issue with this: Where are we talking about? If you were to say, in the marketplace—this is already considered to be *dat yehudit* [and forbidden]; but if you were to suggest instead, in a courtyard—if so, you have not left a single daughter of our patriarch Abraham who could live with her husband! Abaye, or alternatively R. Kahana, answered: [R. Yohanan’s ruling is meant to apply to a woman who goes] from one courtyard to another by way of an alley.” To which *Tosafot* commented that in a courtyard even without a basket there still is no prohibition of going with an uncovered head, and it is true that this entails no violation of *dat yehudit* as well, as evidenced by the Talmud’s assertions that going with a basket in the marketplace is considered only a violation of *dat yehudit*, while going with a basket from one courtyard to another by way of an alley is not even a violation of *dat yehudit*. . . .

See also *Minhat Ani*, below (p. 33), regarding the basis of *Tosafot*’s ruling to permit uncovering hair in a courtyard.

²² Thus there is a tremendous difference between a woman who is not as modest as the proper daughters of Israel and a promiscuous woman. It is not fitting for a proper Jewish man to marry a woman who has been divorced on account of promiscuity (*Shulhan Arukh*, *Even ha-Ezer* 119:5), but there is a dispute among the *Rishonim* as to whether one even ought to divorce a woman who violates *dat yehudit*; see *Shulhan Arukh*, *Even ha-Ezer* 115:4.

²³ See *Mareh Panim* commentary to the end of Yerushalmi *Gittin* as well as *Tiferet Yaakov* to *Gittin* 90; the above explanation is consonant with their comments.

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as to insert the term “*yehudit*” into the passage in *Sotah* when the text itself only mentions “*overet al dat.*” (All of the *Tosafot* can be found as well in the *Hiddushei ha-Ran.*)

C. Rashi

It also appears that Rashi’s view is that hair covering is based in *dat yehudit* and not *dat moshe*. The Talmud in *Sotah* 25a states, “The question was asked: Does a woman who violates *dat* require forewarning in order for her to lose her *ketubah* payment or not?” Rashi explains, “A woman who violates *dat yehudit*, in that she is not modest: she goes out with her head uncovered, spins in the marketplace, or converses with every man, for which according to the seventh chapter of *Ketubot*, she is to be divorced without receiving the *ketubah* payment.” This too is the simple understanding of the alternate explanation given by Rashi on *Ketubot* 72a (s.v. *azharah*), “[S]ince Scripture states, “And he shall uncover,” we can infer that at that time her head was not uncovered; we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered: this is the main explanation.” Rashi’s view is that the prohibition is based on “the practice of the daughters of Israel.”²⁴

The relationship between the two Talmudic sources that discuss women’s hair (*Ketubot* 72a-b and *Berakhot* 24a) is one of the more complex issues in the background of this paper. As it relates to more general views of modesty in halakha, understanding Rashi’s view of these two sources is a central issue.²⁵ Rashi (and those who follow his view)²⁶ accept

²⁴ See also the explanation of R. Yerucham Fishel Perlow in his commentary to the *Sefer ha-Mitsvot* of Sa’adia Gaon, quoted below, p. 44. R. Yehuda Herzl Henkin also maintains that the alternate explanation of Rashi is based on the principle that going in the street is not biblically prohibited (as is the view of Rambam), and only according to the first explanation is there a biblical prohibition to go out in the street; see his “*Shi’ur Kisui Rosh Shel Nashim*,” *Tehumin* 13:290 (5753).

²⁵ The two other distinct views are equally important and explained elsewhere in this article. The view of Rambam is that hair covering is obligatory for all women and he makes no distinction between married and single women (*Issurei Bi’ah* 21:17 and *Shulhan Arukh* 21:2). The second view is that of Ra’aviah that it all depends on the norms of society and that *Berakhot* 24a is merely a list of conduct considered immodest in Talmudic times (Ra’aviah cited in Mordekhai commenting on *Berakhot* 24a, note 80 and the *Bah* on *Tur* 21). There are also many nuanced middle views that accept one opinion for hair, a different opinion for voice, and yet a third opinion for leg.

²⁶ See, for example, *Magen Avraham*, *Orah Hayyim* 75:6. In a very limited way, both *Mishna Berurah* 75:17 and *Iggerot Moshe*, *Orah Hayyim* 1:26 adopt the view of Rashi but limit it to single women who are *taberah*, which functionally limits this leniency to small children. Although it is beyond the scope of this paper to fully discuss, this limitation is difficult to understand within the context of the view of Rashi and

that the gemara in *Berakhot* 24a in reference to hair (as well as *kol* and *shok*) is only speaking about revealing these areas of a woman's body or conduct if the woman is married. Rashi, in his commentary on the Talmudic phrase *shok be-ishah ervah* (*Berakhot* 24a), states clearly: “*be-esbet ish*” (“[the leg] of a married woman”). The same view is expressed in the commentary of the *Bet Shmuel* on the *Shulhan Arukh*'s words *kol be-ishah ervah* (*EH* 21:4) where he states, “But the voice of a single women or of one's wife is permissible.” So, too, common practice in the Orthodox community (as codified or noted in many sources)²⁷ accepts this view with regard to hair, which only married women cover.

The conventional binary analysis of *Berakhot* 24a divides between those activities or areas that must never be revealed (including all three mentioned in *Berakhot* 24a) and those which may always be revealed (such as hands, face, or speaking voice). According to Rashi's view, there are actually three categories within the obligation not to reveal immodestly—not two. At one extreme, the first group contains things that are so sexually charged that no woman should ever reveal them outside the confines of a marital relationship.²⁸ At the other extreme, the second category includes those things that can always be revealed by all women, such as hands, face, or speaking voice, as they are never erotic. But, for Rashi, between these two poles is a middle area comprising those aspects listed in *Berakhot* 24a. These areas of women's bodies or activities are sufficiently erotic that men look at them and ponder matters of sexuality, yet are not so erotic that single women may not reveal them. In this view, the restrictions found in *Ketubot* 72a-b are specifically marital breaches because, for example, revealing hair is a sign of being single and thus exceedingly immodest for married women and a breach of the marital obligation.

Bet Shmuel, but makes much more logical sense in the view of Rambam or Ra'aviah (discussed in the note above), both of which can be easily understood as excluding pre-adult women. Indeed, on a technical level, this distinction between hair and voice seems wrong with regard to the view of *Bet Shmuel*, who uses the exact same term (*penuya*) with regard to hair as he uses with regard to voice. While the *Peri Megadim*, *Mishbatsot Zahav* 75, s.v. *kelala de-milta* indicates that a *niddah* is considered an *erva* for these matters, logic inclines one in the opposite direction, as for most matters halakha does not consider a *niddah* to be an *erva*; see, for example, *Otsar ha-Poskim* 22:2, note B and the many authorities cited after the word *ulam*. R. Feinstein seems quite aware of this issue, and relates this matter to the lack of erotic thoughts to explain why listening to pre-pubescent girls sing is permitted, which returns to the view of Ra'aviah; see *Iggerot Moshe*, *Yoreh De'ah* 2:75 s.v. *u-be-davar*.

²⁷ See *Shulhan Arukh*, *Orah Hayyim* 75:2 and the many commentaries on *Shulhan Arukh*, *Even ha-Ezer* 21:2.

²⁸ The formulation of Rambam is “the torso of the woman” (*Keri'at Shema* 3:16).

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Rashi's school of thought (which has essentially disappeared from our common conversation with regards to *tsni'ut* in the last 50 years) has a certain halakhic insight to it. First, it explains the historical practice with regard to hair: unmarried women did not cover their hair, notwithstanding the apparently clear directive of *Berakhot* 24a that uncovered hair is immodest. Second, it recognizes that when one is single, somewhat enticing conduct of various sorts is part of the process of courting. Indeed, *Shulhan Arukh* makes this point very clear in *Even ha-Ezer* 21:3, which states:

A man who is looking to get married can *stare* at an unmarried woman to determine if she is beautiful such that he should marry her, and it does not matter whether she has had a prior sexual relationship or not, and not only that, but it is proper for a person to do this; but of course a person shouldn't look at her as if she is a prostitute.²⁹ (emphasis added)

Shulhan Arukh recognizes that people who are not yet married engage in a sort of courtship that has an undertone of sexuality in which they examine each other to determine whether they will be physically compatible. According to this view, men in the process of dating are allowed to look at a woman's hair and ask, "Is that hair appealing to me?" That is part of the process of being happily married (which is why it ought to be done).³⁰ This view argues that just as this is true for hair, it is also true for *kol* and *shok*.

More significantly, this view recognizes that single women are allowed to reveal more of themselves than married women precisely because they are *seeking* to get married, and in order to get married, a certain amount of otherwise prohibited interaction is necessary. That is why the *Shulhan Arukh's* statement that it is permissible to stare at a woman to determine if one wants to marry her is not a reference to how well she learns Ramban or bakes cookies, but instead a pointed reference to the fact that one may look at potential brides in a way that a one may not normally look at other women. But, this view argues, once a woman is married, the mere act of revealing these areas is a significant breach of marital norms, as this is conduct only single people engage in.

²⁹ *Tur*, *Even ha-Ezer* 21, which seems to reject this theory of Rashi, changes the formulation of the halakha to read "A man who is looking to get married can stare *at the face* of an unmarried woman to determine if she is beautiful," (emphasis added) reflecting his understanding of the halakha.

³⁰ *Bet Shmuel* 21:6 notes that this conduct is such a good idea that he suggests, based on a Talmudic source, that a torah scholar who lacks the ability to look closely should bring along another person with the skills to look, so as to insure that proper judgment is used.

Rashi's view with regard to hair would thus be that if hair covering is one of the indications of being married (which it historically was), then uncovering hair by a married woman violates the category of *dat yehudit*.

The view of Rashi, *Tosafot*, and Rosh can be found among many other *Rishonim* as well.

D. The *Semak*

R. Yitshak of Corbeil, author of *Amudei Golah* (also known as *Sefer Mitsvot Katan* or *Katsar*; *Semak*), also writes that all of the laws of hair covering belong to the category of *dat yehudit*. The *Semak* had R. Moshe of Coucy's *Sefer Mitsvot Gadol* (*Semag*) in front of him, which explicitly rules that uncovering one's head entirely is a violation of *dat moshe* (as is the view of Rambam). Yet the *Semak* does not rule in accordance with the *Semag*; he maintains that the prohibition of uncovering hair is entirely within the category of *dat yehudit*.

Amudei Golah (*Sefer Mitsvot Katan*), mitsva 184:

To divorce one's wife, as it is written, "if a man finds evidence of sexual misconduct on her part, he shall write her a bill of divorce and place it in her hand" (Deut. 24:1). *Evidence of sexual misconduct*, such as violating *dat moshe*: feeding him untithed food, having intercourse with him during the period of her menstruation, not setting apart the dough offering, or making vows and not fulfilling them; or such as violating *dat yehudit*: going out to the marketplace with her head uncovered, even with a work-basket on her head if she goes out into the public domain—in our society, the hair net called *kupia* is equivalent to the work-basket; but it is permissible to go from one courtyard to another by way of an alley—or spinning in the marketplace with rouge on her face—R. Hananel explained that she spins red wool near her face so that it casts a red glow on her cheeks—or acting flirtatiously with the young men.

Sefer Mitsvot Gadol, positive commandment 48:

If a woman has done one of the following, she is considered to have violated *dat moshe*: As presented in the seventh chapter of *Ketubot*—going out in the marketplace with the hair of her head uncovered, as the school of R. Yishmael taught, "And he shall uncover her head" (Num. 5:18), this is a warning to the daughters of Israel that they should not go out with uncovered head; making vows or taking oaths and not fulfilling them; having intercourse with her husband during the period of her menstruation; not setting apart the dough offering; or feeding her husband forbidden foods—insects, reptiles, and the carcasses of unslaughtered beasts go without saying, but even foods that are untithed. . . . What is considered to be *dat yehudit*? Those are the modest practices which the daughters of Israel practice. If a woman has done one of the following, she is considered to have violated *dat yehudit*: going from one courtyard to another by way of an alley with her head uncovered and without the headscarf that all other women wear, even though her hair is covered by a kerchief and not uncovered entirely. . . .

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One who compares the wording of the *Semak* with that of the *Semag* readily sees that the *Semak* changes—intentionally, to emphasize his disagreement with the *Semag*—all of the rules of hair covering that had been categorized as *dat moshe* to *dat yehudit*, because the *Semak*, like the view of his teacher Rosh and *Tosafot*, firmly believes that the laws of hair covering are not at all a matter of *dat moshe*. Furthermore, there is no other place in the *Semak* in which he discusses that it is forbidden for a woman to uncover her hair; thus the entire prohibition is rightly categorized as *dat yehudit* and is dependent on the practices of modest Jewish women.

E. *Ba'al ha-Itur*

The *Ba'al ha-Itur* also writes that all of the laws of hair covering fall into the category of *dat yehudit* (and none are considered *dat moshe*). The *Sefer ha-Itur* (letter “*mem*,” s.v. *hilkhot mered*) states:

[A]s the Mishna states, one who violates *dat moshe* or *dat yehudit*. What is a violation of *dat moshe*? Feeding him untithed food, having intercourse with him during the period of her menstruation, not setting apart the dough offering, or making vows and not fulfilling them. What is a violation of *dat yehudit*? *Going out with her head uncovered*, etc., as the Gemara goes on to elaborate: *What is a violation of dat yehudit? Going out with her head uncovered—and the Talmud establishes the rule that even going out with a work-basket is insufficient*, but R. Yosi stated in the name of R. Yohanan: When a woman goes with a work-basket, she is not considered to be of uncovered head.

Thus, according to the *Itur*, when a woman goes out with her head uncovered—whether partly or entirely—she only violates *dat yehudit*. There is no evidence at all in the *Itur* or the *Semak* that there is a biblical prohibition or a violation of *dat moshe* when a woman goes with her head fully uncovered.

F. Ra'avyah

Ra'avyah also does not include any aspect of hair covering under the rubric of *dat moshe*; he considers all of hair covering to be *dat yehudit*. Ra'avyah in *Mishpetei ha-Ketubah* (*Kol Kitvei Ra'avyah* 4:919) explains the phrase “*ke-dat moshe ve-yisrael*” in the following manner:

We have also required this text to publicize that he only wrote her a *ketubah* so that she would behave in accordance with *dat moshe ve-yisrael*.

As the mishna in the seventh chapter of *Ketubot* teaches: The following are to be divorced without receiving their *ketubah*: one who violates *dat moshe* or *dat yehudit*. Who is considered one who violates *dat moshe*? One who feeds him untithed food, has intercourse with him during the period of her menstruation, or does not set apart the dough offering. Who [is considered one who violates] *dat yehudit*? One who goes out with her head uncovered, spins in the marketplace, or converses with every man.³¹

Ra'avyah writes that all the laws of hair covering are to be found within the category of *dat yehudit* (and not of *dat moshe*). Perhaps this is dependent on the view of Ra'avyah in *Berakhot* 24 (cited in Mordekhai *ad loc.*)³²; Ra'avyah maintains that “all of the items mentioned above [hair, voice, and legs] with regard to *ervah*, apply specifically to areas of the body that are not normally uncovered.”³³

G. Ritva

Ritva, on *Ketubot* 72b, writes as follows:

³¹ A similar formulation can be found in the Responsa of Maharam of Rothenburg 4:927 (Prague ed.):

After writing my first letter, we received correspondence pertaining to a complaint by R. Yirmiyah in regard to his son-in-law who regularly beat his daughter and shamed her by uncovering her hair in defiance of *dat yehudit*, for he authorized this marriage for his daughter in order that she have a good life, not that she should be in pain . . .

³² See also the view of Ra'avad cited by Rashba (*Berakhot* 24b) (“However, with one’s own wife, even if one is touching her, so long as he turns away and does not see her nakedness it is permissible, for touching [one’s own wife] does not cause one to become overly distracted, for he is comfortable with her [as they share an intimate relationship]. . . . Ra’avad wrote that it is possible that because the Talmud stated earlier that the buttocks are not considered *ervah*, our master [Rif, who omits these laws in their entirety] maintained that this is all the more so true regarding an exposed handbreadth [of the body], as well as legs, hair, and voice.”)

³³ A similar formulation can be found in the *Behag*. In his laws of *mi’un* (protest against a marriage contracted by a minor girl’s guardian) the *Behag* quotes only the Mishna *Ketubot* 7:7 without the teaching of the school of R. Yishmael found in the Talmud; this is also the simple understanding of his methodological approach when citing the passage of *Gittin* 90b in volume 2, pp. 180-181. See also Ra’avan (*Avi Ezri*) to *Ketubot* (p. 262): “The following are to be divorced without receiving their *ketubah*: One who feeds [her husband] untithed food; has intercourse with him during the period of her menstruation; does not set apart the dough offering; makes vows and does not fulfill them; or goes out to the marketplace with her head uncovered even with a work-basket on her head.”

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But if in a courtyard, if so, you have not left a single daughter of our patriarch Abraham who could live with her husband!—Rashi of blessed memory explained it so—that in a courtyard there is a prohibition of uncovering hair. The meaning of his explanation is that since according to this suggestion, R. Yohanan’s ruling that when a woman goes with a basket on her head, she is not considered to be of uncovered head applies [in a courtyard, we infer that without a work-basket there would be a prohibition against uncovering hair] even in a courtyard—if so, you have not left a single daughter of our patriarch Abraham who could live with her husband, since most Jewish women go with their heads entirely uncovered in their own courtyards, as no one is there to see. The Talmud concludes that R. Yohanan was referring to one who goes from one courtyard to another by way of an alley. Thus there are three rules with regard to this law: In a courtyard, even without a work-basket, there is no prohibition against uncovering hair; *in the marketplace, going even with a work-basket is a violation of dat yehudit*; and in an alley, it is permissible to go with a work-basket but not without one. The Talmud Yerushalmi adds: Some courtyards can be like alleys and some alleys can be like courtyards. A courtyard which many people use as a pass through has the status of an alley; an alley through which many people do not pass has the status of a courtyard.

When Ritva writes, “In the marketplace, going even with a work-basket is a violation of *dat yehudit*,” the simple understanding of his view is that “in the marketplace, going without a work-basket is only a violation of *dat yehudit* as well.”³⁴ He does not include any law rightly categorized as *dat moshe* in his summation.

Perhaps this view of the Ritva is based on his novel insight to *Kiddushin* 82a. There, Ritva writes:

All is dependent on wisdom and the sake of heaven. This is the normative rule of Jewish law, that all is dependent on what a person sees in himself. If he needs to distance himself more, he must do so, even such that he not gaze upon women’s undergarments when they are being washed. So too, *if he sees in himself that his desires are subdued and under control and do not give rise to any impure thoughts, he may look at and speak to a woman with whom he is prohibited to engage in a sexual relationship and ask a married woman how she is doing.* This explains the conduct of Rav Yohanan

³⁴ Ritva maintains that “feeding him unsalted meat” falls under the category of *dat moshe* even though his teacher Ra’ah rules that the prohibition is only rabbinic; see the *Peri Megadim*, *Yoreh De’ah*, Introduction to the laws of *melichah* (salting).

who looked at the women as they were immersing, without any erotic intent . . .

(This citation of Ritva is included in *Pit'hei Teshuvah, Even ha-Ezer* 21.)

Thus Ritva maintains that when there is no concern at all that a person will have erotic thoughts, there is no prohibition to look at an uncovered area, neither for the viewer nor for the one being viewed. Just as it was permissible for R. Yohanan to view a “naked” woman—with her hair uncovered, too—because it did not “give rise to any impure thoughts,” it is likewise permissible for a woman to go “naked”—with her hair uncovered—before R. Yohanan when he would not find that conduct arousing. Everything, then, according to Ritva is dependent on whether the conduct leads to erotic thoughts: when there is no erotic activity, there is no prohibition.

H. *Kol Bo*

In *Hilkhot Gittin*, R. Aharon of Lunel, author of the *Kol Bo*, also includes the entire prohibition under *dat yehudit* and not *dat moshe*. The *Kol Bo* writes:

It is a positive commandment to divorce a woman with a written document, as it is written: “if a man finds evidence of sexual misconduct on her part, he shall write her a bill of divorce and place it in her hand” (Deut. 24:1). Evidence of sexual misconduct—such as violating *dat moshe*: feeding him untithed food, having intercourse with him during the period of her menstruation, not setting apart the dough offering, or making vows and not fulfilling them; or such as *violating dat yehudit: going out to the marketplace with her head uncovered—even with a work-basket on her head if going to the public domain*. Rabbeinu Peretz wrote: “in our society, the hair net called *kupia* is equivalent to the work-basket.” But it is permissible to go from one courtyard to another by way of an alley—or spinning in the marketplace with rouge on her face—[Rabbeinu Tam³⁵] explained that she spins red wool near her face so that it casts a red glow on her cheeks—or acting flirtatiously with the young men.

³⁵ Expansion of the acronym *resh-taf* as appears in our text; it should likely read *resh-het*—Rabbeinu Hananel.

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Every aspect of the prohibition of uncovering hair is listed under *dat yehudit* in the *Kol Bo*.³⁶

³⁶ There is some evidence that this is also the view of Rif. In *Responsa of Rif* 73 he writes:

If there are witnesses that she was found with another man under the same blanket, then she is to be divorced without receiving her *ketubah*. As our Sages of blessed memory taught: The following are to be divorced without receiving their *ketubah*: a wife who violates *dat moshe* or *dat yehudit*. What is *dat yehudit*? Going out with her head uncovered; spinning in the marketplace; or conversing with every man, which they explain as acting flirtatiously with the young men.

It is possible that this is also the view of the *Sefer Agudah*. The *Sefer Agudah* on the seventh chapter of *Ketubot* writes:

What is *dat moshe*? Feeding him untithed food. How is this the case—if he knows about it, let him separate?! Rather, she said that this bushel was tithed by such-and-such Kohen, then he inquired of that person and found her to be a liar. What is *dat yehudit*? Going out with her head uncovered from one courtyard to another by way of an alley, spinning in the marketplace and exposing her forearms, conversing with every man, cursing her husband's parents in the presence of his children, or raising her voice regarding matters of marital intimacy.

In the *Sefer Agudah*, no prohibition regarding hair covering is listed under *dat moshe*; however, the prohibition of entirely uncovering one's head is not found at all in the *Agudah*, neither in the category of *dat moshe* nor that of *dat yehudit*.

It is also possible that this is the view of R. Yonatan b. David ha-Kohen of Lunel. He writes in his commentary to *Ketubot* 72a:

Mishna: *Dat moshe*, such as a commandment found explicitly in the Torah, as the Mishna goes on to elaborate. *Dat yehudit*, matters that are not biblically forbidden but rather the practices of the daughters of Israel follow out of modesty, and this woman violates such a practice. . . . [A]ll agree that when a man sleeps with a woman who had not immersed following her period of menstruation, where the child born from the union is not a *mamzer* (illegitimate), [the woman is divorced without receiving her *ketubah* payment]; thus certainly when a woman commits adultery and becomes forbidden to her husband, [as it states,] “After she has become defiled to him” (Deut. 24:4), she is divorced without receiving her *ketubah* payment. And moreover this never needed to be stated explicitly because it had already been taught in the Mishna that a woman is to be divorced without receiving her *ketubah* payment for brazenness alone, such as for going out with her head exposed, which is a decree to prevent a greater sin. Her head exposed, her head uncovered and thus the hair of her head can be seen, as is the practice of a bride going to the wedding canopy. The Talmud asks, [is that not] a Biblical prohibition, as it is written, “And he shall uncover her head”? Rather, even were she to place a cap on her head, if some of her hair were to protrude from under

Thus, one who examines the *Rishonim* will find that many of them held that the prohibition for a woman to uncover her head (or hair) in its entirety is only considered *dat yehudit* (merely rabbinically prohibited).

V. WHAT IS *DAT MOSHE* AND WHAT IS *DAT YEHUDIT*?

There is no doubt that there is a large group of *Rishonim* who maintain that hair covering is rightfully categorized solely as *dat yehudit*. It is not possible to argue that these *Rishonim* maintain that there are biblical prohibitions within the category of *dat yehudit*. It makes no sense to say that all these *Rishonim* considered the prohibition to be biblical but only *dat yehudit*,³⁷ after all, Rashi explained *dat yehudit* as being “the practice of modesty which the daughters of Israel practice even though it is not expressly written in Scripture.” (Rashi on Rif explains, “The practice of the daughters of Israel even though it is not written.”)

The *Shittah Mekubetset* (*Ketubot* 72) explains the category of *dat yehudit* as follows: “*Dat yehudit*—matters that are *not forbidden biblically* but rather are the practice of the daughters of Israel for modesty in general, and this woman violates such a practice.”³⁸

the cap, it would be a violation of *dat yehudit*, such as if she were to go [thusly] to the public marketplace. Gemara: “And he shall uncover her head,” It is taught in Tractate *Sotah*: She uncovered her head for [her suitor], therefore the Kohen shall uncover her head—we thus see that she was not to have uncovered her head. From here we derive that the daughters of Israel are not to go with their heads uncovered. Her work-basket, the basket in which her spindle rests and which she places on her head when her head is [otherwise] uncovered. By *dat yehudit*, even her work-basket is insufficient for the purposes of modesty.

It is worth noting that there is a contradiction within his view. In one line he writes, “[W]ith her head exposed, which is a decree to prevent a greater sin,” yet in the following line he quotes the Gemara that it is “a Biblical prohibition, as it is written, ‘And he shall uncover her head.’” (Further investigation is required into the methodology of Ri mi-Lunel.)

³⁷ According to such an understanding, there would be a categorical biblical obligation upon every woman to cover her hair, as, for instance, the obligation upon every woman to pray daily, but a woman who does not cover her hair would only be in violation of *dat yehudit*, and then only if hair covering were considered an indication of modesty in that generation would she be in violation of *dat yehudit*; otherwise she would not, just as a woman who does not pray every day violates neither *dat moshe* nor *dat yehudit*.

³⁸ Rosh (*Ketubot* 7:9) explains that a woman who “violates *dat yehudit* does not receive her *ketubah* payment . . . on account of her impudence and on account of the suspicion of infidelity.”

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The *Encyclopedia Talmudit* (vol. 8, col. 19, s.v. *dat yehudit*), in explaining the parameters of *dat yehudit*, writes:

Dat yehudit means the practice of modesty which the daughters of Israel practice, *even though such is not found in the Torah nor grounded in a biblical prohibition*; rather, these are practices followed among the Jewish people for the sake of modesty, so that the daughters of Israel should be more modest than other women of the world; one who violates these standards does something of a promiscuous nature, which leads one down the road toward immorality.

And the same *Encyclopedia Talmudit* (vol. 8, col. 24, s.v. *dat moshe*), in explaining the parameters of *dat moshe*, writes:

Dat moshe means all of the commandments stated explicitly in the Torah or alluded to therein. Included in *dat moshe*, in regard to a woman who violates Jewish law as pertains to her being divorced and receiving the attendant *ketubah* payment, when she causes her husband to sin or violates a matter indicative of promiscuity, are even rabbinic laws . . . Some *Rishonim* maintain that since *dat moshe* and *dat yehudit* are discussed as parallel structures, *dat moshe* is meant to include only actual biblical laws, and only where the expression *dat moshe ve-yisrael* is used are rabbinic laws intended to be included as well.

The following is found explicitly in *Responsa Tsemah Tsedek (he-Hadash)*, *Even ha-Ezer* 151:

The Talmud (end of *Ketubot* 72a) asks [Is not going out with an] uncovered head a Biblical prohibition? To which Rashi comments: why is it therefore not considered *dat moshe*? That seems to imply that a rabbinic violation cannot be classified as *dat moshe*. This seems to support the position of the *Shevut Yaakov* (no. 206) . . . But *in fact all that this indicates is that a biblical violation certainly cannot be classified as dat yehudit*, however, as [the *Tur*] explained with regard to one who feeds her husband untithed produce (See *Bet Shmuel*, beginning of *Even ha-Ezer* 115),³⁹ that it even includes feeding him the dough-offering from dough made of grain grown outside the land of Israel, which has no basis in Torah law at all, like the ability a deaf-mute has to divorce. And even though the authorities there raise doubts with regard to *eruv*, which has no basis in Torah law as well,

³⁹ It is possible that the *Tur* disagrees and thinks that there is not a single rabbinic prohibition categorized as *dat moshe* nor any biblical prohibitions labeled *dat yehudit*.

we may infer that in our case, with regard to something she feeds him, she is to be divorced without receiving her *ketubah* payment—that [feeding rabbinically prohibited food] is categorized as *dat moshe* . . .

Similar sentiments are also found in R. Avraham b. Mordekhai HaLevi of Cairo's Responsa *Ginat Veradim*, *Even ha-Ezer* 4:11:

In the seventh chapter of *Ketubot*, the Mishna teaches that a wife who violates *dat moshe* or *dat yehudit* is to be divorced without receiving her *ketubah*. *Dat moshe* are those things which are *explicitly prohibited in the Torah of Moshe*, particularly matters which involve the husband as well. For instance, if she feeds him untithed produce and lies to him and says they have been tithed; or she has intercourse with him during the period of her menstruation and says that she is pure but in fact has the presumptive status of being a menstruant by dint of her conduct among her neighbors; similarly, if she makes vows but does not fulfill them, for one's children die on account of this sin. In all of the above instances, he too sins and loses out on account of her. But if she is intentionally lax in other prohibitions which have nothing at all to do with her husband, we pay no attention. *Dat yehudit* are those matters of *modesty and dignity which the daughters of Israel practice*, such as not to go out with one's head uncovered and the like. These, too, are relevant to the husband, for a man is particular about such conduct by his wife.⁴⁰

Everything that is expressly written in the Torah is not categorized as *dat yehudit*.

R. Barukh Frenkel, in his notes on the *Bet Meir* (*Even ha-Ezer* 115), disagrees with this position. He writes that *dat moshe* includes only those

⁴⁰ He adds:

One is only required to give forewarning to a woman who violates *dat yehudit*, whose sin is relatively minor; but one who violates *dat moshe*, whose sin is great, requires no forewarning at all, for we penalize her. There is some support for this from Rashi (*Sotah* 25a), who in commenting on the Talmud's question of whether a woman who violates *dat* requires forewarning [before losing her *ketubah* payment], writes: "a woman who violates *dat yehudit*, who is immodest, such as going out with her head uncovered or spinning in the marketplace, etc., which the Talmud in *Ketubot* (72a) rules as being grounds for divorce without receiving her *ketubah*." He explicitly states that the question in the Gemara is with regard to one who violates *dat yehudit*, and not *dat moshe*.

When he cites the opinion of Rashi that one who violates *dat yehudit* requires forewarning, he also cites Rashi's view that hair covering is *dat yehudit* and not *dat moshe*. See also Responsa *Yachin U-voaz* 1:122.

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actions which lead the husband to sin as well; anything which does not cause him to sin is only *dat yehudit*. In his view, seclusion with another man and hair covering are considered *dat yehudit* even though they might be considered biblical prohibitions (A suggestion along these lines can be found in R. Yehudah Herzl Henkin's *Responsa Benei Banim* 3:22). All of this is based on the language of Rosh (*Ketubot* 7:9) who states that "With regard to *dat yehudit*, the husband is able to deprive his wife of her *ketubah* on account of her impudence and on account of the suspicion of infidelity."

There is no fundamental disagreement between Rosh and other authorities with regard to "what is considered *dat yehudit*." Indecent actions which give rise to "the suspicion of infidelity" are those matters which are dependent on the "practices of the modest daughters of Israel."⁴¹ What, then, is under dispute? If there are actions which in no way detract from a woman's modesty but are still biblically prohibited for some other reason—how are those actions to be considered? According to the *Bet Meir* and Rosh, these are another class of sins entirely (neither *dat moshe* nor *dat yehudit*). However, nowhere in Rosh can one find a biblical prohibition (other than *dat moshe* or *dat yehudit* and modesty) that is the biblical source for hair covering. A related presentation can be found in Rosh on *Berakhot* (3:37), explaining the passage in the gemara (24a) which lays out the rule that "the hair of a woman is considered *ervah*." Rosh is of the view that this prohibition is not at all dependent on whether one is praying; rather, it applies at all times and in all places. He writes, "That which is normally covered up by a woman [is considered *ervah*.] . . . The hair of married women, who normally cover their hair, is considered *ervah*, but it is permitted [even] to pray in view of unmarried women who normally go with their hair uncovered." R. Yom Tov Lipman Heller, in his *Divrei Hamudot* commentary to this paragraph of Rosh, writes that according to Rosh:

. . . a woman's forearms are not considered to be her hands [which are certainly permissible]. Nonetheless, it is logical to conclude that [the laws in] every place should be dependent on local practice as a consequence of the above rationale, yet parts of a woman's body that are not normally covered are not considered *ervah*, for men are not aroused by looking at them. . . .

⁴¹ Among the *Rishonim* and *Abronim*, nearly all are unanimous in rejecting this opinion and taking the view that *dat yehudit* only includes rabbinic prohibitions; see *Sedei Hemed*, s.v. *dat*, and *Encyclopedia Talmudit*, s.v. *dat yehudit* and *dat moshe*, who cite numerous *Rishonim* and *Abronim* who say that "*dat yehudit*" is equivalent to "rabbinic prohibition" (*issur derabbanan*). (see above, p 20.)

Thus R. Heller is of the view that wherever the custom of modest religious women is to uncover a particular part of their body (such as forearms, and certainly hair), there is no prohibition to do so according to Rosh.⁴² According to this understanding, in Rosh's view there is no disagreement between the Talmudic passages in *Ketubot* 72 and *Berakhot* 24: one is dealing with laws of the *ketubah*, and the other with laws of modesty.⁴³

R. Moshe Feinstein, in his *Iggerot Moshe, Even ha-Ezer* 1:69, writes the following with regard to what is considered to be a violation of *dat yehudit* and promiscuous behavior:

[T]here is another prohibition outlined in *Ketubot* 72 for women under the rubric of *dat yehudit* not to act in a promiscuous manner. However, in this regard it is limited to where she alone acts this way. But when all the women of her city act that way, it is not at all appropriate to consider such conduct promiscuous. It makes no difference that the conduct of these women might have originally been promiscuous behavior at one time; *nonetheless, since such is now the manner of dress and walking, one ought not consider it promiscuous conduct and forbid it.* [Avoiding such clothing or activity] is regarded as the conduct of the pious and exceedingly modest—may blessing come to such a person.⁴⁴

⁴² R. Aaron Samuel Kaidanover, commenting on this in his *Tiferet Shmuel*, writes: “meaning, he comes to exclude that which women normally uncover, such as the face and neck and hands, but it seems simple to me that the practice of women to regularly uncover their forearms and have their garments open nearly to their breasts is an evil practice; to them I apply the term a no-good place: an exposed handbreadth of a woman is considered *ervah*.”

⁴³ One could also suggest that only in a time and place that uncovered hair would indicate impudence and a suspicion of infidelity would it be forbidden (even were one to argue that it is a biblical prohibition.). A related idea is found in Rambam with regard to the law that it is prohibited to enter the Temple precincts with one's hair uncovered. Rambam (*Bi'at ha-Mikdash* 1:17) rules:

Similarly, it is prohibited for anyone, whether Kohen or ordinary Israelite, to enter the entire Temple, from the beginning of the outer courtyard and inward, after having consumed wine or while drunk or with one's head uncovered in a disgraceful manner or with torn clothes—even though the latter is not included in the biblical admonition, for it is not befitting of the honor and reverence due to the great, holy site to enter in a disgraceful manner. However, a person who grew out his hair such that it is smooth and no longer disgraceful is permitted to enter the outer courtyard.

⁴⁴ See also what my esteemed teacher R. Mordechai Willig wrote on this topic in his work *Am Mordechai* 16:3 (pp. 67-68).

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A similar ruling is found by R. Ovadia Yosef in *Responsa Yabi'a Omer*, Vol. 4, *Even ha-Ezer* no. 3:

Today, it has become widespread practice for God-fearing women to go out with only a kerchief or hat, without a headscarf or veil, and no one makes a fuss. It thus seems that the essential concept of women covering their hair is biblical in nature, and is obligatory irrespective of changes in practice, and is unchanging for all time. However, with respect to the modest practices of Jewish women, we accept any established practice to be lenient. This accords with the ruling of Maharam Alshakar (no. 35) who permits women, in places where the practice is for all to do so, to go about with hair protruding from under their hat.

So too, R. Yehudah Herzl Henkin describes the concept of *dat yehudit* thusly:

It seems to us that *dat yehudit* is dependent on local practice, as evidenced by Rambam . . . It is also widely accepted among the *Rishonim* that *dat yehudit* is based on common practice, as Rashi explained: “which the daughters of Israel practice *even though it is not expressly written in Scripture*.” R. Isaiah di Trani in his commentary (*Tosafot Rid*) to the phrase, “There is no prohibition,” explained: “*rather, the women follow those practices in a modest manner*” —in the present tense.⁴⁵

Only in the *Shulhan Arukh* of R. Shlomo Helma (Shlomo Ashkenazi ben Moshe Rappaport, author of the *Mirkevet ha-Mishneh* commentary on Rambam) on *Even ha-Ezer* 115:3-4 do we find a code of law which rules that uncovering all of one’s hair is considered a violation of *dat moshe*. He writes that there are three types of behavior included in the category of *dat moshe*:

1. Causing one’s husband to violate a prohibition,
2. Performing a prohibited act whose punishment is death [at the hands of Heaven], where one’s children die even though the husband has violated nothing, and
3. Performing a prohibited activity that is promiscuous and raises suspicion of infidelity.⁴⁶

⁴⁵ See R. Henkin’s article, “*Shi’ur Kisui Rosh Shel Nashim*,” above, note 24.

⁴⁶ For instance, he writes, “A woman who goes out into the public domain with her hair completely uncovered violates *dat moshe*. The same is true of a woman who regularly secludes herself with non-Jewish men.”

In his view, in a time when uncovered hair is not an indicator of promiscuity approaching infidelity, then it is not categorized as *dat moshe*. Based on this, we can explain the view of Rosh and the *Tur*. Rosh writes (*Ketubot* 7:9) that a woman's uncovered hair raises suspicion of infidelity; it is possible that Rosh maintains that in a time and place where such is an act of promiscuity leading to infidelity, such conduct is biblically prohibited. However, the *Tur*, who writes the law in a general manner, in an ordinary place, where there is no attendant suspicion of infidelity (in a place or time when such is not promiscuous behavior), writes that everything is dependent on the category of *dat yehudit*. (According to this approach, Rosh might be of the same view as the *Yerayim* [mitsva 392], that the prohibition is in fact to distance oneself from forbidden sexual relationships.)

VI. UNCOVERING OF HAIR CATEGORIZED AS *DAT MOSHE* AND A BIBLICAL PROHIBITION IN THE *RISHONIM*

Some *Rishonim* are of the view that the complete uncovering of a woman's hair is a biblical violation. They maintain that when the Talmud states, “[Is not going out with an] uncovered head a Biblical prohibition as it is written, ‘And he shall uncover her head’ (Num. 5:18), and the school of R. Yishmael taught that this is a warning to the daughters of Israel that they should not go out with uncovered head,” this is indeed laying out a biblical prohibition. However, I have found only eight *Rishonim* who rule that uncovering of hair is biblically prohibited.

In the Rulings of R. Isaiah di Trani the younger (*Piskei Ri'az* [=R. Yishayah Ha-Ahron, ז"ל]) to *Ketubot* 72, he states:

However, going without [even] a basket on her head is biblically forbidden, as Scripture states, “And he shall uncover her head”—this is a warning to the daughters of Israel that they should not go out with uncovered head.

This is also the view of the *Shiltei Gibborim* to *Ketubot* 72, who cites this exact formulation of *Piskei Ri'az*.

R. Simeon b. Tsemah Duran (Tashbets) in *Zohar ha-Rakia* (his commentary on R. Solomon ibn Gabirol's *Azharot*, a poetic rendition of the 613 commandments) positive commandment no. 137, writes explicitly that there is a biblical obligation for a woman to cover her hair, and going with uncovered hair violates the attendant biblical prohibition, just like all

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other transgressions which are corollaries of a positive biblical obligation (*issur aseh*). He writes, “This need not be enumerated among the commandments, for the Talmud also states (*Sukkah* 6a) that the laws regarding barriers (*hatsitsah*) are biblical, and likewise (*Ketubot* 72a) that going with one’s head uncovered is a biblical prohibition . . .”

R. Yerucham b. Meshullam, in *Sefer Mesharim* 23:8 writes: “[F]or if [the hair] were entirely uncovered, it would be obvious that such is forbidden even biblically, as Scripture states, ‘And he shall uncover her head.’” Thus, he is of the view that it is a biblical prohibition. (R. Yerucham has a further innovation as well: He rules that even in an alley, if a woman’s hair is entirely uncovered, she violates a biblical prohibition.)

Rashba also rules that such conduct violates a biblical prohibition. In two of his responsa he writes (found at the conclusion of each one) that uncovering of hair violates *dat moshe* and is a biblical prohibition. In responsum 571 he writes (regarding a ruling pertaining to a particular woman who acted immodestly), that “she was thus judged as having violated *dat moshe* and [*dat*] *yehudit*, for she uncovered her head and her forearms.” It seems that the uncovering of “her head and her forearms” is being defined as violations of “*dat moshe* and [*dat*] *yehudit*” respectively: *dat moshe* corresponds to uncovering of the head and *dat yehudit* corresponds to uncovering of the forearms. In responsum 5:246, Rashba writes that *dat moshe* is a violation of Torah law (“Only actual biblical violations are called *dat moshe*.”). In sum, Rashba maintains that covering one’s hair is *dat moshe* and a biblical prohibition.

This view is found as well in the *Shittah Mekubetset* (*Ketubot* 72a), which states:

“And he [the Kohen] shall uncover her [the suspected adulteress’] head.” The Talmud in Tractate *Sotah* (8a) states that on account of her having uncovered her head for [her alleged lover], the Kohen uncovers her head [as part of the *Sotah* ceremony]. We thus see that it was inappropriate for her to have uncovered her head, and from here we derive a warning to the daughters of Israel that they should not go out with an uncovered head. In other words, because the Torah specifically instructs the uncovering of the head of the *Sotah*, we infer that all other women are obligated not to go about with their heads uncovered. From here we thus adduce that the prohibition is biblical in origin, for it is derived from an inference from a Scriptural verse. How then[, the Talmud in *Ketubot* asks,] can this be considered *dat yehudit*? The Talmud responds: Shmuel answered, “with her work-basket.” In other words, when the mishna states that a woman who goes with her head uncovered violates *dat yehudit*, it means

to say a woman who goes out wearing a work-basket, *for going out without even a work-basket is prohibited biblically*. . . . (Rashi, first edition)⁴⁷

Rabbeinu Nissim also rules that a woman violates *dat moshe* when she goes with her hair entirely uncovered. In the novellae of Ran, *Gittin* 90 (on which Rosh comments “a woman who goes out with her head uncovered . . . violates *dat yehudit*”), he writes:

Even according to R. Meir, too, a woman does not become forbidden to her husband by violating *dat yehudit*, for if a woman were to go out to the marketplace with a work-basket, she would not be forbidden to her husband, even though she violates *dat yehudit*.

Ran maintains that if a woman goes out wearing only a work-basket on her head, she violates *dat yehudit*. However, if she goes out without any covering at all, according to Ran, she violates a more serious prohibition, namely *dat moshe*. (It is possible that Ran takes the same view as Rambam, namely that there are some rabbinic prohibitions which are categorized as *dat moshe*; however, the simple understanding of *dat moshe* is that it indicates a biblical prohibition.)

The *Meiri* is also of the view that it is biblically prohibited for a woman to go about with her head uncovered. He writes (*Bet ha-Behirah, Ketubot* 72):

Dat moshe is used to indicate those commandments explicitly written in the Torah or alluded to therein . . . Going with one’s head uncovered—this was explained in the Talmud as being of biblical origin and included in *dat moshe*.

⁴⁷ None of this is found in our edition of Rashi (neither in Rashi printed alongside the gemara nor in Rashi printed alongside the Rif). Why did Rashi emend his comments and omit the entire matter of the biblical nature of the prohibition from our (later) edition? Perhaps Rashi maintains that the second explanation he presents, namely that we infer from the verse “And he shall uncover,” that at that time her head was not uncovered, and it is not the practice of the daughters of Israel to go with their heads uncovered—and which in our edition he indicates to be the main explanation—is based on something other than a biblical prohibition; See the Novellae of R. Dov Beresh Meisels (Mahardam) to Maimonides’ *Sefer Ha-Mitsvot*, positive commandment no. 175 (“He is of the same view as the second explanation presented by Rashi, that from the verse “‘And he shall uncover . . .’ we infer that at that time her head was not uncovered, and we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered. According to this explanation, it is not a full-fledged prohibition, but rather a practice of the daughters of Israel that is ascribed Torah status.”)

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In sum, eight *Rishonim* maintain that uncovering one's head is biblically prohibited: Riaz, *Shiltei Gibborim*, Tashbets, Rabbeinu Yerucham, Rashba, *Shita Mekubetset*, Ran, and *Meiri*.

Interestingly, R. David b. Isaac Bonan, in his *Dei Hashev* (Livorno 1846), *Even ha-Ezer* 4, formulates a truly innovative insight regarding the biblical prohibition of uncovering one's hair. He rules:

Regarding the basic point of *Tosafot* (*Yoma* 25a, s.v. *ve-ha ba'anan*), that it is unseemly to be in the Temple precincts with one's head uncovered, some raise the following question based on the Talmud's statement (*Ketubot* 72), "Going with one's head uncovered is a biblical prohibition, as it is written, 'And he shall uncover her head,' and the school of R. Yishmael taught that this is a warning to the daughters of Israel that they should not go out with uncovered head": If one were to say that it is unseemly to be in the Temple precincts with one's head uncovered, then what proof is this—perhaps a woman is always permitted to go with her head uncovered, but this case is different because the *Sotah* ritual takes place in the courtyard of the Temple; accordingly, she is obligated to cover her head out of awe/respect of the Temple, as it is unseemly to enter the courtyard of the Temple with one's head uncovered?! Moreover, it seems that this is a biblical prohibition, as Scripture states: "You shall fear/respect my Temple" (Lev. 19:30) . . . and uncovering one's head is surely included in this prohibition. Therefore the verse comes to state, "And he shall uncover her head," because it was covered at the time she entered the Temple. . .

According to this view, the biblical prohibition is limited to the Temple mount.⁴⁸

VII. UNCOVERING OF HAIR CATEGORIZED AS *DAT MOSHE* BUT A RABBINIC PROHIBITION: THE VIEW OF RAMBAM

Rambam's view with regard to hair covering is not simple. It is clear that Rambam rules that uncovering of one's entire head is forbidden as *dat moshe*.

⁴⁸ See also R. Yehuda Herzl Henkin's evaluation of this innovative approach in his article "*Shi'ur Kisui Rosh Shel Nashim*," above, note 24.

He writes (*Isbut* 24:11): “If a woman has done one of the following, she is considered to have violated *dat moshe*: Going out in the marketplace with the hair of her head uncovered, making vows . . .” This seems to place Rambam squarely in the camp of Rishonim who consider hair covering a biblical prohibition.

However, it is also obvious that in Rambam’s view, there are rabbinic prohibitions that fall into the category of *dat moshe*. Rambam rules that a woman who does not set apart the dough offering, or who feeds her husband foods that are untithed (even fruit), or who has intercourse with her husband while in a state of impurity due to menstrual spotting violates *dat moshe*.⁴⁹

Thus, even though Rambam rules that uncovering of one’s entire head is forbidden as a violation of *dat moshe*, it is possible that it is only a rabbinic prohibition.

Rambam includes this prohibition elsewhere in the *Mishneh Torah* in a section which plainly seems to indicate that it is only a rabbinic prohibition. In the laws of forbidden sexual relations (*Issurei Biah* 21:17), Rambam writes:

The daughters of Israel, whether unmarried or married, should not go out in the marketplace with their head uncovered. A woman ought not to walk in the marketplace with her children following behind, as a

⁴⁹ The *Maggid Mishneh* (*ad loc.*) writes:

If a woman has done one of the following—the Mishna in the seventh chapter of *Ketubot* states: The following are to be divorced without receiving their *ketubah*: a wife who violates *dat moshe* or [one who transgresses] *dat yehudit*. What is *dat moshe*? Feeding [her husband] untithed food, having intercourse with him during the period of her menstruation, not setting apart the dough offering, or making vows . . . The gemara there explains that if a woman goes out in the marketplace with her head uncovered, it is a violation of *dat moshe*. It also states that going out with an uncovered head is a Biblical prohibition, as it is written, “And he shall uncover her head,” and the school of R. Yishmael taught that this is a warning to the daughters of Israel that they should not go out with uncovered head. And our master [Rambam] explained that when the Talmudic sages stated, feeding him untithed food, they certainly meant to include all other types of forbidden foods, for nowadays tithes are only a rabbinic obligation, as noted in the first chapter of *Hilkhot Terumot* . . .

Menstrual spotting, as well, generates only a rabbinic prohibition according to all views. Furthermore, according to Rambam, the dough offering (and levitical tithe) are only rabbinic obligations nowadays, and tithes on fruit are rabbinic obligations at all times.

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prophylactic rule, lest her child be captured and she follow after him [the kidnapper] to get him [her child] back and evil men sexually abuse her.

One who examines carefully chapter 21 of *Hilkhot Issurei Biah* will notice that all of the laws from halakha 11 through the end of the chapter are rabbinic matters according to Rambam. In 21:17 itself, there are three laws presented, and the other two are undoubtedly rabbinic in nature. These are: (1) A married woman should not go out in the marketplace with her head uncovered, (2) an unmarried woman should not go out in the marketplace with her head uncovered, and (3) a woman should not walk in the marketplace with her children following behind her. Furthermore, nowhere in his *Sefer ha-Mitsvot* does Rambam mention that the obligation of hair covering is biblical.⁵⁰

The *Terumat ha-Desben* (Responsum 242) writes as follows:

Even though Rambam wrote that the origin of [the prohibition against seclusion with another man (*yihud*)] is only ancient tradition (*divrei kabbalah*), he also wrote that uncovering of hair is *only a rabbinic admonition*, as evidenced by the language of his formulation.⁵¹

R. Yonah Landsofer, Responsa *Me'il Tseddakah* 61, also writes:

Seclusion of a married woman with another man is a biblical violation, as the Talmud, *Avodah Zarah* 36b, concludes. And though Rambam in his book of general principles wrote that such is only rabbinically forbidden, nonetheless with regard to matters such as this we consider it to be of *dat moshe*, just as the Talmud in *Ketubot* (72) counters that going out with uncovered hair is a biblical prohibition—though this, too, according to his general principles, is only rabbinic as well; we must therefore explain that because there is some allusion to it in the Torah, we consider it as *dat moshe*.

⁵⁰ Nor is it found in any other compilation of *mitsvot* (save for the commentary of Tashbets to ibn Gabirol, *Zohar ha-Raki'a*). In general, Rambam's methodology is not to count the negative corollary of a positive biblical obligation (*issur aseih*) separately (see what is written on this topic in R. Saadya Gaon's *Sefer ha-Mitsvot* [1:655] and the comments of the *Yad Malakhi* [371-372]), nor to count "matters derived from any of the thirteen hermeneutical principles" (*Sefer ha-Mitsvot*, Shores II).

⁵¹ The *Mishneh le-Melekh*, *Hilkhot Sotah* 2:1 writes, "Seclusion with a man is no worse than having her head covered with a work-basket, which according to all opinions is only a rabbinic prohibition." He maintains that there are *Rishonim* who ruled that hair covering is only rabbinic; the simple understanding is that this is Rambam's view. See also *Responsa Va-Yashev Moshe*, *Yoreh De'ah* 2; *Yehavveh Da'at* 5:62.

The Novellae of R. Dov Beresh Meisels (Mahardam) to Rambam's *Sefer ha-Mitsvot* (positive commandment 175) states as follows:

Regarding that which [Rambam] did not count a woman's going out with uncovered head, which is biblically prohibited, as the Talmud in *Ketubot* stated: "Going out with an uncovered head is a Biblical prohibition, as it is written, "And he shall uncover her head" (Num. 5:18), and the school of R. Yishmael taught that this is a warning to the daughters of Israel that they should not go out with uncovered head"—we must answer that he is of the same view as the second explanation presented by Rashi, that from the verse "And he shall uncover . . ." we infer that at that time her head was not uncovered, and we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered. And it is this explanation that Rashi indicated to be the main one. According to this explanation, *it is not a full-fledged prohibition, but rather a practice of the daughters of Israel that is ascribed Torah status*, and for that reason [Rambam] did not count it in his enumeration of the commandments.

According to this understanding, Rambam (and Rashi) rules that uncovering one's entire head does not constitute a biblical violation. The *Kiryat Sefer*, which collects all of the biblical laws that Rambam codifies, also does not include any halakha about hair covering. (R. Henkin writes, "[T]his makes sense according to the view of Rambam, that hair covering is only a rabbinic obligation, and the verse is merely an allusion"; see his "*Shi'ur Kisui Rosh Shel Nashim*," note 24.)

In the view of Rambam, the prohibition for a woman to go with uncovered hair constitutes a violation of *dat moshe*, though it is only a rabbinic prohibition.⁵² The view of Rambam is found in the *Semag* as well (who, as was his wont, took nearly all of his language from Rambam).⁵³

⁵² The view of Rambam calls for an explanation of the distinction between *dat moshe* and *dat yehudit* (as the distinction is not, in his view, between biblical and rabbinic prohibitions). In my view, one might suggest that the violations labeled *dat moshe*, whether biblical or rabbinic, are constant prohibitions and not at all dependent on time or place; violations considered *dat yehudit*, however, are dependent on the modest practices of each generation. See *Responsa Brit Avraham, Even ha-Ezer* 13:(6).

⁵³ The *Semag* writes (Positive Commandment 48):

If a woman has done one of the following, she is considered to have violated *dat moshe*: As presented in the seventh chapter of *Ketubot*—going out in the marketplace with the hair of her head uncovered, as the school of R. Yishmael taught, "And he shall uncover her head"—this is a warning to the daughters of Israel that they should not go out with uncovered head; making vows or taking oaths and not fulfilling them; having intercourse with her

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The *Orbot Hayyim* of R. Aharon b. R. Jacob HaKohen of Narbonne also adopts the formulation of Rambam, as he often does. In the Laws of *Ketubot* 33, he quotes from *Ishut* 24:11-12, and in the Laws of *Ketubot* 8, he quotes from *Issurei Bi'ah* 21:17. Thus, the *Orbot Hayyim* also bases his view on the view of Rambam.

In *Sefer Ezrat Nashim* (by an otherwise unknown *Rishon*, R. Isaac from Provence, early 13th century), section 7, the laws of one who violates *dat*, the rulings are based on the view of Rambam. He writes:

One who violates *dat moshe*: such as going out in the marketplace with her head uncovered, making vows or taking oaths and not fulfilling them, having intercourse with her husband during the period of her menstruation, not setting apart the dough offering, or feeding her husband forbidden foods, and the matter is ultimately uncovered—for instance, she claimed, “These fruits were tithed for me by such-and-such Kohen, or such-and-such person set aside the offering from this dough, or such-and-such sage ruled my menstrual spotting to be pure,” then after he ate or slept with her, he inquired of that person, who informed him that she lied.⁵⁴

Similar statements can also be found in *Sefer Ets Hayyim* by R. Jacob b. Judah Hazzan of Londers [London],⁵⁵ part 3, p. 266.⁵⁶

husband during the period of her menstruation; not setting apart the dough offering; or feeding her husband forbidden foods—insects, reptiles, and the carcasses of unslaughtered beasts go without saying, but even foods that are untithed.

⁵⁴ What is *dat yehudit* in his view? “The daughters of Israel have long accepted upon themselves certain modest practices, and one who violates those practices is called, in the words of the Sages, one who violates *dat yehudit*”; *Ezrat Nashim*, printed in *Shittat ha-Kadmonim* to Tractates *Sotah* and *Nazir*.

⁵⁵ An English Tosafist who published his work in 1287, three years before the expulsion in 1290.

⁵⁶ The rationale of the *Rishonim* who maintain that going with one’s hair uncovered is categorized as *dat moshe* but is nonetheless only a rabbinic prohibition is that the teaching of the school of R. Yishmael functions only as an association to a biblical verse. Yet as per the simple reading of the flow of the Talmud, they switch hair covering from the category of *dat yehudit* to *dat moshe*. (As Rashi notes, “Going out with an uncovered head is a biblical prohibition—so why is it not considered *dat moshe*?”) That hair covering has the status of a rabbinic prohibition and yet is considered *dat moshe* is predicated on the text of the Gemara reading, “such-and-such sage ruled my menstrual spotting to be pure,” rather than, “ruled my current discharge of blood to be pure.” The former is the text of Rif and Rambam. Thus, the category of *dat moshe* clearly includes both biblical and rabbinic prohibitions. (In our edition of Rosh, we have “ruled my menstrual spotting to be pure,” but the *Tur*’s summary of his father’s rulings (*Kitsur Piskei ha-Rosh*) indicates his text to have been “ruled my current discharge of blood to be pure.”)

VIII. SUMMARY TO THIS POINT

We have seen that there are three views with regard to the law against going with an uncovered head. Some *Rishonim* (such as Rashba and Meiri) maintain that the prohibition is biblical and categorized as *dat moshe*; others (such as Rambam) maintain that the prohibition is rabbinic but nevertheless categorized as *dat moshe*; other *Rishonim* (such as *Tosafot*, Rosh, and *Semak*) maintain that the prohibition is rabbinic and categorized as *dat yehudit*. One who compares the wording of Rambam, the *Tur*, and *Shulhan Arukh* readily sees that in general, the *Tur* and *Shulhan Arukh* built their halakhic categories of divorce accompanied with forfeiture of the *ketubah* payment around the language and structure of Rambam, and not of other *Rishonim*. As we saw in chapter three, however, both switched one essential concept from *dat moshe* to *dat yehudit*—the prohibition of going with one’s head uncovered—because, in the view of many *Rishonim* (see section 5), *dat moshe* encompasses only actual biblical prohibitions, but going with one’s head uncovered—according to the *Tur*, *Shulhan Arukh*, and many other *Rishonim*—is not a biblical prohibition (see section 4).

One who closely examines the wording of the *Tur*, Rambam, and *Shulhan Arukh*—side by side—sees exactly this, and it constitutes a fundamental proof that there is a view within halakha that a woman going with her hair uncovered is forbidden only within the rubric of a rabbinic prohibition and *dat yehudit*. They state:

Rambam (Hil. Isbot 24):

11. If a woman has done one of the following, she is considered to have violated *dat moshe*: Going out in the marketplace with her head uncovered, Making vows or taking oaths and not fulfilling them, having intercourse with her husband during the period of her menstruation, not setting apart the dough offering, or feeding her husband forbidden foods—insects, reptiles, and the carcasses of unslaughtered beasts go without saying, but even foods that are untithed. How is the husband to know? For instance, if she said that these fruits were tithed by such-and-such Cohen, or such-and-such woman set aside the offering from this dough, or such-and-such sage ruled my menstrual spotting to be pure, and then after he ate or slept with her, he inquired of that person, who informed him that such an incident never took place. The same applies if she was presumed by her neighbors to have the status of being a menstruant yet she told her husband that she was pure and he proceeded to have intercourse with her.
12. What is considered to be *dat yehudit*? Those are the modest practices which

Tur (Even ha-Ezer 115):

[1] The following are to be divorced without receiving their *ketubah*: a wife who violates *dat moshe* or *dat yehudit*. What is *dat moshe*? Feeding [her husband] untithed food or any of the other prohibited food items, such as blood or forbidden tallow, where she caused him to sin and he ate relying on her word and was informed subsequently: for instance she averred that such-and-such sage made this pile legally fit for use [by separating the priestly dues] on my behalf or issued me a ruling that this piece of meat is permissible or issued me a ruling that my current discharge of blood is pure, and then was found to be lying. This is so specifically when she is contradicted by witnesses, for instance they testify that at the time she said that particular sage made the pile fit, he was not in the city. Additionally, there must be witnesses that she told him the food was fit for use and that he ate relying on her word. However, if there are no witnesses and she denies it, saying she did not feed him such items, or if she contradicts the sage, where he claims he did not make the pile fit while she claims that

Shulhan Arukh (Even ha-Ezer 115):

1. The following are to be divorced without receiving their *ketubah*: a wife who violates *dat moshe* or *dat yehudit*. What is *dat moshe*? Feeding [her husband] untithed food or any other prohibited food item, or having intercourse with him during the period of her menstruation, and he was made aware of this subsequently—for instance she averred that such-and-such sage made this pile legally fit for use [by separating the priestly dues] on my behalf or issued me a ruling that this piece of meat is permissible or issued me a ruling that my current discharge of blood is pure, and then was found to be lying. This is so specifically when she is contradicted by witnesses, for instance they testify that at the time she said that particular sage made the pile fit, he was not in the city. Additionally, there must be witnesses that she told him the food was fit for use and that he ate relying on her word. However, if there are no witnesses and she denies it, saying she did not feed him such items, or if she contradicts the sage, where he claims he did not make the pile fit while she claims that he did,

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the daughters of Israel practice. If a woman has done one of the following, she is considered to have violated *dat yehudit*: Going out in the marketplace or in a through alley with her head uncovered and without the headscarf that all other women wear, even though her hair is covered by a kerchief; spinning in the marketplace with rouge or the like on her face, forehead, or cheeks, in the manner of the promiscuous non-Jewish women; spinning in the marketplace and exposing her arms to all; conversing flirtatiously with single men; demanding sexual congress with her husband in such a loud voice that her neighbors overhear her discussing matters of sexuality; or cursing her father-in-law in her husband's presence.

he did, she is to be believed. Furthermore, the above is true only when she caused him to sin and he actually did so relying on her word, but if she merely desired to feed him something forbidden but he was informed and avoided consuming, or if she herself ate something forbidden, she has not forfeited her *ketubah*.

[2] If she was presumed by her neighbors to have the status of being a menstruant, in that they saw her wearing the clothes of her menstrual period, yet she told her husband that she was pure and he proceeded to have intercourse with her, she is to be divorced without receiving her *ketubah*.

[3] One who makes vows but does not fulfill them is to be divorced without receiving her *ketubah*, for one's children die on account of this sin.

[4] And what is *dat yehudit*? Going out with her head uncovered; even if it is not uncovered entirely but only covered by her work-basket, since she was not covered with a head-scarf; she is to be divorced. Rambam wrote that even though a woman's hair is covered with a kerchief, since she is not wearing a head-scarf like all women, she is to be divorced without receiving her *ketubah*. This is true only if she were to go out this way in the marketplace or a through alley or a courtyard which many use as a pass through, but in an alley that is not a thoroughfare or a courtyard through which many do not pass, she is not to be divorced. So too, one who spins in the marketplace and exposes her arms to all; or one who spins with rose color to her face, which Rashi explained as spinning with her hand upon her thigh and the thread lowered in front of her face, her forehead or cheeks, in the manner of the promiscuous women. Likewise, one who speaks and flirts with single men, or curses her father-in-law in her husband's presence, or demands sexual congress with her husband in such a loud voice that her neighbors overhear her or who fights with him so loudly that she can be heard complaining about matters of sexuality. In each of these cases, she is to be divorced without receiving her *ketubah*...

she is to be believed. Furthermore, the above is true only when she caused him to sin and he actually did so relying on her word, but if she merely desired to feed him something forbidden, she has not forfeited her *ketubah*.

2. If she was presumed by her neighbors to have the status of being a menstruant, in that they saw her wearing the clothes of her menstrual period, yet she told her husband that she was pure and he proceeded to have intercourse with her, she is to be divorced without receiving her *ketubah*.

3. One who makes vows but does not fulfill them is to be divorced without receiving her *ketubah*.

4. What is *dat yehudit*? The modest practices which the daughters of Israel practice. If a woman has done one of the following, she is considered to have violated *dat yehudit*: Going out in the marketplace or in a through alley or in a courtyard which many people frequent with her head uncovered and without the headscarf that all other women wear, even though her hair is covered by a kerchief; spinning in the marketplace with rouge or the like on her face, forehead, or cheeks, in the manner of the promiscuous idolatrous women; spinning in the marketplace and exposing her arms to all; conversing flirtatiously with single men; demanding sexual congress with her husband in such a loud voice that her neighbors overhear her discussing matters of sexuality; or cursing her father-in-law in her husband's presence. In each of these cases, she is to be divorced without receiving her *ketubah*...

The ordering of the laws in the *Tur* and *Shulhan Arukh* here is entirely based on the order of Rambam from beginning to end⁵⁷—except for hair covering, which appears in Rambam at the beginning of the laws of *dat*

⁵⁷ The *Tur* and *Shulhan Arukh* did change one other thing: they moved the prohibition of making vows and not fulfilling them from the beginning of the list of *dat moshe* violations to the end. This is because they wish to add the reason that one who makes vows and does not fulfill them is divorced, namely that one's children die on account of this sin, as the reason becomes relevant to the application of the law: In a situation where the husband also makes vows without fulfilling them, the wife who acts in the same way does not forfeit her *ketubah* payment. See *Hagahot Asheri, Ketubot* 72; *Bet Yosef, Even ha-Ezer* 115; and *Rema, Even ha-Ezer* 115:3.

moshe, but in the *Tur* and *Shulhan Arukh* in the middle of *dat yehudit*. From what we have seen so far, one can say quite clearly that both the *Tur* and the *Shulhan Arukh* rule that hair covering is a *dat yehudit* and not a *dat moshe*.

What remains to be explained is how those *Rishonim* who rule that uncovering of hair is only a rabbinic prohibition in the category of *dat yehudit* understood the Talmudic passages which seem to indicate that a biblical violation is involved.

IX. THE TALMUDIC BASIS FOR THOSE WHO MAINTAIN THAT UNCOVERING OF THE HAIR IS ONLY A VIOLATION OF *DAT YEHUDIT*

The Talmud states: “What is [considered to be a violation of] *dat yehudit*? Going out with her head uncovered. [But] going out with an uncovered head is a Biblical prohibition, as it is written, ‘And he shall uncover her head’ (Num. 5:18), and the school of R. Yishmael taught that this is a warning to the daughters of Israel that they should not go out with uncovered head?!” This view of the school of R. Yishmael also appears in the Midrash Halakha. The *Sifri* (Bemidbar 5:11) states:

“And he shall uncover her head.” How so? [The Kohen] turns to stand behind her and lets her hair loose, as a fulfillment of the obligation to uncover, so said R. Yishmael. Alternatively: this teaches that the daughters of Israel cover their heads. And though there is no explicit proof to the matter, there is an indication:⁵⁸ “And Tamar put ashes on her head” (II Samuel 13:19).⁵⁹

⁵⁸ The plain reading of this *Sifri* is that this is only an association to a verse (*as-makhta*) and not an actual biblical law, as it states, “though there is no explicit proof to the matter, there is an indication.” It is possible that the view of Rambam, that uncovering of hair is categorized as *dat moshe* but only a rabbinic prohibition, is based on this *Sifri* and the Yerushalmi, which do not raise the possibility of this being a biblical prohibition.

⁵⁹ The *Sifri* continues:

R. Yehudah says: if the place where *chalitsah* is done [i.e., her foot] was beautiful, he does not shave it; and if her hair was beautiful, he does not undo it. If she was clothed in white, he clothes her in black; if black becomes her, he removes them and clothes her in unseemly garments. If she wore golden ornaments and necklaces, ear-rings and finger-rings, they remove them from her in order to make her repulsive. R. Yehudah b. Berokah stated: One does not humiliate the daughters of Israel any more than what is described in the Torah. Rather, as the verses state, “before God. He shall

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Netsiv, in his *Ha'amek She'elah* commentary to the *Sifri* writes:

Derived, etc: from the fact that we disgrace her in this manner commensurate to her act of making herself attractive to her lover [by uncovering her head] we can infer that it is forbidden. Alternatively, since Scripture states, “And he shall uncover,” we can infer that at that time her head was not uncovered; we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered: this is the main explanation—so writes Rashi, *Ketubot* 72a. These [two explanations] are dependent on the dispute between Ra'avad and Rosh, *Mo'ed Katan* 3:3. According to Ra'avad, the uncovering of the head of a mourner is a biblical obligation: since it states with regard to the sons of Aaron, “Do not let your hair go wild [and do not tear your garments] in order that you not die,” we can infer that any other who does not uncover their head is liable to death at the hands of the divine—this corresponds to the second explanation. Rosh disagrees and maintains that the verse is necessary to teach the selfsame law: that it is forbidden for Kohanim to uncover their heads in mourning, but all others are authorized to do so.⁶⁰

According to Netsiv, the dispute with regard to hair covering is one manifestation of a fundamental dispute about negative corollaries of a positive biblical obligation (*issur aseh*) in general. Netsiv maintains that the two views presented by Rashi correspond to the sides of this fundamental dispute between Rosh and Ra'avad. Ra'avad maintains that in general, when the Torah mandates that a specific act be performed in a particular place or time (“He shall uncover her head,” “do not let your hair grow wild”), one is *forbidden* to perform that act in any other context. Since the Torah commanded Aaron and his sons to cut their hair even though they were in mourning, every other person is biblically forbidden to do so. Rosh, however, maintains that when the Torah mandates that a specific act be performed in a particular place or time, there is no attendant biblical prohibition to perform the same act outside of the parameters which the Torah outlined. Thus, even though the Torah commanded Aaron and his sons to cut their hair during their period of mourning,

uncover her head,” the Kohen would spread a sheet of linen between himself and the others assembled, turn to stand behind her, and uncover her head in order to fulfill the obligation to uncover.

⁶⁰ On the line, “though there is no explicit proof to the matter . . .,” the Netsiv comments, “that it should be a legal obligation, but rather *dat yehudit*, as the Mishna in *Ketubot* (72a) states, ‘One who goes out with uncovered head.’”

everyone else is biblically permitted to do so; only upon Aaron and his sons is it incumbent.⁶¹

In Netsiv's view, there is a fundamental disagreement as to whether or not the hermeneutical derivation that the Talmud presents is an actual derivation; Rashi presented two bases for the matter, as each is tenable. According to Rosh, the obligation for women to cover their hair is like the obligation to mourn—namely, it is an ancient practice of the Jewish people which predates the giving of the Torah, but is not a biblical obligation.⁶² This view of Netsiv helps to explain why many *Rishonim* ruled against the simplest reading of *Ketubot* 72a, that the prohibition is of biblical origin. Nearly all of these authorities (Rosh, *Tosafot*, Rashi, *Tur*, and Rema) also rule that the practices of mourning are only rabbinic.⁶³ In their view, just as mourning has a biblical source but does not constitute a biblical obligation, uncovering of a woman's hair has a biblical source but no attendant biblical prohibition.



⁶¹ The rationale of the Netsiv can also be found in R. Moshe Zev ha-Cohen, *Tiferet le-Moshe* 2:10. He maintains that the dispute among the *Rishonim* as to whether the requirement of a *ketubah* is explicitly found in the Torah or merely a biblical custom appears with regard to hair covering. In his view, there is a dispute among the *Rishonim*—when the Torah records an ancient practice (whether the dowry of virgins [*mohar ha-betulot*] or hair covering), does it have the status of custom or law? And he posits that whoever holds that there is no biblical obligation of *ketubah* would likewise maintain that there is no biblical obligation for women to cover their hair. A similar view can also be found in *Yeshuot Ya'akov*, *Even ha-Ezer* 21; he maintains that the practice of uncovering the hair described in Numbers 5:18 is a biblical custom and not a biblical law. Perhaps this is the rationale of the second view presented by Rashi, *Ketubot* 72a.

⁶² See Encyclopedia Talmudit 1:57-58, s.v. *avelut*. The view of the *Mehaber*, in my estimation, is predicated on an entirely different rationale. The *Mehaber* rules that going with one's head uncovered is only a rabbinic prohibition because that is the view of Rambam (and not because it is the view of Rosh, *Tosafot*, and *Terumat ha-Deshen*), but he also maintains—like the *Tur*—that it is impossible for rabbinic prohibitions to fall into the category of *dat moshe* (against the view of Rambam). Thus they recast the prohibition from *dat moshe* to *dat yehudit*.

⁶³ For the view of *Tosafot* and Rosh, see *Tur*, *Yoreh De'ah* 398 and Rosh, *Mo'ed Katan* 3:2; for Rashi (Rashi printed in our editions of *Mo'ed Katan* is not traditionally ascribed to him), see Rashi on Rif (*ibid.*), who rules that mourning is only a rabbinic law; in the Commentary of Ran on Rif in *Mo'ed Katan*, Ran rules that mourning is only rabbinic; the *Semak* rules that mourning is only rabbinic, see *Semak*, nos. 95-98; Ritva rules that mourning is indeed biblical (Commentary of Ritva, *Mo'ed Katan* 14, s.v. *avelut de-me-'ikar*), but he maintains that the Talmud's derivation from "Do not let your hair grow wild" is merely an association to the verse (*asmakhta*); his view that mourning is a biblical obligation is based on something else entirely. The *Behag* seems to be the lone exception; see *Behag*, laws of mourning, part I, p. 435. (Ra'avyah may be an exception as well; see Ra'avyah, *Hilkhot Avel* p. 235, nn. 4-7.)

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A further proof that the *Rishonim* are of the view that there is no biblical prohibition against going with one's hair uncovered can be found in the writings of R. Yosef David Zintzheim (author of the *Yad David*) in his *Minhat Ani*, in the section entitled, "*Gilui se'ar be-ishah*":

The *Terumat ha-Deshen* notes in the course of Responsum 242 that Rambam maintains that for a woman to go with uncovered head is only a rabbinic prohibition. . . . However, the writings of all the other decisors indicate that uncovering of hair is a biblical prohibition, as Rabbeinu Yerucham wrote explicitly. With regard to going with one's hair uncovered in a courtyard, the *Bet Shmuel*, *Even ha-Ezer* 21:5 wrote that such is not prohibited but only a practice of modesty . . . this seems to be missing the obvious.

See *Even ha-Ezer* 115, where he wrote regarding the dispute there⁶⁴ that even according to those who maintain that it is forbidden to go with one's hair uncovered in a courtyard, such is only a rabbinic prohibition. Accordingly, if one is to accept that going without even a work-basket (i.e., with one's hair fully uncovered) in a public domain is biblically prohibited, then the Rabbis enacted legislation forbidding doing so in a courtyard, lest one come to do so in a public domain. However, if going with one's hair fully uncovered in a public domain is only forbidden rabbinically, why would they have outlawed this in a courtyard—it would be considered one prophylactic decree on top of another?! Indeed, one may suggest that those who maintain that it is permissible to go out in a courtyard with one's hair fully uncovered in fact maintain that this is only rabbinic, just as the *Terumat ha-Deshen* maintains is the view of Rambam. Therefore the sages did not enact a decree about going into a courtyard, but only in an alleyway which resembles a public domain. The same seems to be the view of the *Bet Yosef*, who only forbade going with a kerchief on one's head rather than a headscarf in a courtyard which many use as a pass through or in an alley.⁶⁵

Who are the *Rishonim* who maintain that it is permissible for a woman to go out in a courtyard with her hair fully uncovered? *Tosafot*,⁶⁶ Rosh, Ran,

⁶⁴ The editor notes: "In our edition of the *Bet Shmuel*, the emendation he suggests already appears."

⁶⁵ R. Yosef David Zintzheim (Chief Rabbi of Strasbourg and author of the *Yad David* on the Talmud), *Minhat Ani* 1:44-45.

⁶⁶ *Tosafot*, *Ketubot* 72b, s.v. *chatser* ("In a courtyard—meaning, even without a basket there still is no prohibition of going with an uncovered head; for if this were not the case, then you have not left a single daughter of our patriarch Abraham.")

Rashi, Rif, Ritva, *Ittur*, and many others (including the *Tur* and *Shulhan Arukh*).⁶⁷ When R. Yohanan maintains “When a woman goes with a basket [on her head], she is not considered to be [going with] an uncovered head,” his view is predicated on the assumption that there is no biblical prohibition at all. Many *Rishonim* in fact rule this way, as we have seen. We thus understand why so many *Rishonim* cite the passage in the Yerushalmi stating that some courtyards are considered as alleys, and some alleys are considered as courtyards. Because no biblical prohibition is involved here at all (this is the view of the Yerushalmi⁶⁸), one must keep in mind that not every courtyard is the same, and that the Talmudic sages enacted a decree with regard to an alley through which many people pass just as they enacted a decree regarding the public domain (and they did not rely, for instance, on the definitions from the laws of *eruv*).⁶⁹

⁶⁷ See *Bet Yosef*, *Even ha-Ezer* 115, s.v. *u-mah she-katav ve-davka*, which quotes the views of the *Rishonim* on this matter. The *Bet Yosef* is himself unsure as to what the view of the *Tur* is, but the *Be'er Sheva* (Responsum 18) maintains that the *Tur* in fact agrees with this position.

⁶⁸ This seems to be the simple understanding of the position of R. Yohanan in the Talmud Yerushalmi (*Y. Ketubot* 7:6 [42b]): “R. Chiyah stated in the name of R. Yohanan: When a woman goes out with her *kaplitin* [on her head], she is not considered to be [going with] an uncovered head. That which you have said must be with regard to going into a courtyard, but in an alleyway, it is considered to be going with an uncovered head.” See also *Penei Moshe*, *Y. Gittin* 9:11, s.v. *ve-ha tani*; see also note 75, below.

See the comments of the *Nemukei Yosef* to *Ketubot* 72, who writes: “One may suggest that the Talmud mentioned going from one courtyard to another by way of an alley with regard to a completely uncovered head” (like the Yerushalmi). The statement of R. Yishmael does not appear in the Yerushalmi at all. R. Yosef Trani (*Responsa Maharit* 1:76) writes:

The Yerushalmi states that a courtyard which many people use as a pass-through is [considered] as an alley; an alley through which many people do not pass is [considered] as a courtyard. And even though we say that going in an alley with a basket is not considered to be going with uncovered head nor a violation of *dat yehudit*, it seems that here [the Yerushalmi] is speaking of an alley which is a thoroughfare, that the courtyard through which many people pass means that many residents of the entire region, who do not live in the courtyard need to pass through—for instance, in order to access the many stores there. However, an alley which is used as a pass-through only by residents of the adjoining courtyards, even if there are many of them, but all others go there for no reason other than if they have business with the residents of those courtyards, then it is not considered to be an alley through which many people pass, and is no better than an alley which is not a thoroughfare.

⁶⁹ The Gemara is explained as follows:

When R. Yehudah stated in the name of Shmuel that “biblically, her work-basket is satisfactory, but according to *dat yehudit* even a basket is [insufficient and] prohibited

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Furthermore, even though the Talmud asks, “[Is not going out with an] uncovered head a Biblical prohibition,” only the *Shakh* (*Hoshen Mishpat* 28:8) maintains that in every instance in the Gemara in which the word “biblical” (*de-oraita*) appears, does it necessarily indicate an actual biblical obligation and not merely an association to a verse (*asmakhta*). The *Bet Yosef* and many other *Abronim* rule that even when the term “biblical” is used, it is possible that the verse serves only as an *asmakhta*, and the underlying obligation is only rabbinic. Thus, only according to the view of the *Shakh*, that whenever the term “biblical” in all its permutations appears in the Talmud it always sets out a biblical obligation or prohibition, must one say that the law of hair covering described in *Ketubot* 72a is of biblical origin. The vast majority of *Rishonim* and *Abronim* disagree with that view. The *Sedei Hemed* (*Ma’arekhet daled*, *Kelal* 19) writes as follows:

Biblical: We have found this expression used for matters which are not, in fact, biblical obligations; the Talmud in fact means to say that this rule

as well,” their view is that according to R. Yehudah, it is biblically prohibited to go out in the marketplace without any head covering at all, and the Rabbis decreed that rabbinically, one is required to have more of a head covering than the Torah required. R. Yohanan states that a woman who covers her hair with only “a basket, she is not considered to be going with an uncovered head”; in other words, she violates no prohibition—neither biblical nor rabbinic. Abaye explains that there is no prohibition, according to R. Yohanan, when a woman wears only a basket in an alley. But in a through-alley or a courtyard through which many people pass (both of which are legally equivalent to the marketplace according to R. Yohanan; see Tur, *Even ha-Ezer* 115 and compare the rules with regard to a marketplace, through-alley, and courtyard through which many pass), R. Yohanan maintains that wearing only a basket is prohibited, since their status is equivalent to that of a marketplace. According to R. Yohanan, there is never a biblical prohibition even in a marketplace, but there is a prohibition based on the rules of modesty (*dat yehudit*) to go with one’s head uncovered in the marketplace (which is the statement of R. Yishmael), and the Sages further decreed, in his view, a prohibition to go out with only a basket (which in their time was considered immodest) in the marketplace or anywhere resembling a marketplace. But they made no such decree with regard to going out into a courtyard or anywhere resembling a courtyard, as there is no possibility of a prohibition based on rules of modesty applying there. Thus, the view of R. Yohanan in the Bavli is harmonized with the view of R. Yohanan in the Yerushalmi, as well as with the Yerushalmi’s statement that “a courtyard which many people use as a pass-through is considered as an alley, while an alley through which many people do not pass is considered as a courtyard,” which many *Rishonim* include (as they also infer from R. Yohanan that it is permissible to go with one’s head uncovered in a courtyard). Likewise, those who maintain that there is a biblical prohibition to go with one’s head uncovered also maintain that it is forbidden to go out in a courtyard without at least a basket; see, e.g., *Piskei Ri’az*, *Ketubot* 72.

According to this explanation, there is a dispute among the *Rishonim* as to whether we rule in accordance with R. Yehudah/Shmuel or R. Yohanan.

has some support in the Torah. So wrote our master the *Bet Yosef* (see beginning of *Yoreh De'ah* 184, s.v. *u-vi-she'at*) with regard to the rulings of *Tosafot*, Rosh, and the *Semag* that separation from one's spouse before the anticipated time of menstruation is biblical. Similarly, the *Derisha* wrote (see beginning of *Yoreh De'ah* 183) regarding the view of the *Tur* that such is a biblical obligation. A similar comment appears in the *Bet Yosef* (*Orach Hayyim* 418, s.v. *ve-yabid* [at the end]) regarding the Talmud's statement that *Rosh Hodesh* is biblical, that the Talmud means to say that the law is hinted at through a biblical association.

See also *Shakh* (*Hoshen Mishpat* 28:14), that according to both R. Isaac Levin (author of the *Megillat Esther*) and the *Shakh* himself, when the Talmud unequivocally states that something is "biblical," rather than asking it as a question, it is biblical . . . [otherwise] it need not be a proof to a Torah rule (but perhaps merely an association). R. Judah Ayas, in his *Afra de-Ara* commentary to Israel Jacob Argazi's *Ara de-Rabanan* (42:142), also indicated that what Rashi on the Rif (*Beitsah* 37) wrote regarding commercial activity on Shabbat, that it is a biblical prohibition, is not necessarily so, for that certainly is only rabbinic. . . . Regarding work on the intermediate days of a festival, the Talmud (*Mo'ed Katan* 11b) states: "Mourning is rabbinic; work on the intermediate days of a festival is biblical," but some *Rishonim* explained that this means to say that there is an allusion to it in the Torah; see *Yerayim* 113, *Hagabot Maimoniyot*, *Hilkhot Yom Tov* ch. 7, Rosh, beginning of Tractate *Mo'ed Katan*, and *Tosafot*, *Hagigah* 18a, s.v. *holo*.

(Elsewhere in the *Sedei Hemed* (*Ma'arekhet daled*, *Kelal* 12), he writes: "Biblical—in many places we find this expression used to describe laws which are only rabbinic.")

The word "biblical," as used in *Ketubot* 72a, is certainly meant to be read as a question, thus leaving open the legitimate possibility according to the *Sedei Hemed* that the use of the term does not necessarily indicate a biblical law.



In my humble opinion, there is further proof from the Gemara that the teaching of the school of R. Yishmael, that "this is a warning to the daughters of Israel that they should not go out with uncovered head," is not in fact a hermeneutical derivation of biblical law.

There are only eight places in the Talmud that a prohibition is formulated using the expression "a warning to . . ." (*az'harah le . . .*) in which the warning is addressed not to the individual transgressor but to institutions

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or groups as a whole (“a warning to the court [*Bet din*],” “a warning to the children of Israel,” “a warning to the daughters of Israel,” or “a warning to all of Israel,” but not “a warning to an adulterer” or “a warning to a thief”). Each time this expression is used (and not addressed to the individual transgressor) *it does not indicate an actual derivation of biblical law*, nor does it function as a basis for an actual biblical prohibition.

Let’s take a closer look at the eight:

- (1) The Rabbis taught: “That which comes out of your lips” (Deut. 23:24)—this is a positive obligation. “You shall guard” (ibid.)—this is a negative obligation. “And you shall do” (ibid.)—this is a warning to the courts that they shall impel one to do as he has vowed. (*Rosh Ha-Shanah* 6a)

The hermeneutical derivation, “‘And you shall do’—this is a warning to the courts that they shall impel one to do as he has vowed,” does not establish a personal or individual obligation. The *Hinnukh* (Mitsva 575) cites both “‘That which comes out of your lips’—this is a positive obligation,” and “‘You shall guard’—this is a negative obligation,” but omits the third derivation, “‘And you shall do’—this is a warning to the courts that they shall impel one to do as he has vowed.” Rambam, too, omits the third hermeneutical derivation (see *Sefer ha-Mitsvot*, positive commandment 84, and negative commandment 155). *Tosafot* (*ad loc.*, s.v. *yakriv*) maintains that this derivation functions only to state that the laws of sacrifices are like all other positive commandments, which the courts have the authority to compel, but it does not function to create an individual obligation. See also Rashba and the *Meiri* (*ad loc.*), who do not take this to be a self-standing biblical prohibition, but rather a subcategory of the prohibition against delaying the bringing of promised sacrifices or the obligation to “guard one’s tongue.”⁷⁰

- (2) “There shall not be a talebearer [*rakhil*]” (Lev. 19:16) . . . this is a warning to the courts that they not be lenient [*rakh*] with one litigant and harsh with another. (*Ketubot* 46a)

There are some *Rishonim* who do in fact maintain that this is a fulfillment of a biblical mandate. However, each bases the law on another source, *Shevuot* 30a, where the laws of equal treatment of litigants is

⁷⁰ Rambam (*Hilkhot Ma’aseh ha-Korbanot* 14:15) writes that “the courts compel a person [who has neglected to bring his offering for three consecutive festivals] to bring the offerings immediately upon the next festival.” However, there is no evidence that Rambam considers this to be a self-standing biblical obligation, nor does the *Kiryat Sefer* include it in his list of commandments found in the *Yad*.

derived—without the expression of warning—from the verse “With righteousness shall you shall judge your neighbor” (Lev. 19:15).

(3) Whence is there a warning to the haughty of spirit? Rava said in the name of R. Zeiri, “Hear ye and give ear, be not proud” (*Jer.* 8:15). (*Sotah* 5b)

There is not a single *Rishon* who maintains that this is an actual derivation of biblical law.

(4) The Rabbis taught: “You shall warn the children of Israel about their impurity” (Lev. 15:31)—From here R. Yoshiya derived a warning to the children of Israel that they shall separate from their wives near their menstrual periods. For how long? Rabbah stated: One time period (i.e., a day or a night). R. Yohanan stated in the name of R. Shimon bar Yochai: Anyone who does not separate from his wife near her menstrual period, even if he has sons like the sons of Aaron, they will die, as scripture states, “You shall warn the children of Israel about their impurity.” (*Shevuot* 18b, *Niddah* 63b)

Nearly all of the *Rishonim* rule that this is only a rabbinic obligation. Only Rabbeinu Tam rules that this is an actual biblical source (*Tosafot*, *Yevamot* 63; see Rosh *ad loc.*, who rules that the obligation to separate is only rabbinic.). As a matter of halakha, the *Tur*, *Shulhan Arukh*, and Rema (*Yoreh De’ah* 184) all rule that this is not a biblical obligation.

(5) The Rabbis taught: “If he spills . . . he shall cover” (Lev. 17:13)—he who spills [the blood of an animal] shall cover. From where do we derive that if one slaughters and does not cover and another sees this, he is obligated to cover? As scripture states, “And I have told the children of Israel” (*ibid.* 17:14)—[this serves as] a warning to all of Israel. (*Hullin* 87a)

All of the *Rishonim*⁷¹ rule that this is in fact a true derivation and a biblical obligation; however, their texts do not include the expression, “a warning to all of Israel.” The text of the *Semag* reads, “an obligation upon all”; the text of Rosh reads, “this obligation shall be binding upon all of Israel”; Rif states, “This is an obligation on all of Israel.”⁷² Not a single *Rishon* has the text, “a warning to all of Israel” as appears in our editions of the Talmud.

⁷¹ See Rambam, *Hilkhot Shehitah* 14:15; Rosh, *Hullin ad loc.*; *Semag*, positive commandment 64. See also *Taz*, *Yoreh De’ah* 28:8.

⁷² See *Meiri*, *Bet ha-Bechirah*, *Hullin* 87. See also *Dikdukei Soferim*, *Hullin* 87.

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(6) “Hear [the causes] between your brethren and judge righteously.” (Deut. 1:16) R. Hanina states: this is a warning to the court not to listen to the claims of one litigant in the absence of his fellow litigant, and a warning to a litigant not to explain his case to the judge before his fellow litigant appears. (*Sanhedrin* 7b)

Some *Rishonim* do in fact maintain that this is a fulfillment of a positive biblical obligation. However, they each base the law on an alternate source, *Shevuot* 31a, where a similar requirement is derived—without the expression of warning—from the verses “Keep far from a false matter” (Ex. 23:7) or “Do not accept an illegal report.” (ibid., 23:1)⁷³

(7) It is written, “I commanded your judges at that time” (Deut. 1:16), and also, “I commanded you at that time” (ibid. 1:18)—R. Elazar stated in the name of R. Simlai: [These are] a warning to the populace to revere judges, and a warning to a judge to patiently bear the populace. (*Sanhedrin* 8a)

The *Rishonim* do not maintain that this is an actual derivation. Nor will one find this homiletic derivation in any of the compilations of *mitsvot*. Each of the *Rishonim* located foundations for these obligations in other *mitsvot*.⁷⁴

(8) What is [considered to be a violation of] *dat yehudit*? Going out with her head uncovered. But [going out with] an uncovered head is a Biblical prohibition as it is written, “And he shall uncover her head” (Num. 5:18),

⁷³ Rambam, *Sefer ha-Mitsvot*, Positive Commandment 177; *Hinnukh*, Mitsva 235; and *Semag*, Negative Commandment 10 did not base this obligation in the verse in Deuteronomy. Rashi writes, “Hear [the causes] between your brethren”—when they are there together hear their claims; do not hear the claims of one without the other, as this may arrange falsehood as the truth, for the other is not there to contradict him. Because the judge will naturally be inclined to find favorably for the first, he will not be able to revert to find favor for the second as easily, as *Sanhedrin* 7 states.” Rashi thus explains *Sanhedrin* 7 in light of *Shevuot* 31; the derivation presented in *Sanhedrin* is not the main one. Only Rambam (*Sanhedrin* 21:7) writes that Deut. 1:16 serves as a self-standing source for one aspect of the law. However, the *Kesef Mishneh* explains—and all other *Rishonim* agree—that “Hear the causes between your brethren” serves merely as an association to a verse, and the main homiletic derivation comes from the verses “Do not accept an illegal report” or “Keep far from a false matter.” (See the *Tur*, *Hoshen Mishpat* 17; Rosh to *Shevuot* 31; Encyclopedia Talmudit 7:318-319 (s.v. *dinei mamot*, “*hasbba’at ba’alei ha-din*.”)

⁷⁴ See Rambam, *Hilkhot Sanhedrin* 25:2; *Bet Yosef*, *Hoshen Mishpat* 8. This hermeneutical derivation does not appear in Rif, Rosh, or the *Bah*.

and the school of R. Yishmael taught that this is a warning to the daughters of Israel that they should not go out with uncovered head.⁷⁵ (*Ketubot* 72a)

In sum: All of the homiletic derivations which employ the expression, “a warning to . . .” (such as “a warning to the court,” “a warning to the children of Israel,” “a warning to the daughters of Israel,” or “a warning to all of Israel,”) are not actual derivations, and in each instance one concludes that the matter at hand is only a rabbinic obligation or prohibition, or else it is ultimately derived from another biblical source. One might be inclined to say as well that the passage in *Ketubot* 72a only establishes a rabbinic prohibition.

Moreover, in every case in the Talmud in which two homiletic derivations are presented for the same law and one contains the expression “a warning to . . .,” the *Rishonim* accepted the other derivation, the one not phrased as a “warning,” to be the main source for the halakha.⁷⁶ Based on this, it seems reasonable to assert that some *Rishonim* considered the passage in *Berakhot* 24 to be the main source for hair covering. *Berakhot* 24 states:

R. Hisda said: A woman’s leg [*shok*] is considered forbidden nakedness [*ervah*], as it says, “Uncover the leg, pass through the rivers” (*Isaiah* 47:2) and it says afterwards, “Your nakedness shall be uncovered, your shame shall be seen as well.” (ibid. 47:3) Shmuel said: A woman’s voice is considered forbidden nakedness, as it says, “For your voice is sweet and

⁷⁵ It is also possible that there is a dispute among the Tannaim and Amoraim even in *Ketubot* 72. Five Tannaim and Amoraim speak: R. Yishmael, R. Yehudah, R. Yohanan, R. Zera, and R. Kahana (alt., Abaye). Rif parses the Gemara as follows: R. Yishmael taught that there is a warning to the daughters of Israel that they not go out with uncovered head. R. Yehudah answered in the name of Shmuel: Biblically, her work-basket is a satisfactory head covering.” Rif might maintain that there is a dispute between the view of R. Yishmael and that of R. Yehudah, in that R. Yishmael is of the view that going with one’s hair uncovered is only a rabbinic prohibition, while R. Yehudah thinks that the statement of R. Yishmael is limited to going with a basket. Without even a basket, in R. Yehudah’s view, she violates a biblical prohibition. R. Yohanan rules that even in the marketplace, if a woman goes out with only a basket on her head, it is not considered to be going with uncovered head—i.e., there is no prohibition. (This is the simple understanding of the view of R. Yohanan appearing in the Yerushalmi, cited above, n. 61. R. Zera proceeds to ask, “Where are we talking about? If you say, in the marketplace—this is already considered to be *dat yehudit*; but if you suggest instead, in a courtyard—if so, you have not left a single daughter of our patriarch Abraham who could live with her husband!” Abaye, or alternatively R. Kahana, then answers: [R. Yohanan’s ruling is meant to apply to a woman who goes] from one courtyard to another by way of an alley (meaning that there is no difference, in R. Yohanan’s view, between an alley and the marketplace.)

⁷⁶ See examples 2 (*Ketubot* 26a) and 6 (*Sanhedrin* 7a).

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your appearance is comely” (*Song of Songs* 2:14). R. Sheshet said: A woman’s hair is considered forbidden nakedness, as it says, “Your hair is like a flock of goats” (ibid. 4:1).⁷⁷

According to the above understanding, the view of R. Sheshet, which establishes that a woman’s hair is considered *ervah*, disputes the passage in *Ketubot* 72a-b, and the *Rishonim* rule in accordance with R. Sheshet. The prohibition against a woman going with her hair uncovered is thus rabbinic in nature, as the derivation of R. Sheshet is based solely on a verse in *Shir ha-Shirim*.⁷⁸

X. UNCOVERING OF HAIR CATEGORIZED AS A RABBINIC PROHIBITION BY *AHRONIM*

Many *Abranim* indicate in their writings that the main source of the prohibition that “the hair of a woman is considered *ervah*” and the obligation of hair covering comes from *Berakhot* 24 and not *Ketubot* 72. For example, in the responsa of R. Isaac b. Samuel HaLevi Segal (brother and teacher of the *Taz*), no. 9 (regarding the prohibition for a betrothed woman to go with her hair uncovered) he writes:

⁷⁷ The midrash gives another rationale for the prohibition of going with uncovered hair. *Midrash Rabbah Bamidbar* 9:13 states:

“And he shall uncover.” This teaches that the way of the daughters of Israel is to have their heads covered. Therefore he would uncover her head and say to her: “You separated yourself from the way of the daughters of Israel, whose manner it is to have their heads covered, and went in the ways of the gentiles who go with their heads uncovered. Here is what you asked for.”

According to this approach, the proscription derives from the prohibition against following in the ways of the gentiles; but in a time or place where there is another reason that Jewish women uncover their hair, there may be no prohibition at all (see *Shulhan Arukh, Yoreh De’ah* 178:1-2). While this rationale appears in R. Sa’adya Gaon’s *Sefer ha-Mitsvot* (part I, p. 650), I have not found it cited by the *Rishonim* (with the exception, perhaps, of *Yerayim*, Mitsva 392). Among the *Abranim*, it appears in R. Moshe b. Yaakov Chagiz, *Eleh ha-Mitsvot*, no. 262, and the rulings of Gra, *Even ha-Ezer* 115:4. See also *Otsar ha-Poskim, Even ha-Ezer* 21:2:1 and *Yabi’a Omer* 4:3.

⁷⁸ Based on this novel understanding, one can also explain why the ruling of R. Sheshet is not codified by Rambam in *Hilkhot Tefillah*. In this view, Rambam cites the ruling of R. Sheshet in *Hilkhot Issurei Bi’ah* 21:17 when he rules that “The daughters of Israel, whether unmarried or married, should not go out in the marketplace with their head uncovered.” Nor does the Jerusalem Talmud ever discuss the idea of uncovered hair being a biblical prohibition. The ruling of the school of R. Yishmael does not appear in the Yerushalmi; see Y. *Gittin* 9:18 and *Penei Moshe, ad loc.* See also *Mareh Panim* and *Sheyarei Korban ad loc.* See also n. 16, above.

That which R. Sheshet stated, that the hair of a woman is considered *ervah*, one may suggest that was with regard to a married woman, who regularly goes with her hair covered. But with an unmarried woman who regularly goes with her hair uncovered there is no concern for improper sexual thoughts, as Rosh and the Mordekhai, citing Ra'avyah wrote in the third chapter of *Berakhot*. And even though they said this with regard to the recitation of the *Shema*, as they explain the passage according to R. Hai Gaon, that all these laws were said with regard to one's own wife and the recitation of the *Shema*, nevertheless, from the fact that they wrote that there is no need to be concerned about improper sexual thoughts from [seeing] the uncovered head of an unmarried woman, there is also no prohibition to look at her, as the one rationale applies to the other.

From here we see that the prohibition is based on the verse in *Song of Songs* and the Talmudic passage in *Berakhot*, not from the verse in *Numbers* and the passage in *Ketubot*.

In the responsa of R. Moshe ibn Habib, *Even ha-Ezer*, no. 1 (no. 149 in the new edition), also regarding the prohibition for a betrothed woman to go with her hair uncovered) he writes:

It seems simple, in my humble opinion, that since they have already developed the practice of going with their hair uncovered, there is no need for concern, as Rosh wrote at the end of the third chapter of *Berakhot*, regarding the statement of R. Sheshet that the hair of a woman is considered *ervah*, that this applies specifically to married women, who normally cover their hair, but for unmarried women to normally go with their hair uncovered is permissible. So also wrote the Mordekhai, citing Ra'avyah; the *Hagabot Maimoniyot*, *Hilkhot Keri'at Shema* 3:[60]; *Tur*, *Orah Hayyim* 75; and our master [the *Mehaber*, *ibid.* 75:2].

If you are inclined to dismiss this and say that there can be no proof from these sources, as they are all speaking about a single woman, but with a betrothed woman it would be forbidden—that argument is void. Consider the reasoning behind why the decisors ruled that it is permissible for single women: *since they do so regularly, it does not arouse improper sexual thoughts, and the same is true in our case.*

A proof to this comes from what the *Bet Yosef*, *Orah Hayyim* 75, wrote in the name of Ra'avad, regarding R. Hisda's statement that a woman's leg [*shok*] is considered *ervah*. The *Bet Yosef* asked, what is R. Hisda attempting to teach us here—after all everything that is usually covered is considered *ervah*, so why single out *shok*? He answered that Rashba cites Ra'avad who wrote that “Perhaps that was meant specifically to apply to

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[a woman's] private parts, and to this R. Hisda came to add that the thigh of a woman is considered private parts, even for her husband, and even though thighs are not considered private parts for a man. However, we are not concerned about her exposed face, hands, feet, and non-singing speaking voice, or hair protruding from beyond her hat, since a man regularly sees these and does not become distracted." Here we have an explicit source that even regarding a married woman, Ra'avad ruled that because a body part is not usually covered, it is not considered *ervah*.⁷⁹

In the responsa of Maharam Alshakar, no. 35 (regarding the prohibition to partially uncover one's hair), he writes:

Query: Need one be concerned about those women whose practice is to expose the hair beyond their hats . . . ?

Answer: *It is clear that there is no need to be concerned for that hair at all, because the practice is to expose it—even with regard to the recitation of the Shema.* The rule that a woman's hair is considered *ervah* only applies to hair that women normally cover . . . but that which is regularly uncovered and which a man is comfortable seeing is permissible, even as we have explained. So have written the great commentators of blessed memory, as did Ra'avyah: "All of the items mentioned above [hair, voice, and legs] with regard to *ervah*, apply specifically to areas of the body that are not normally uncovered, but we are not concerned about unmarried women who regularly go with their hair uncovered, as no improper thoughts arise." The Mordekhai and Rosh agree as well; everything follows the local practice.⁸⁰

Likewise, R. Shmuel b. Neta Lowe (Kelin) (*Mahatsit ha-Shekel, Even ha-Ezer* 21) writes:

The *Bab* wrote that since the Talmud did not state "a warning to married women," it is evident that the prohibition applies to both single and

⁷⁹ See also *Get Pashut*, 119:14-15. Regarding this, R. Ovadya Hedaya, *Responsa Yaskil Avdi* 4:9, wrote:

So have I found written. It is unfortunate that such was written, and it is far from clear. Seemingly the proof from Ra'avad is not convincing, as one could differentiate between hair protruding from under one's hat which need not be covered and the hair atop one's head which ought to be. So seems correct from our analysis above.

⁸⁰ A similar formulation can be found in R. Shmuel Tuvia Stern, *Responsa Shavit, Even ha-Ezer* 7:50 ("Because by going out with one's hair uncovered one violates *dat yehudit* and not *dat moshe*.")

married women. However, the Mordekhai at the end of the third chapter of *Berakhot* quotes Ra'avyah who writes that "All of the items mentioned above [hair, voice, and legs] with regard to *ervah*, apply specifically to areas of the body that are not normally uncovered" . . . And one ought not explain that this is limited to one's home and courtyard, but it is forbidden [for a single woman] to go out in the marketplace [with her hair uncovered].⁸¹

R. Yehoshua Babad (grandfather of the *Minhat Hinnukh*) in *Responsa Sefer Yehoshua*, no. 89 (regarding the prohibition against a betrothed woman going with her hair uncovered), writes:

The general rule regarding the exposure of *ervah* is dependent on the following: If a woman exposes a body part that women regularly cover, it is considered *ervah*; but if women do not regularly cover it at all, it is not categorized as *ervah* at all, since all women regularly go with at least one body part exposed. For example, if the practice of women were to regularly cover their hands or faces, then were they to expose a handbreadth of a part of the body that is regularly covered, it would be considered exposing forbidden nakedness (*ervah*) and prohibited to recite the *Shema* in their presence. Likewise with regard to hair: It is considered to be exposure of *ervah* if the practice of women is to cover [their hair]; but if their practice is to regularly uncover their hair, or even to expose a handbreadth of their bodies, like the unmarried women who regularly go with their heads uncovered, it is not considered to be exposing forbidden nakedness—just like in places where women go with their faces and hands uncovered, where such is not considered to be *ervah* since this is their practice. However, if the women's practice is not to uncover, but one woman regularly uncovers that which ought to be hidden, it would be forbidden to recite the *Shema* in her presence because of the exposed *ervah*. If you will examine these matters closely, you will see that they are clear as day.

This also appears explicitly in the comments of Rosh, *Berakhot* 3:37 (24a): ". . . The hair of married women, who normally cover their hair, is considered *ervah*, but it is permitted [even] to recite the *Shema* in view of

⁸¹ In particular, those who adopt the view of Ra'avad (cited in Rashba, *Berakhot* 24) or Ra'avyah who permit the exposure of what would otherwise be considered *ervah* biblically, based on the widespread practice of women, undoubtedly maintain as well that the prohibition of going with one's hair uncovered is classified only as *dat yehudit*. I have heard from R. Yehudah Gershuni that it is appropriate to rule this way as a matter of halakha.

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unmarried women who normally go with their hair uncovered.” This view can also be found in *Hagabot Maimoniyot, Hilkhot Keri’at Shema* 3:16, s.v. *u-fresh Bahag*: “. . . It is also forbidden to recite the *Shema* in the presence of the [exposed] leg, hair, or voice of a woman . . . This applies only when such is not normally exposed; however, with an unmarried woman who regularly goes with her hair uncovered there is no concern, as this will not lead to improper sexual thoughts. The same applies to a voice one is used to hearing.” The same appears in the *Mordekhai*, and the *Bet Yosef* mentioned all this briefly.

The basic principle is that any part of the body which is always seen, and which it is not the common practice of women to cover, and which men are used to seeing—is not considered *ervah*, people are not stirred by such because they are used to seeing this, and no biblical prohibition is involved at all [in uncovering them]. But when body parts that are customarily covered are partially exposed and people find this stirring, then it is considered *ervah* and it is biblically prohibited [to uncover them]. Accordingly, there is no difference between braided and unbraided hair: because the practice of women is to go out with their hair fully covered, then [exposing hair] is considered *ervah* and biblically prohibited. Thus, the gemara in *Ketubot* 72 correctly asks, how could it be suggested that hair covering is *dat yehudit* since the practice of women is to go out with their heads completely covered, with their hair braided in a braid and covered with a head-scarf—accordingly, having their head exposed, namely only braided, would be a biblical violation! The gemara was thus impelled to answer that biblically, having one’s hair exposed but braided is sufficient, but according to *dat yehudit* even braided hair is also forbidden—since the practice of women was to go out with their hair covered by head-scarves, then in that era in particular going with braided hair was considered to be brazen, and women who did so violated *dat yehudit*. But *were it the practice of all Jewish women to go with their heads entirely uncovered, there would be no prohibition at all, even for married women*. Rather, as the gemara demonstrates from the verse which states, “And he shall uncover,” we can infer that up to that point her head was covered, as was the practice of all women. In truth, the Talmudic sages knew that the practice of women was to cover their heads with a braid and a head-scarf; accordingly, for them uncovered hair was considered *ervah* and biblically prohibited, not just *dat yehudit*. Therefore, the Talmud was compelled to say that the violation of *dat yehudit* involved going with braided hair—this, with God’s help, is clear. But even were the opposite to be the case, that married women went with their heads uncovered and single women covered their hair, it

would be forbidden for single women to go without their heads covered, but permissible for married women. Accordingly, there is no question at all comparing the status of betrothed and married or single women, as everything is dependent on the practice of married women; understand this well.⁸²

A similar formulation—explicitly permitting the uncovering of married women’s hair—can be found in several other *Abronim*. *Sefer Hukei ha-Nashim* (by the Ben Ish Hai) p. 55, states as follows:

The women here [in Morocco] have seen women of Europe whose practice is not to cover their hair in front of strangers, and who nonetheless dress modestly and do not reveal their bodies, only their faces and their necks, the palms of their hands and their heads. *Indeed their hair is also uncovered, though according to us such is forbidden. They, however, have a justification, because they say this practice was not accepted among all the women in Europe: both Jewish and non-Jewish women uncover their hair, just like they uncover their hands and their faces, and looking at them does not generate immodest thoughts among the men.*

Thus, all is dependent on the modest practices of Jewish women—just like *dat yehudit*. Likewise, R. Efraim Zalman Slutzki, *Responsa Ets Efraim* (*Orah Hayyim*, p. 12), writes:

Accordingly, the difficulty facing all the commentators has been solved . . . Now that in our multitude of transgressions, Jewish women have breached this fence and go with their heads uncovered, the situation is analogous to what the *Bab* wrote with regard to towns where the women go barefoot and their legs are always exposed.

⁸² A similar presentation can be found in the name of R. Mattityahu Avraham Tsurmani as cited in *Responsa Va-Yeshiv Yosef* (R. Yosef Burla), *Yoreh De’ah* 1:3. Even R. Burla’s own view is not so simple, as he agrees that the prohibition of going with one’s hair uncovered is not biblical; it seems that he maintains that this is dependent on other prohibitions (as is the basis of many customs in halakha). He writes: “Even were it to be that there were no source either biblical or rabbinic for the prohibition against going with one’s hair uncovered, save custom alone—in a situation where the women developed a customary practice and know that there is no prohibition per se but instead do such as a fence and safeguard and accepted this stringency upon themselves, one may not permit this to be undone even though they only wish to return to the original practice. The *Pri Hadash* wrote about this at length and in detail in *Orah Hayyim* 496 regarding the concept of customs of prohibition . . .”

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R. Yaakov Hayyim Sofer, in his *Kaf ha-Hayyim, Orah Hayyim* 75:(17) writes:

It is also permissible to pray in the presence of European women whose practice is to always go with their hair uncovered, for it is the practice of all women to do so . . .

And in 75:(18) he rules:

Those women who move from lands where the practice is to cover one's hair to a place where the practice is not to cover are permitted to go without a head covering, provided they have no intention of returning . . .

Indeed, he maintains that one who moves to a place where the practice is not to cover one's hair is permitted to go without her hair covered, and it makes no difference whether it is partially or fully uncovered. This is also found in the above-mentioned Ben Ish Hai.

R. Joseph Messas (Rabbi of Morocco and later Chief Rabbi of Haifa), *Responsa Mayyim Hayyim*, 2:110 rules:

Know, my child, that the prohibition for women to uncover their hair is extremely well-founded! For the custom practiced by all women of ancient times was to cover their hair, and one who did not do so was considered to be promiscuous. To them, a woman's exposed hair was also considered disgraceful (see Rashi, end of *Ketubot* 72a, s.v. *az'harah li-vnot yisrael*). Therefore the Sages were exceedingly strict based on the custom of their time, on account of promiscuity and disgracefulness. . . .

Furthermore, Maharam Alshakar, responsum 39, wrote in the name of Ra'avyah that the Talmudic statement that the hair of a woman is considered *ervah*, etc. is limited to the recitation of the *Shema* and to hair that it is their practice to cover. . . . *Thus, nowadays when women worldwide have abandoned the ancient custom and reverted to the simple practice of not covering their hair, it in no way indicates a deficiency in their modesty or promiscuity, God forbid. . . .*

And in his collected letters (no. 1884), R. Messas writes in a lengthy response:

Know, my child, that the prohibition of married women uncovering their hair was quite strong in our community, as it was in all of the Arab lands, before the influx of French Jewry. However, in short order after their arrival, the daughters of Israel transgressed this law and a great dispute arose amongst the rabbis, sages, and God-fearing learned masses. . . . Now all

women go out with uncovered heads and loose hair. . . . Consequently, I have devoted myself to find a justification for the current practice, for it is impossible to fathom that we can return to the status quo ante. . . . I attempted to search through the writings of the legal decisors laid out before me, only to find stringency upon stringency and prohibition upon prohibition. I then set out to fetch knowledge from afar to draw from the sources—Mishna, Talmud and commentaries—before me: perhaps in them I would find an opening of hope through which to enter. . . . Many thanks to God that we have found numerous openings to this area to enter in a lawful rather than unlawful manner. They are:

Behold, it is a well-founded principle of all the decisors, upon which they built their sanctuaries like the heights, that which R. Yishmael hermeneutically derived, “And he shall uncover her head,” this is a warning to the daughters of Israel that they should not go out with uncovered head, as it states in *Ketubot* at the end of 72a. And Rashi there explained, “A warning—from the fact that we disgrace her in this manner commensurate to her act of making herself attractive to her lover [by uncovering her head] we can infer that it is forbidden. Alternatively, since Scripture states, ‘And he shall uncover,’ we can infer that at that time her head was not uncovered; we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered: this is the main explanation.” (See R. Pinchas HaLevi Horowitz, *Hiddushei Hafla’ah*, who took the first explanation of Rashi to be the main one.)

The difference between the two explanations is that according to the first, it seems that the reason the Kohen uncovers her hair is in order to publicly disgrace her. . . . this seems to imply that it is prohibited for us to uncover a woman’s hair in public to disgrace her for no reason, but in order to punish her commensurately, the Torah permitted this prohibited act to be done in order to disgrace her. *However, she herself has no prohibition to go with her head uncovered, for if she wishes to disgrace herself, she may do so at any time.*⁸³

Accordingly, now that all the daughters of Israel have agreed that hair covering is not an indication of modesty, and certainly the absence of a head covering carries no disgrace. . . . this prohibition has been uprooted from its foundation and become permissible. . . . Furthermore,

⁸³ This is the exact opposite of R. Feinstein’s view, *Iggerot Moshe, Even ha-Ezer* 1:57. He maintains that the first explanation of Rashi expresses a prohibition, while the second delineates only a negative corollary of a positive biblical obligation—which is not prohibited in the face of a monetary loss greater than twenty percent of one’s wealth.

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and more significantly, the explanation of R. Yishmael's statement rests on two bases—namely, the combination of two unfavorable conditions: uncovering of the hair and the unraveling of the hair from its braids and knots. But uncovering of the hair alone is not covered by the warning at all . . .

The upshot of all this is that hair covering for women is only obligatory from the standpoint of custom alone.

R. Moshe Malka, the late Chief Rabbi of Petah Tikva and author of *Responsa Mikveh ha-mayyim*, also rules in accordance with R. Messas as a matter of halakha:

However, after close analysis of the words of our Master [R. Yosef Karo], *Orah Hayyim* 75:2, I saw that the great Rabbi [Messas] was indeed correct. The *Shulhan Arukh* states: "Only hair that is usually covered is considered to be *ervah*, and it is forbidden to recite the *Shema* facing it." However, hair that is not usually covered is not considered *ervah* at all. So wrote the *Kaf ha-Hayyim ad loc.*, 75(17) citing the Ben Ish Chai. . . . From here one sees that women's hair is considered forbidden nakedness only when it is covered and in a place where women normally cover it. But when it is uncovered and in a place where women normally do not cover it, it is not considered *ervah*. The reason is that hair which is normally covered but has become exposed leads to erotic thoughts; but this is not the case where it is always exposed: it does not give rise to erotic thoughts in people who are accustomed to seeing it all the time, as in the case of single women—there is no prohibition when the hair is always uncovered [in that society]. . . . Thus the position of [R. Messas] now stands, that this matter is based on local practice, and wherever the entire local populace goes with their heads uncovered, there is no issue of erotic thoughts. And it seems that women nowadays rely on this, as they go about with their heads uncovered in the markets and streets and no one protests, for they have something to rely on.⁸⁴

R. Isaac S. Hurewitz, in *Yad ha-Levi*, his commentary to Rambam's *Sefer ha-Mitsvot* (positive commandment 175) also rules:

However, the rabbis of old, giants of their time, who were not accustomed to seeing the daughters of Israel go about with their heads uncovered,

⁸⁴ *Responsa Ve-Heishiv Moshe* 35 (see also *Responsum* 35). But see the comments of R. Shalom Messas, *Responsa Tevuot Shemesh, Even ha-Ezer* 137-8, contrary to the ruling of his uncle, R. Joseph Messas.

with only wigs on their heads, they railed loudly against this, and were concerned about the promiscuity and despoiling of their souls much more than any physical harm which might come from wearing wigs made of human hair, and rightly so: since women did not conduct themselves this way generally, it was indeed a matter of promiscuity and a violation of *dat*, as we have discussed. But through their fierce opposition to promiscuity, they have distorted for us—intentionally or unintentionally—the simple understanding of the teachings of the Sages (*Shabbat* 64, *Nazir* 28, and the beginning of the second chapter of *Ketubot*), to the point that even an intelligent person cannot sort this out; see *ibid*. The truth is that these matters of law, prohibited and permitted, are not based on the Talmud or the early decisors, but on the public conduct of women in a given place and time. I have written all this not to rule as a matter of practical halakha, but to find an *ex post facto* justification for the practice of the daughters of Israel.

I have expanded upon this more than is called for, yet it nevertheless seems to me that hair covering ought not to be included in the enumeration of the *mitsvot*, even though the Talmud stated that it is a biblical obligation. Once we have concluded that it is dependent on place and time, and in a place where the practice of women is to go with their heads uncovered, there is no obligation nor interdiction, either biblical or rabbinic. Perhaps it is for this reason that the Tashbets himself did not include it in his enumeration of the *mitsvot*. Notwithstanding, there ought not to be even a wisp of a question raised from barriers (*hatsitsin*) or hair covering or the many other instances in which the Talmud states that something is biblical. This may be correct, but so long as there is no passage in the Torah expressly stating an obligation or admonition on this matter, it is not to be included among the *mitsvot*, because the only commandments to be enumerated among the 613 are those where the actual wording of the Torah denotes a positive action or a prohibition.

(See also the related comments in *Responsa Revavot Efraim*, 6:459-460.)

R. Yerucham Fishel Perlow, in his commentary to the *Sefer ha-Mitsvot* of Sa'adia Gaon (positive commandment 96), writes as follows:

There is no question according to the first explanation of Rashi, for we can say that this means from the fact that we disgrace her in this manner commensurate to her act of making herself attractive to her lover [by uncovering her head] we can infer that it is forbidden. . . .

However, according to Rashi's second explanation, which he indicated to be the main explanation, there is a great difficulty: Just because [not

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going with their heads uncovered] was the practice of the daughters of Israel, must we say that it has the status of a biblical prohibition? Perhaps it only has the status of a custom which the daughters of Israel adopted of their own accord. And even though this custom is mentioned in the Torah, it nevertheless does not generate a biblical prohibition—after all, the husband’s right to the fruits of *nikhsei melog* [assets of the wife whose fluctuation of value is to her benefit or detriment] is also only a rabbinic decree . . . If so, then what is the source for the prohibition of going with one’s hair uncovered, since the only proof from the verse is that such was the custom of Jewish women—this requires further analysis.

In truth, according to the wording of the *Sifri* (*Parashat Naso* 5:11), “ ‘And he shall uncover her head’—this teaches that the daughters of Israel cover their heads. And though there is no explicit proof to the matter, there is an indication: ‘And Tamar put ashes on her head’ (II Samuel 13:19),” it seems that there is no biblical prohibition, and the only thing derived from the verse is that such was the practice. However, it is clear that the Talmuds derive a biblical prohibition from this verse . . . Perhaps one might answer that we do not derive a biblical prohibition from the verse itself, but *because the verse teaches us that such was the custom of the daughters of Israel, we conclude that this is a matter of promiscuity and leads to sexual immorality; accordingly, such conduct would itself be biblically forbidden* as it falls into the category of “Do not place a stumbling block before the blind.”

According to his approach, all of hair covering depends on the laws concerning the prohibition to facilitate sinful conduct (*lifnei ivver*)—and in a place where uncovered hair does not cause improper thoughts or lead to promiscuity, there is no biblical prohibition. (R. Yehuda Herzl Henkin also maintains that Rashi’s second explanation is based on the fact that going out in the street is not biblically prohibited (like the view of Rambam); only according to the first explanation is there a biblical prohibition when going in the street; see his “*Shi’ur Kisui Rosh Shel Nashim*,” note 24.)

A related ruling appears in R. Moshe Turetsky’s *Responsa Yashiv Moshe* (EH 3) who maintains that it is permissible for a married woman to uncover her hair in a place where there are only gentiles (in a circumstance where there is no concern for seclusion [*yibud*]). He rules:

[I]t is forbidden for a woman to expose [her hair] to a Jewish man on account of the man’s sin, for she causes him to stumble in the prohibition to look at forbidden sexual matters, as explained in the laws of marriage, *Even ha-Ezer* 21:1, which is a violation of *lifnei ivver*, as the man will

come to violate the biblical prohibition of “You shall guard yourself from every evil thing” (Deut. 23:10)—one should not engage in improper thoughts during the day which would lead to impurity at night (*Avodah Zarah* 20b). Alternatively, she must do so on account of the woman’s [i.e., her own] sin, as there is an obligation upon a woman to conduct herself modestly in the presence of others, and her prohibition against behaving in a promiscuous manner is similar to that which the *Shulhan Arukh* wrote in the subsequent paragraph (ibid., 21:2) [“The daughters of Israel should not go out in the marketplace with their heads uncovered, no matter if they are unmarried or married”].

He rules that these two prohibitions do not apply in a place where there are only gentiles, and thus it is permissible for a woman to uncover her hair in a place where there are only gentiles. In his view, there is no prohibition for a woman to go with her hair uncovered, it only falls under other prohibitions (e.g., not to put a stumbling block before the blind).



In my view, all the decisors who permit a married woman to go with her hair uncovered, based on the reality that nowadays uncovered hair is no indication of promiscuity at all, do so based on the comments of Ritva at the end of Tractate *Kiddushin*. *Kiddushin* 81b states:

Our master [Rav Hisda] also violated the ruling of Shmuel, for Shmuel states: men should not interact with [literally, be handled/served by] women [i.e., in a manner which involves physical contact]. He responded: I accept the alternate view of Shmuel, for Shmuel states: Everything is for the sake of heaven. [i.e., physical interactions between men and women are permissible when in a situation in which there are no sexual overtures; [Rashi: *All for the sake of heaven*—my interactions aren’t with her for the sake of sexuality or marriage but rather for mere closeness, and to become a friend to her mother when I am pleasant to her daughter. *Tosafot*: *All for the sake of heaven*—this is what we rely on nowadays, for we physically interact with women.]]

Ritva *ad loc.* writes:

All is dependent on wisdom and the sake of heaven. This is the normative rule of Jewish law, that all is dependent on what a person sees in himself. If he needs to create additional barriers for his own desires, he must do so, even such that he not look at women’s undergarments when they are being washed (See *Avodah Zarah* 20b). So too, if one sees in himself that

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his desires are bent and submissive and it does not give rise to any impure thoughts in his heart at all, he may look and speak with a prohibited sexual relationship and ask about the well being of married women, and this explains the conduct of Rav Yohanan who sat at the gates as the women were immersing, looking on without any erotic intent, and Rav Ami who spoke with the Caesar's mother, and other Rabbis who spoke with various Matrons [immodest women] and Rav Ada bar Ahava who placed a bride on his shoulders [at a wedding] and danced, none of whom were afraid of erotic thoughts, based on our above explanation. Rather, one should not be lenient on these matters unless one is a greatly pious person, acutely aware of one's own desires . . .

R. Shlomo Luria (Maharshal), in his *Yam Shel Shlomo* commentary to *Kiddushin* (4:25) cites this Ritva and rules:

All is dependent on that which one sees in one's eyes and masters one's own desires. If one is able to overcome one's own desires, it is permitted to speak to and look at a forbidden sexual relation, and ask about her well being. This is what the whole world relies on, in that they have physical interaction with, speak, and look—yet nonetheless, in the bathhouse it is prohibited to have a female attendant service a man. But if one sees that his desires master and greatly overcome him, he should create additional barriers for himself such that he not speak to married women at all and then it is prohibited even to look at women's undergarments when they are being washed.

His view appears as well in the *Taz*, *Even ha-Ezer* 21:(1).

Perhaps this is all dependent on the view of Ra'avyah on *Berakhot* 24 (Vol. 1, *siman* 76):⁸⁵ Ra'avyah maintains that “all of the items mentioned above [hair, voice, and legs] with regard to *ervah*, apply specifically to areas of the body that are not normally uncovered”—when parts of the body are normally uncovered, no erotic thoughts are generated, and thus no prohibition applies.

Ritva, Maharshal, and Ra'avyah all maintain that when there is no concern that a person will have erotic thoughts, there is no prohibition to look at an uncovered area, *neither for the viewer nor for the one being viewed*. Just as it was permissible for Rav Yohanan to view a “naked”

⁸⁵ See also Rashba (to *Berakhot* 24b) citing Ra'avad (“However, with one's own wife, even if one is touching her, so long as he turns away and does not see her nakedness it is permissible, for touching [one's own wife] does not cause one to become overly distracted, for he is comfortable with her [as they share an intimate relationship].”).

woman—with her hair uncovered, too—because it did not “give rise to any impure thoughts,” it is likewise permissible for a woman to go “naked”—precisely with her hair uncovered—before Rav Yohanan—since he would not find that conduct arousing. Their view is cited approvingly by the *Pit’hei Teshuvah, Even ha-Ezer* 21:(4).⁸⁶

According to the view of Ritva, Maharshal, and Ra’avyah, *Pit’hei Teshuvah*, and others, when there is no concern at all about erotic thoughts, there is no prohibition, neither for the actor nor for the viewer. And even though regarding the incident of the naked woman in the Talmud, Ritva rules that such is only permissible for a pious person such as R. Yohanan, it makes sense to say that this is because an ordinary person is not trusted to aver that a naked woman does not give rise to erotic thoughts. But with regard to uncovered hair nowadays, the eminent decisors admit and explicitly write that no erotic thoughts are generated—because most women go around this way,⁸⁷ it is permissible for all. This is precisely the view of the Maharshal: it is permissible to greet (ask the well being of) a married woman in a society where modest men do so—even though the Talmud ruled that such was expressly forbidden as a matter of halakha.

XI. IS THERE A HALAKHIC DIFFERENCE BETWEEN “UNCOVERING OF THE HEAD” AND “EXPOSING ONE’S (DISHEVELED) HAIR”?

There is one other view among the *Abronim* with regard to the definition of the prohibition for women to go with their head uncovered which is inclined (perhaps in combination with what we have written above) to claim that there is no prohibition for a married woman to go out with her hair uncovered. Many *Abronim* rule that with regard to “*peri’at rosh*,” the biblical prohibition is only for one to go out into the marketplace with one’s hair exposed and untidy (*parua* is thus taken to mean that the hair is *mit tsuavarfenig* [i.e., tousled and unkempt; disheveled]).

⁸⁶ But see *Sefer ha-Hinnukh*, Mitsva 188 (cited in *Otsar ha-Poskim, Even ha-Ezer* 21:19:2), who writes that nowadays we ought not to breach even the smallest fence in regard to these matters. See also *Responsa Benei Banim* 1:37.

⁸⁷ See *Arukh ha-Shulhan, Orah Hayyim* 75:5; *Iggerot Moshe, Orah Hayyim* 1:42; *Yabi’a Omer, Orah Hayyim* 6:13; and many other *poskim* who maintain that it is permissible to pray in the presence of women who go about with their hair uncovered, because there is no concern for erotic thoughts.

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The Talmud (*Sotah* 8a) states:

The Rabbis taught: “And he shall uncover [*u-fara*] the woman’s head” (Num. 5:18) [Rashi: *And he shall uncover*—in every instance in Scripture [this] is an expression of exposing], This [only] teaches me her head; from where is it derived that it applies to her body? The text states: “the woman’s.” If so, what is the reason for the text stating, “And he shall uncover [*u-fara*] her head”? This teaches that the Kohen undoes her hair [Rashi—he overly exposes it, in that he undoes her hair].

Ketubot 72a states:

“What is [considered to be a violation of] *dat yehudit*? Going out with her head uncovered”: [But going out with] an uncovered head is a Biblical prohibition, as it is written, “And he shall uncover her head” (Num. 5:18), and the school of R. Yishmael taught that this is a warning to the daughters of Israel that they should not go out with uncovered head . . .

Several *Abronim*—halakhic decisors as well as biblical commentators—maintain that one ought to explain *Ketubot* 72a in light of *Sotah* 8a. In their view, there is a biblical prohibition for the daughters of Israel to go out with an uncovered head. But what constitutes an uncovered head? To them it means going out in public with one’s hair undone, which is that a woman’s hair is overly exposed to the point that it is disheveled. *However, merely having one’s hair uncovered, but not undone, is not a violation of any biblical prohibition, but rather a violation of dat yehudit* (which is dependent on time and place). R. Jacob ben Joseph Reischer (Prague, Bavaria and Germany ca. 1670-1733), *Responsa Shevut Ya’akov* 1:103, writes as follows:

[The claim of many authorities that when Rambam and *Tur* write that the obligation of hair covering applies to an unmarried woman, they mean to say a widow] seems forced, as their wording seems to apply to unmarried women in general. Moreover, the Talmudic source of this law which states, “the daughters of Israel,” seems to include unmarried women.

And the *Magen Avraham* (*Orah Hayyim* 75:3) wrote: “[The ruling that one may recite the *Shema* in the presence of unmarried women whose hair is uncovered] seems difficult, for in *Even ha-Ezer* 21:2 the *Mehaber* wrote that ‘the daughters of Israel should not go out in the marketplace with their heads uncovered, whether they are unmarried or married,’ as did Rambam (*Issurei Bi’ah* 21:5). And the beginning of the

second chapter of *Ketubot* also states that if a bride had gone out in a bridal veil [*hinuma*]⁸⁸ and with her hair uncovered [*parua*], this is an indication that she was a virgin. And it is quite forced to say that the unmarried woman [in *Orah Hayyim* 75] is a widow, for if this were so, it should have been stated explicitly.

One may instead suggest as follows: The ‘going with an uncovered head’ discussed in *Even ha-Ezer* 21 is referring to a woman who undoes the braids of her hair and goes out into the marketplace, which is forbidden even for an unmarried woman. So explained Rashi in his commentary to Numbers 5:18, s.v. *u-fara et rosh ha-isha . . .*” Were it not that the explanations of Rashi to the Talmud and Rambam in his Commentary on the Mishna gives me pause, I would have explained the passage in *Ketubot* 72a-b in this manner as well: that *when the Talmud states it is biblically prohibited for a woman to go with her head uncovered [roshah parua], it means that she undoes the braids of her hair.* The Talmud then questions this by noting that going with an uncovered head is a biblical violation if the woman dishevels her hair, to which the Talmud appropriately responds that biblically, *kalatah* is satisfactory, meaning that *biblically it is forbidden for the daughters of Israel to go out in the marketplace with their hair undone; but kalatah, as in braided hair [keliat se’ar] is sufficient.* However, according to *dat yehudit* and custom, even going out with braided hair and no other hair covering is prohibited as well for married women and non-virgins. We thus find that Rambam, who codified only what was prohibited by law and not by custom, wrote that “the daughters of Israel should not go out in the marketplace with their heads uncovered, whether they are unmarried . . . ,” meaning with their hair disheveled and not braided, as it is even forbidden for an unmarried woman to go out that way in the marketplace. . .

And such is our practice. And when the *Shulhan Arukh* ruled in *Even ha-Ezer* 75:2 that for all unmarried women, because they regularly do so, it is permissible for them to go out in the marketplace with their heads uncovered, it is because we have no further concerns about giving rise to erotic thoughts so long as their hair is braided.

The *Magen Avraham*, *Orah Hayyim* 75:3 writes: “The ‘Going with an uncovered head’ described in *Even ha-Ezer* 21 is referring to a woman who undoes the braids of her hair and goes out into the marketplace,

⁸⁸ Alternatively, *hinuma* is a canopy used exclusively at the wedding of a virgin bride.

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which is forbidden even for an unmarried woman.”⁸⁹ Even though the simple understanding of the *Magen Avraham* is that he does not maintain that the biblical prohibition is limited to the undoing of one’s braids and not uncovering the hair, such a view is found among many other *Abranim* (including a minority who maintain that that is in fact the *Magen Avraham*’s view), that the biblical prohibition of hair covering is only to undo one’s hair, not to uncover it. They are: *Shevut Ya’akov* (1:103, cited above), *Atsei Arazim* (*Even ha-Ezer* 21:1), *Magen Giborim* (*Orah Hayyim* 75:2), the notes of R. Barukh Frenkel (*Imrei Barukh* to *Sheyarei ha-Korban*, *Ketubot* 7:6), *Yeshu’ot Ya’akov* (*Even ha-Ezer* 21:1, responsum from his grandson), *Penei Moshe* (*Even ha-Ezer* 21:2), Responsa R. Azriel [Hildesheimer] (vol. 2 [*Even ha-Ezer*, *Hoshen Mishpat*, and errata], no. 36), R. Yosef Messas (*Responsa Mayyim Hayyim* 2:110; Collected letters, no. 1884), *Sefer Sanhedrai* (pp. 201-2), and many other *Abranim*. (See also *Responsa Maharitats be-Hadashot* 200, who distinguishes between “uncovered” and “undone” with regard to a man.)

It is also possible to say that the Torah prohibited a woman to go in public with her hair undone only in a time and place where such is disgraceful. A related idea is found in Rambam with regard to the law that it is prohibited to enter the Temple precincts with one’s hair undone. Rambam (*Bi’at ha-Mikdash* 1:17) rules:

Similarly, it is prohibited for anyone, whether Kohen or ordinary Israelite, to enter the entire Temple, from the beginning of the outer courtyard and inward, after having consumed wine or while drunk or with one’s hair undone [*parua*] in a disgraceful manner or with torn clothes—even though the latter is not included in the biblical admonition—for it is not befitting of the honor and reverence due to the great, holy site to enter in a disgraceful manner. However, a person who grew out his hair such that it is smooth and no longer disgraceful is permitted to enter the outer courtyard.

⁸⁹ The *Magen Avraham* continues:

Nevertheless, one must say that it is not biblically forbidden for an unmarried woman to do so, for if you were to suggest that the verse includes an unmarried woman, then it would be biblically forbidden for unmarried women to go with their hair uncovered, as this is the Talmudic source (*Ketubot* 72) for the law that the daughters of Israel should not go out with uncovered head. Rather, one must say that this verse does not include an unmarried woman, but that it is improper for a single woman to go this way based only on *dat* and modesty.

The prohibited exposure of hair is limited exclusively to that done in a disgraceful manner, and the term *parua* is an indication of disgraceful conduct, just as Rashi explained in his commentary to that very word in *Ketubot* 72a: “from the fact that we *disgrace* her in this manner commensurate to her act of making herself attractive to her lover [by uncovering her head] we can infer that it is forbidden.”

Many biblical commentators also base their commentaries to the term “*para*” on the Talmudic passage in *Sotah* 8a. For example, Rashi (Numbers 5:18) writes: “And he shall uncover—he undoes the braids of her hair in order to humiliate her. From here we derive that uncovering one’s head is considered denigrating conduct for a Jewish woman.” Malbim also explains the term this way, as does R. Menachem Mendel Kasher (*Divrei Menahem* 5:2), who attributes such to other *Rishonim*. A similar notion is found in the commentary of R. Sa’adia Gaon (Lev. 13:45).⁹⁰

In their view, the passage in *Ketubot* 72 should be understood as follows:

What is considered to be a violation of *dat yehudit*? Going out with her head *parua*—*i.e.*, with her hair completely undone. But going out with an uncovered head is a Biblical prohibition, as it is written, “And he shall uncover her head” (Num. 5:18), and the school of R. Yishmael taught that this is a warning to the daughters of Israel that they should not go out with their heads *parua*—*i.e.*, their hair completely undone? [R. Yehudah answered in the name of Shmuel:] Biblically, *kalata* is satisfactory—*i.e.*, biblically, it is sufficient for a woman to go out with her braided or woven like a basket, such that it is neat and not disheveled; however, according to *dat yehudit* even *kalata* [is insufficient and] is prohibited as well—thus, a woman who goes out with her hair neat but uncovered violates only *dat yehudit*; but such is biblically permissible so long as it is not disheveled. R. Assi stated in the name of R. Yohanan: When a woman goes with *kalata*—*i.e.*, with her hair braided, she is not considered to be [going with] an uncovered head. R. Zera took issue with this: Where are we talking about? If you were to say, in the marketplace—this is already considered to be *dat yehudit* [and forbidden]; but if you were to suggest instead, in a courtyard—if so, you have not left a single daughter of our patriarch Abraham who could live with her husband! Abaye, or alternatively R.

⁹⁰ See R. Barukh ha-Levi Epstein, *Torah Temimah*, Num. 5:18 s.v. *u-fara et rosh ha-ishah*, n. 95, who writes that this is in accordance with the view of R. Yishmael in *Sotah* 8a. But see also *Seridei Esh* 3:30 who maintains that nearly all biblical commentators explain *para* to mean “uncover.”

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Kahana, answered: [R. Yohanan's ruling is meant to apply to a woman who goes] from one courtyard to another by way of an alley.⁹¹

In *Responsa Atsei Hayyim, Orah Hayyim* 6, R. Hayyim Tzvi Teitelbaum (Sigheter Rebbe; older brother of R. Joel Teitelbaum, the Satmar Rebbe) writes as follows:

At first glance, the position of the *Magen Avraham* seems difficult: whence did he derive that one ought to differentiate between undoing one's hair and uncovering one's head? As does the question *Magen Avraham* posed to himself, namely that [if one were to suggest that the verse includes unmarried women,] if so, even for unmarried women it would be biblically forbidden to go with their hair uncovered, for this is the Talmudic source (*Ketubot* 72) for the law that the daughters of Israel should not go out with uncovered head, as well as his answer that this verse does not include an unmarried woman, but rather it is improper for a single woman to go this way based only on *dat* and modesty.

In my humble opinion, one may answer the question of the *Magen Avraham* as follows: The Talmud (*Ketubot* 72) states, "What is [considered to be a violation of] *dat yehudit*? Going out with her head uncovered." It goes on to ask, "[But going out with] an uncovered head is a Biblical prohibition, as it is written, 'And he shall uncover her head' (Num. 5:18), and the school of R. Yishmael taught that this is a warning to the daughters of Israel that they should not go out with uncovered head?" And Rashi explained that "from the fact that we disgrace her in this manner commensurate to her act of making herself attractive to her lover we can infer that it is forbidden."

Alternatively, since Scripture states, 'And he shall uncover,' we can infer that at that time her head was not uncovered; we thus deduce that it is not the practice of the daughters of Israel to go out with their heads

⁹¹ It is possible that there is some support to the views of the *Abronim* who distinguish between "uncovered" and "undone" from the use of these two different terms by Rambam. In *Issurei Bi'ah* 21:17 he writes: The daughters of Israel, whether unmarried or married, should not go out in the marketplace with their head *undone* [*parua*]," while in *Isbut* 24:11 he rules: "If a woman has done one of the following, she is considered to have violated *dat moshe*: Going out in the marketplace with her head *uncovered* [*galui*]." It is possible that Rambam maintains that it is forbidden—biblically—for all Jewish women, to go with their hair undone, but there is a lesser prohibition to go with one's head uncovered (which according to Rambam is only a rabbinic violation but still classified as *dat moshe*, but is classified according to the *Tur* and *Shulhan Arukh* as *dat yehudit*). Thus, when the *Tur* and *Shulhan Arukh* delete the word "*galui*" (in *Even ha-Ezer* 115) and replace it with "*parua*" it is an indication that in their view there is no distinction between the two at all.

uncovered: this is the main explanation.” One may suggest that the two explanations given by Rashi disagree with regard to the following issue. The Talmud in *Sotah* 8a states: “ ‘And he shall uncover her head’—This teaches that the Kohen undoes her hair,” but the *Sifri* (Parashat Naso 5:11 and also cited in *Yalkut Shimoni*) states: “It was taught: R. Yishmael states that, ‘And he shall uncover her head’ teaches that the daughters of Israel cover their heads.” The wording of the *Sifri* seems to indicate that it explains the verse in a way other than the Talmud in *Sotah* which identifies *para* as undoing the hair; instead, it understands that [*para*] is an expression of uncovering, not undoing. For if this were not the case, how would we infer that the daughters of Israel cover their heads—perhaps they merely do not undo the [braids of] their hair, but it would be completely permissible for women to uncover their hair so long as it was not undone? We may therefore suggest that the two explanations given by Rashi disagree about this exact matter: The first explanation maintains—like the Talmud in *Sotah*—that *parua* means undone, which is a matter of disgrace: commensurate to her act of making herself attractive to her lover by braiding her hair, and thus in order to disgrace her we undo her hair. . . . But the second explanation maintains as the *Sifri* does, that *parua* means uncover rather than undo; hence the *Sifri* derives that women are forbidden to go with their hair uncovered even if it is not undone. It is for this reason that Rashi in his second explanation wrote, “we can infer that at the time her head was not covered,” rather than disgracing her, because merely uncovering a woman’s hair does not disgrace her. And the reason Rashi wrote that the second explanation is the main one is because the Gemara goes on to challenge the Mishna by asserting that “[going out with an uncovered head] is a Biblical prohibition”—but this would pose no challenge if it were forbidden biblically only to go with one’s hair undone: the Mishna would be describing a case of a woman who went with her hair uncovered but not undone; after all, it seems that if the Talmud in *Sotah* (8a) maintains that *parua* means undo, then there would be no evidence to suggest that the verse prohibits anything other than unbraided hair. This proves that the Talmud in *Ketubot* 72a follows the view of the *Sifri*, that *parua* means uncover rather than undo. For this reason Rashi indicated that the second explanation is indeed the main one, as the Gemara clearly proceeds in accordance with the view of the *Sifri*, which is the one Rashi’s second explanation follows.

Based on the foregoing analysis, we may conclude that if we were to say that *parua* means undoing, then *going with one’s hair uncovered but not undone would not be biblically prohibited*. Yet it would seem to be

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forbidden rabbinically nonetheless, for it is no worse than *kalata* [which in this construct, makes no difference whether *kalata* means basket or braid], which the Gemara indicates is still prohibited as a matter of *dat yehudit*. . . . Accordingly, there is no distinction between unmarried and married women [with regard to unbraided hair]—only with regard to uncovered hair, which is merely a violation of *dat yehudit*; the biblical verse seems to describe only the undoing of a woman’s hair. Thus, since going with one’s hair uncovered is merely *dat yehudit*, it only applies to married, rather than unmarried, women. . . . Thus, according to the view of the gemara in *Sotah*, that *parua* means undoing of the hair, the mishna in *Ketubot* [describing a violation of *dat yehudit*] must be describing hair which is uncovered but not unbraided—for unbraided hair is a biblical violation, not *dat yehudit*. . . .

Many *Abronim* have dismissed this view based on the following two objections:⁹²

1. None of the *Rishonim* explicitly conflates *Ketubot* 72 and *Sotah* 8a. Even if one were to agree that “*periah*” with regard to a suspected adulteress is not uncovering the hair, but rather something else, how are we to know that the same legal definition is to apply generally to a married woman who goes out in public?

Among the *Rishonim* on the Talmud, only R. Yonatan b. David ha-Kohen (Ri) of Lunel explains the passage in *Ketubot* in light of *Sotah* (or vice versa). He writes in his commentary to *Ketubot* 72a:

“And he shall uncover her head,” It is taught in Tractate *Sotah*: She uncovered her head for [her suitor], therefore the Kohen shall uncover her head—we thus see that she was not to have uncovered her head. From here we derive that the daughters of Israel are not to go with their heads uncovered.

Yet even he does not explicitly equate the uncovering in *Ketubot* to the uncovering in *Sotah*.

2. The simple understanding is that “exposing” (*gilui*) and “uncovering” (*periah*) mean the same thing.

⁹² See, e.g., n. 1 above; also see in particular the article by R. Yechiel Yaakov Weinberg, “On Women’s Hair Covering” (Heb.), *Ha-Maayan* 14:1-8 and R. Yosef David Zintzheim, *Minhat Ani*, “*Gilui se‘ar be-ishah*.”

As Rashi explained, “‘And he shall uncover’ in every instance in Scripture is an expression of exposing.” Many other *Rishonim* also wrote that there is no distinction at all between exposing and uncovering; see, for example: Rambam, *Ishut* 24:11-12; Responsa of Radvaz 1:455; Responsa of Terumat ha-Deshen 10; Ra’avyah, cited in Mordekhai to *Berakhot* 24; Rabbeinu Yerucham, *Sefer Mesharim* 23:8; Responsa of Rashba 1:571; *Semag*, positive commandment no. 48; and *Sefer Ezrat Nashim* (a *Rishon* of Provence), section 7. Numerous other *Rishonim* and *Abronim* agree with this position.⁹³ For example, in *Responsa Seridei Esh* 3:30, R. Weinberg writes in regard to the novel explanation of the *Shevut Ya’akov*:

However, upon examination one may conclude that the explanation of the author of the *Shevut Ya’akov* is mistaken, and the explanations of Rashi and Rambam are indeed correct. First let me note that the legal basis of the prohibition for a woman to uncover her hair is explicit in the *Sifri*, Parashat Naso 5:11: “‘And he shall uncover her head.’ The Kohen turns to stand behind her and lets her hair loose, as a fulfillment of the obligation to uncover, so said R. Yishmael. Alternatively: this teaches that the daughters of Israel cover their heads. And though there is no explicit proof to the matter, there is an indication: ‘And Tamar put ashes on her head’ (II Samuel 13:19).” Many commentators strove to explain the wording of the *Sifri* (“The Kohen turns . . .”); see Malbim’s *Ha-Torah ve-ha-Mitsvah* commentary to Midrash Halakha, as well as the notes of R. H.S. (Hayyim Shaul) Horowitz [in his critical edition of the *Sifri*]. In their view, this paragraph was left out of its proper place and mistakenly inserted here. It correctly belongs later in the statement of R. Yehudah b. Berokah.⁹⁴ Netsiv also explained it in this way, as did the Gra. However, I find it quite surprising that the actual wording of the *Sifri* escaped the *Bah* and the Gra, to the point that they sought to prove based on the expression “to the daughters of Israel” that this is Rambam’s source for the law [of hair covering]. . . .

However, even without the foregoing, it would be impossible to explain the gemara in *Ketubot* (72) according to the view of the *Shevut*

⁹³ The *Hatam Sofer*, in his responsa, *Yoreh De’ab* 2:249 writes (regarding the blessing one ought to make on *periah* of the foreskin membrane when not done in conjunction with the circumcision [*milah*]), that while *milah* means to sever, “this does not apply to [*periah*] which means the uncovering of the corona, as in, “And he shall uncover the woman’s head.” (He concludes, though, that *milah* in fact means to remove an impediment.) R. Moshe Feinstein, *Iggerot Moshe*, *Even ha-Ezer* 1:58 equates exposing and uncovering, as does R. Ovadia Yosef, *Yabi’a Omer*, *Even ha-Ezer* 4:3.

⁹⁴ See n. 59 above.

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Ya'akov. For this Talmudic exchange also appears in the Jerusalem Talmud (*Ketubot* 7:6), and the wording there leaves no room at all for the explanation of the *Shevut Yaakov*. The Yerushalmi states as follows: “R. Hiyyah stated in the name of R. Yohanan: When a woman goes out with her *kapliton* [on her head], she is not considered to be [going with] an uncovered head. That which you have said must be with regard to going into a courtyard, but in an alleyway, it is considered to be going with an uncovered head.” While the Bavli states: “R. Assi stated in the name of R. Yohanan: *kalatah* is not considered to be [going with] an uncovered head.” Evidently, *kalatah* and *kapliton* are the same thing. (The *Arukh* has the word *kaplitan*, which he explains is Latin for hair, curls and wigs [i.e., foreign hair interwoven in one’s own]; see also *Arukh*, s.v. *kaplita*, as well as Lavi’s Hebrew-Aramaic dictionary for the correct pronunciation and translation.) Rosh’s edition of the text continues: “R. Yehudah answered in the name of Shmuel: Biblically, [going] with a *kalatah* is satisfactory; however, according to *dat yehudit* even [going] with a *kalatah* is prohibited as well.” The text of the *Tosafot* Rid reads: “R. Yehudah answered in the name of Shmuel: Biblically, a *kalatah* on her head is satisfactory; however, according to *dat yehudit* even [going] with a *kalatah* is prohibited as well. What emerges from this, is that the word *kalatah* is not the gerund meaning “braiding,” but rather a noun describing that which covers the head, whatever it may be—a basket or kerchief or scarf or fall. By comparing these sources and clarifying the wording, we are able to untangle the thicket in which many latter-day authorities have become caught, and thereby resolve the seeming contradiction between the wording of the *Shulhan Arukh*, *Orah Hayyim* 75 and *Shulhan Arukh*, *Even ha-Ezer* 201. We have also been able to clarify, based on the wording of this *Sifri*, that Rambam does not draw any distinction between a married woman and an unmarried woman or virgin.⁹⁵

⁹⁵ R. Yaakov Emden, *Responsa She’elat Ya’avetz* 2:2, writes:

Let me repeat something I have written before. Regarding that which the *Shevut Ya’akov* wrote: “Were it not that the explanations of Rashi to the Talmud and Rambam in his Commentary on the Mishna give me pause, I would have explained . . . ‘*kalatah* is satisfactory’—meaning that biblically it is forbidden for the daughters of Israel to go out in the marketplace with their hair undone; but *kalatah*, as in braided hair, is sufficient”: understand that this explanation is indeed confused. This includes his earlier statement that a woman who was raped must cover her head. His proof is from the *Yalkut Shimoni*, Parashat Naso, p. 207, which cites the *Sifri*. He writes: “Alternatively: this teaches that the daughters of Israel cover their heads. And though there is no explicit proof to the matter,

The view of many *Rishonim* and *Abronim* is that there is no difference in fact between the prohibition for a woman to uncover her hair or undo her hair in an unkempt manner.⁹⁶

In my own opinion, though the view of the *Abronim* that there is a difference between the term “undo” and the term “uncover”—and that uncovering is only prohibited based on *dat yehudit* (and thus may change from one place to another and one time period to another)—is not found explicitly in the works of the *Rishonim*, there is nevertheless no Talmudic proof at all to the contrary. It is possible, then, that modest Jewish women have relied on this too as one consideration to generate a case of double doubt (*sefek sefeka*), namely:

1. It might be that there is no biblical obligation of hair covering at all (as many *Rishonim* maintain, see section IV above), and the entire prohibition against going with uncovered or exposed hair is only based on *dat yehudit* and rabbinic;

and

2. If there is a biblical obligation to cover one’s hair, and the hermeneutic derivation in *Ketubot* 72a is not merely an association to a verse but in fact is the source of an actual biblical prohibition, it still might be that the biblical prohibition merely forbids going in public with unkempt and dishev-

there is an indication: “And Tamar put ashes on her head and tore the robe she was wearing . . . (II Samuel 13:19)”—and in that instance, Tamar had been raped. We thus have an explicit source that even a raped woman must cover her hair.” I do not understand what he is trying to say—in fact the incident contradicts his point! There, only *after* she was raped (by Amnon) did Tamar tear her garment and uncover her head. Indeed, quite to the contrary—before the incident, she did not have her hair undone, even though she was unmarried. (It was on account of this immoral act that she conducted herself in such a denigrating fashion, to indicate her distress over her being profaned and tarnished.) . . .

⁹⁶ The modesty of Kimhit is another matter entirely. *Yoma* 47a relates:

The Rabbis taught: Kimhit had seven sons, each of whom served in the position of Kohen Gadol [High Priest]. The Sages asked her, “What have you done to merit such?” She answered: “In all my days, the beams of my house have never seen the braids of my hair.”

Rabbeinu Hananel maintains that she was “exceedingly modest.” *Tosafot Yesbanim* explains that she would cover her hair “during the time she was able to have uncovered it.” The *Magen Avraham* in his *Zeit Ra’anan* commentary to *Yalkut Shimoni*, Gen. 3:27, rules that as a matter of law, it is permissible for a woman to uncover her hair at night, but she covered her hair even at night. According to all, the actions of Kimhit were above and beyond the requirements of the letter of the law.

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eled hair; going with one's (neatly arranged) hair uncovered remains permissible as a matter of Torah law, and is forbidden only by *dat yehudit*.

XII. CONCLUSION

R. Dr. S. Carlebach, in his article on hair covering for women, "Sources for the Prohibition of a Woman Uncovering her Hair and Laws Regarding Wigs," which collects a host of sources on hair covering from the *Rishonim* and *Abronim*, writes:

I have searched through the numerous books I own and those I could get my hands on to gather the views of the great medieval and latter-day decisors on this topic. And from all I have been able to amass in my stronghold, I have concluded in my humble estimation that a woman who goes with her head uncovered violates a biblical prohibition, even though I did not find explicit statements to this effect by Rambam, *Semag*, or *Shulhan Arukh*—I find this to be astounding.⁹⁷

I, too, have set out to investigate this topic in the footsteps of the great decisors, and I tried to search all the books I could find to gather the views of the *Rishonim* on hair covering for women, and I have discovered that many of them—*Tosafot*, Rosh, the *Tur*, and *Terumat Ha-Deshen* in particular—established the prohibition for a woman to go with her head uncovered as a violation of *dat yehudit* and a subjective rabbinic prohibition. I find this to be astounding as well, because their view never appears in the works of the leading *Abronim*, even as it is codified in the *Shulhan Arukh*.⁹⁸ The numerous religious women

⁹⁷ Rabbi Dr. S. Carlebach, "Sources for the Prohibition of a Woman Uncovering her Hair and Laws Regarding Wigs" (Heb.), in S. Eppenstein, M. Hildesheimer, and J. Wohlgemuth, eds., *Sefer le-David Tsevi*: Festschrift on the seventieth birthday of R. David Zvi Hoffman (Ger.–Heb.) (Berlin: L. Lamm, 1914), p. 218-247.

⁹⁸ See R. Moshe Feinstein, *Iggerot Moshe*, *Yoreh De'ah* 1:101 (toward the end), who writes:

And that which my dear correspondent wrote asking how we are permitted to rely in practice on such innovative insights as those I have presented, particularly when such a view contradicts the position of some latter-day authorities, I say: Has there already been an end or boundary set for Torah study, God forbid, that we should only rule according to what is found in existing works, but when questions arise that have not been posed in our traditional works we will not decisively resolve them even when we are able?! Certainly, in my humble opinion, it is forbidden to say this, as certainly

throughout the generations who did not cover their hair undoubtedly did so based on the simple reading of the *Shulhan Arukh*, which is

Torah study will continue to flourish now in our time; therefore, everyone who is able must rule decisively on each halakhic question posed to him, to the best of his ability, with diligent investigation in the Talmudic sources and the works of halakhic decisors, with a clear understanding and valid proof, even if it is a new application of the halakha which has not been discussed in our Jewish law works. And even for a halakha which has been discussed in our Jewish law works, the one issuing a ruling must certainly understand the issue, too, and reach a conclusion in his own mind before issuing a ruling, and not rule solely based on a ruling that can be found on the topic in other halakhic works, as that is considered as one who decides points of law merely from reading law books, about which it is said, “Those who merely recite the Mishna bring destruction upon the world, for they decide points of law from their recitation of the texts” (*Sotah* 22a; see Rashi *ad loc.*). And even if one’s decisions sometimes go against those of eminent latter-day rabbinic authorities, so what? We are certainly permitted to disagree with latter-day authorities (*Ahronim*), and sometimes even with medieval authorities (*Rishonim*) when one has valid proofs, correct reasoning in particular—on matters like this, our sages stated, “A judge has but only what his eyes see [before him]” (as explained in *Bava Batra* 131a; see Rashbam *ad loc.*)—so long as one does not contradict the undisputed opinion of the *Shulhan Arukh* and its commentaries which have been widely accepted in our community; on these types of matters it has been said, “[our predecessors] left room [for us] to distinguish ourselves” [See *Hullin* 7a]. Most of the responsa of the latter-day authorities indeed utilize innovative insights to decide numerous questions of practical import. However, one ought not be haughty in one’s instructive rulings [i.e., being innovative just for the sake of innovation rather than to solve a particular problem]—this should be avoided whenever possible, but in cases of great need, and certainly in serious matters regarding the ending of marriages as this case, we are certainly obligated to rule [leniently], even if we merely deem it plausible to be lenient, and it is forbidden for us to be among the “humble” and [thereby] cause Jewish women to remain unable to marry, or cause fellow Jews to stumble in prohibited activities, or even simply cause a Jew’s financial loss—See *Gittin* 56 which states, “Because of the humility of Rabbi Zeharya ben Avkulas, the Temple was destroyed;” why does it say “his humility” and what does that incident have to do with humility? See the comments of *Maharats Hayot* there for a correct interpretation—this indeed is what results [from these types of failures to act], and we are compelled to rule [leniently] even for practical application when we deem it appropriate with evidence and clear understanding, and particularly in a serious matter of leaving a woman without a husband or avoiding a severe temptation.

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based on the *Tur* and many great *Rishonim*. If they were not themselves prophets, they are surely daughters of prophets.

Rashi in his commentary to *Ketubot* 72 offers two possibilities regarding the classification of the prohibition against going with an uncovered head.⁹⁹ According to the first possibility, Rashi writes that the prohibition comes from “the fact that we disgrace her in this manner commensurate to her act of making herself attractive to her lover [by uncovering her head], we can infer that it is forbidden.” The second possibility is that “since Scripture states, ‘And he shall uncover,’ we can infer that at that time her head was not uncovered; we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered.” Rashi rules that the fundamental understanding of the second explanation is correct, that we are to rely on “the practice of the daughters of Israel” with regard to hair covering. Thus, everything is dependent on the practice of Jewish women.¹⁰⁰

⁹⁹ The Novellae of R. Dov Beresh Meisels (Mahardam) to Rambam’s *Sefer ha-Mitsvot* (positive commandment 175) states as follows:

Regarding that which [Rambam] did not count a woman’s going out with uncovered head, which is biblically prohibited, as the Talmud in *Ketubot* stated: “Going out with an uncovered head is a Biblical prohibition, as it is written, ‘And he shall uncover her head’ (Num. 5:18), and the school of R. Yishmael taught that this is a warning to the daughters of Israel that they should not go out with uncovered head”—we must answer that he is of the same view as the second explanation presented by Rashi, that from the verse “And he shall uncover . . .” we infer that at that time her head was not uncovered, and we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered. According to this explanation, it is not a full-fledged prohibition, but rather a practice of the daughters of Israel that is ascribed Torah status . . .

According to this understanding, Rambam and Rashi both rule that there is no biblical prohibition against uncovering one’s entire head, and this serves as the foundation for the rulings of the *Tur* and *Shulhan Arukh*.

¹⁰⁰ R. Moshe Feinstein, *Iggerot Moshe, Even ha-Ezer* 1:57, writes as follows regarding the two views in Rashi:

I have been asked about a woman who was widowed and required to support her children, but was unable to find a position that payed an adequate wage to support her children unless she would not cover her head while working in the office—is she permitted to do so? I responded that there is room to be lenient in a case of great need such as this, for it is clear that even according to the *Bet Shmuel* and *Dagul me-Revavah, Even ha-Ezer* 21:5, who maintain based on the Yerushalmi that even a widow is forbidden to go with her head uncovered, this is only a requirement based on *dat yehudit*, for biblically, such is required only of a married woman. . . . It also seems, in

Everything that I have written is meant only to justify the halakhic practice of modest Jewish women. As a rabbi of little stature, I have no intention of deciding halakhic practice for the entire community in opposition to the rulings of the great decisors of our generation. I only wish to point out that there are many *Rishonim* who rule that the prohibition for married women to go with uncovered hair is a subjective rabbinic violation dependent on societal norms of modesty (and *dat yehudit*), not a biblical prohibition (and *dat moshe*). Women and families who have a clear custom not to cover their hair should know that there is a firm foundation for such a practice in the *Rishonim* and *Shulhan Arukh*, even if such a view is rejected by the great *Abronim* of our day.¹⁰¹

my humble opinion, that this matter depends on the two explanations found in Rashi, *Ketubot* 72, regarding the derivation [of the requirement of head covering]: According to the first, which explains that “from the fact that we disgrace her in this manner commensurate to her act of making herself attractive to her lover [by uncovering her head], we can infer that it is forbidden,” and see the comments of Ritva who wrote that according to this explanation of Rashi we infer that for a woman to go with uncovered head is considered promiscuous behavior, it is thus certainly forbidden. But according to the second, which explains that “since Scripture states, ‘And he shall uncover,’ we can infer that at that time her head was not uncovered; we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered,” seems to imply that there is an obligation for a woman to go about with a head covering, but there is no explicit prohibition other than that the conduct becomes de facto prohibited as one violates a positive commandment by going with her head uncovered. And Rashi concludes that “[the latter] is the main explanation. . . . Yet, it seems nevertheless that with regard to a married woman, where the obligation is biblical, one ought to forbid such conduct based on our uncertainty as to the correctness of the first explanation given by Rashi that this is in fact prohibited, and for that reason one should forbid [going with an uncovered head] even if it causes a woman to lose her entire income. However, with regard to a widow, where the obligation is only based on *dat yehudit*, there is room to be lenient based on this uncertainty, for clearly it should be no more stringent than a rabbinic prohibition, where we rule leniently in a case of doubt . . .

Thus, R. Feinstein maintains that according to the second explanation, there isn’t precisely a prohibition, but rather a positive obligation.

¹⁰¹ R. Yehiel Yaakov Weinberg (author of *Responsa Seridei Esh*), at the end of his article regarding the prohibition of uncovered hair (“On Women’s Hair Covering” (Heb.), *Ha-Ma’ayan* 14:1-8), remains uncertain if there is a biblical prohibition for a woman not to cover her hair. He writes:

I have not come to clarify here whether the requirement for a married woman to cover her hair is an explicit biblical obligation or only a biblical custom. In practice, I maintain that even from the

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ENDNOTE

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I wish to acknowledge an intellectual debt to previous scholarship on this topic, work which has uncovered a wealth of sources that I have utilized in my analysis. In particular, the fine manuscript by R. Dr. Dov Frimer, “Grounds for Divorce Due to Immoral Behavior (Other Than Adultery) According to Jewish Law” (Heb.), (February 1980) (unpublished Ph.D. dissertation, Hebrew University, on file with Center for Research Libraries) contains a wide array of Jewish law references that I have routinely cited. In addition, the article by R. Dr. S. Carlebach, “Sources for the Prohibition of a Woman Uncovering her Hair” (Heb.), in S. Eppenstein, M. Hildesheimer, and J. Wohlgemuth, eds., *Sefer Le-David Tsevi: Festschrift on the seventieth birthday of R. David Zvi Hoffman* (Ger.–Heb.) (Berlin: L. Lamm, 1914), h.218-247, contains much important source material.

Over the last twenty years, numerous people have read this manuscript and have commented on it in many ways. Thank you to all of them. Four of my teachers have played a great role in my intellectual development over these many years, and while they do not necessarily agree with this article’s conclusions, they deserve a special note of thanks for the time they have spent teaching me and speaking with me over many years: Rabbis Moshe Bernstein, J. David Bleich, Michael Hecht, and Mordechai Willig, all have invested many hours in my intellectual growth and remain role models to me in my middle age.

standpoint of Jewish ethics, it is appropriate for a married woman to cover her hair; by doing so, she demonstrates that she is not eager to make herself attractive to other men . . . R. Samson Raphael Hirsch, ob”m, mentioned the requirement for a woman to cover her head in his book *Horeb* in the same chapter in which he discusses the sanctity of thought which is demanded of every Jewish man and woman. May this sign of modesty serve as a source for the purification of our thoughts.

Michael J. Broyde

The dedication shown by Channah S. Broyde, my wife of twenty five years, to me has enabled my investment in many different aspects of Torah study and halakha all these years. Without her, almost none of my work would ever have come to fruition. The words of R. Akiva are certainly true: “Mine and yours are hers” (*Ketubot* 63a), and she is deserving that this article be dedicated to her—but who in his right mind dedicates a monograph whose central Talmudic text deals with grounds for faulted divorce, to his beloved wife! Rather, may the Torah study contained in this work honor our beloved children: Joshua Emanuel, Aaron, Rachel Irene and Deborah Malka, all of whom should be blessed to have the virtues of their mother. As this article goes to press, my son, Aaron Broyde, commences his IDF service (along with all the other members of his year in Hesder Yeshiva Petach Tikva). Like much of my scholarship during his time in the IDF, this article is dedicated in his honor and with the prayers that he return home “safe and sound.” God should watch over him and all the other Israeli soldiers.

